IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.2915/Mum/2025
(**Assessment Year :2022-23**)

Naik Naik And Co., 116, Mittal Tower-B Mittal Tower-B Nariman Point Mumbai- 400 021	Vs.	Commissioner of Income Tax-Appeal (Addl./JCIT (A), Faridabad ACIT 16(3), Mumbai
PAN/GIR No.AAFFN1505N		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Porus Kaka; Shri Aditya Ajgaonkar and Ms. Rupal Shrimal
Revenue by	Shri Leyaqat Ali Aafaqui, Sr.AR
Date of Hearing	**07/08/2025**
Date of Pronouncement	**30/09/2025**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal has been filed by the assessee against the order dated 12.03.2025 passed by the learned Additional Joint Commissioner of Income-tax (Appeals), Faridabad, arising from intimation under section 143(1) of the Income-tax Act, 1961, for the assessment year 2022–23.

2. The controversy is twofold. First, whether the assessee can be denied credit of TDS amounting to ₹96,12,846 merely on the ground that such deduction did not appear in Form

No. 26AS, despite the fact that the corresponding income was duly offered to tax. Second, whether interest charged under sections 234B and 234C is sustainable when there is no default in payment of advance tax, the entire liability already having been met through TDS.

3. The assessee is a well-regarded law firm providing legal services to multiple clients. It filed its return of income declaring a total income of ₹20,16,58,770. The self-assessment tax calculated thereon was ₹7,04,67,641 and interest ₹8,12,300, aggregating to ₹7,12,79,941. Against this liability, the assessee claimed credit of TDS of ₹4,80,45,747, advance tax of ₹2,20,00,000, and self-assessment tax of ₹12,34,194.

4. The assessee maintains its accounts on cash basis. Payments received from clients were net of tax deducted at source, the deductors having withheld the applicable TDS before releasing amounts. The assessee thus claimed credit for such deductions while offering the entire gross receipts to tax.

5. CPC, however, while processing the return under section 143(1) on 16.11.2022, denied credit of TDS aggregating to ₹96,12,846 solely on the ground that such amounts did not feature in Form No. 26AS. A demand of ₹1,09,01,070 was raised comprising the disallowed TDS together with interest under section 234B of ₹8,02,776 and under section 234C of ₹4,85,452.

6. In appeal, the assessee produced evidence in the form of invoices, TDS advices, and bank statements showing that payments had indeed been received net of TDS. The mismatch with 26AS was entirely attributable to failures by deductors in depositing tax or filing correct e-TDS statements. The assessee highlighted that Form 26AS is not prepared by it but is a dynamic departmental record and cannot be the sole measure for granting credit.

7. A detailed reconciliation was placed on record showing party-wise mismatches. It was pointed out, for example, that in the case of Future Retail Ltd., tax of ₹73,63,741 was deducted but not deposited, the company being in liquidation. In another case, MEP Infraprojects Developer Ltd., TDS of ₹16,97,600 was deducted but initially not deposited; the amount has since been deposited and reflected in updated 26AS. Other parties such as Renaissance Pictures LLP, Tag Offshore Ltd., Instastarz Pvt. Ltd., Rolta Resources Pvt. Ltd., Future Lifestyle Fashions Ltd., and several others also figure in this reconciliation, each case showing deduction but either short deposit or non-deposit by the deductor.

8. The learned CIT(A), however, proceeded to uphold the denial of credit, holding that unless the deduction appears in Form 26AS, the assessee cannot be allowed relief. He suggested that the assessee should approach the deductors for rectification of their e-TDS statements, and directed that credit may be granted by the AO only when such rectification finds reflection in updated 26AS.

9. As regards levy of interest under sections 234B and 234C, the learned CIT(A) held the same to be consequential and mandatory. The assessee's request for hearing through video conference was declined.

10. Before us, learned counsel for the assessee submitted that the order of the CIT(A) is contrary both to the statute and to binding instructions of CBDT. He drew our attention to section 205 of the Act, which places an express bar on recovery of tax from a deductee once it is established that tax has been deducted from his income. It was submitted that section 205 comes into immediate operation the moment deduction at source is shown, and it is wholly irrelevant whether the deductor has thereafter deposited the tax or not.

11. The assessee submitted that it had already offered the corresponding income to tax and placed on record complete primary evidence, including invoices raised on clients, advices showing deduction of tax, and bank statements showing net-of-tax credits. Once this is established, denial of TDS credit merely because the deductor failed in his statutory duty is to penalise the innocent for the fault of another, resulting in double taxation.

12. Reliance was placed on CBDT Instruction No. 275/29/2014-IT(B) dated 1.6.2015, wherein the Board clarified that in cases where TDS has been deducted but not deposited by the deductor, the assessee shall not be made to suffer demand on account of mismatch. The Instruction

specifically directed field officers that recovery on account of such mismatch cannot be enforced against the deductee.

13. Reference was also made to Office Memorandum dated 11.3.2016, which reiterated the position and once again directed officers not to enforce demands created due to non-payment of TDS by deductors. The Board cautioned that despite the earlier instruction, field officers were continuing to enforce demands against deductees, and it was once again clarified that assessees shall not be called upon to pay where tax has already been deducted from their income.

14. The assessee fortified his submissions by reliance on judicial precedents. In Yashpal Sahni v. Rekha Hajarnavis [2007] 293 ITR 539 (Bom), the jurisdictional High Court held that once tax has been deducted at source, the bar of section 205 squarely applies and the deductee cannot be asked to pay again, even if the employer or payer has failed to deposit the tax or issue TDS certificates.

15. The Bombay High Court in Pushkar Prabhat Chandra Jain v. UOI [2019] 103 taxmann.com 106 reiterated that the Revenue cannot refuse credit or raise demand against the deductee when tax has already been withheld at source but not deposited by the purchaser. The responsibility is of the deductor, and coercive measures must be directed only against him.

16. The Delhi High Court in Incredible Unique Buildcon (P.) Ltd. v. ITO [2023] 153 taxmann.com 179 has also held that where the payer has deducted tax but not deposited it, the

Revenue cannot both refuse credit and simultaneously demand the same sum from the deductee. Section 205, it was held, places a complete embargo on such recovery.

17. Support was also drawn from the Supreme Court's rulings in UCO Bank v. CIT [1999] 237 ITR 889 and Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706, affirming that CBDT circulars and instructions are binding on the Revenue. It was contended that the learned CIT(A) erred in reducing the binding instructions of CBDT into a dead letter by treating Form 26AS as the sole governing factor.

18. We have carefully considered the rival submissions and perused the material placed on record, including the return, the CPC intimation, the invoices raised on clients, the bank statements evidencing net receipts after deduction of tax at source, the party wise reconciliation filed by the assessee, the CBDT Instruction dated 1 June 2015 and the Office Memorandum dated 11 March 2016, and the authorities cited at the Bar.

19. The case turns on a simple but significant proposition. When tax has in fact been deducted at source from the assessee's receipts, can credit be denied merely because the deductor has not deposited the tax or has not correctly reported it and, therefore, the credit does not surface in Form 26AS. In our opinion the answer must be in the negative. Section 205 of the Act erects a clear bar against making a direct demand on the assessee to the extent tax has been deducted at source from his income. The moment deduction

is shown on the strength of primary evidence, the embargo of section 205 attaches and the deductee cannot again be called upon to bear the burden.

20. This statutory position is not only plain on the text of the provision but also reinforced by the Central Board of Direct Taxes. In Instruction No. 275/29/2014 IT(B) dated 1 June 2015 the Board recorded that taxpayers were being denied credit because deductors failed to deposit the tax, and directed that in such cases coercive recovery should not be enforced from the deductee. The subsequent Office Memorandum dated 11 March 2016 reiterated the same position and directed field officers not to enforce demands created on account of mismatch of credit due to non payment by the deductor. These directions are binding on the Department and are intended precisely to avoid double taxation of an innocent deductee.

21. The judicial current flows in the same channel. The jurisdictional High Court in Yashpal Sahni v. Rekha Hajarnavis held that once deduction of tax at source is established the bar of section 205 operates and the revenue is restrained from recovering the same amount again from the person from whose income tax has been deducted. The Court clarified that even the non issuance of a TDS certificate or the failure of the payer to deposit the tax does not undo the protection that section 205 accords to the deductee. The same High Court in Pushkar Prabhat Chandra Jain reiterated that where the purchaser deducted tax under section 194IA but did not remit it to the Government, the Department could

always proceed against the defaulting purchaser, but the seller who had suffered deduction could not be asked to pay the tax again nor be denied credit. The Delhi High Court in Incredible Unique Buildcon echoed this principle and held that the Department cannot both refuse credit and also seek to recover from the assessee the very sum that has been deducted and pocketed by the payer. These rulings are apposite and their ratio applies on all fours to the present case.

22. Tested on this legal touchstone the approach of the first appellate authority does not commend acceptance. The learned CIT(A) made Form 26AS the decisive touchstone and cast upon the assessee the burden of securing rectification by the deductors. Form 26AS is a departmental statement that reflects the deductor's compliance. It does not form part of the assessee's books. When primary materials on record show that payments were received net of tax after deduction at source, to thereafter insist on reflection in 26AS as a condition precedent for credit is to elevate form over substance. The statute does not so provide. The Board's directions counsel against it. The High Courts have interdicted it.

23. On facts, the assessee has demonstrated deduction of tax at source through its invoices and bank statements. The reconciliation placed on record shows, among others, deduction by Future Retail Limited of a substantial sum which was not deposited owing to the company's financial condition. In the case of MEP Infraprojects the deposited tax

is now reflected on update of 26AS, which only underscores that the mismatch was the consequence of deductor side compliance and not any infirmity in the assessee's claim. For the remaining parties too the Department has not disputed the services rendered or the gross receipts; its sole objection is non appearance in 26AS. That objection, in the face of section 205, the CBDT directions and the binding precedents, cannot prevail.

24. It is important to remember that the assessee has already brought the corresponding income to tax. Denial of credit in the assessee's hands, because the deductor failed to deposit or mis reported the deduction, results in taxing the same income twice. Section 205 is the Parliamentary safeguard against precisely such injustice. The Board's Instruction and Memorandum translate that safeguard into administrative practice. The High Courts have given it judicial benediction. The revenue's proper remedy lies against the defaulting deductor under sections 200 and 201 and other enabling provisions, and not against the deductee who has already suffered deduction.

25. The learned Departmental Representative suggested that section 199 contemplates credit only on payment to the Government and hence the absence of 26AS entries should defeat the claim. Section 199 cannot be read in isolation. It must be read harmoniously with section 205. Section 199 allocates the time and manner of giving credit in the ordinary course when the deductor has discharged his obligation. Section 205 steps in to prevent a second exaction from the

deductee when that ordinary course is derailed by the deductor's default. The harmonious reading preserves both provisions and avoids the manifest unfairness that would otherwise ensue.

26. We also cannot subscribe to the view that the assessee must first secure rectification of the deductors' e TDS statements and only thereafter obtain credit. The statute does not impose such a precondition. The deductee has neither control over nor access to the deductor's filings. The insistence effectively makes the assessee hostage to another's compliance and empties section 205 of content. The more correct and lawful approach is to verify the assessee's primary evidence of deduction and allow credit accordingly, leaving the Department free to pursue the defaulting deductors in accordance with law.

27. In the result we hold that the assessee is entitled to credit of TDS to the extent deduction from its receipts is established on the basis of the contemporaneous material placed on record. The denial of credit by CPC and its affirmation by the first appellate authority are set aside. The Assessing Officer is directed to verify the assessee's reconciliation with reference to the invoices, payment advices and bank statements already on record and to allow the corresponding credit of TDS. This direction is squarely in line with section 205 of the Act, CBDT Instruction dated 1 June 2015 and Office Memorandum dated 11 March 2016, and the principles laid down by the Bombay and Delhi High Courts noticed above.

28. Once credit is so allowed the levy of interest under sections 234B and 234C does not survive. Even otherwise, when the tax liability stands met through deduction at source and the difference is occasioned solely by the deductor's lapse, fastening compensatory interest upon the deductee would be unjust and contrary to the scheme of the Act. The Assessing Officer shall therefore delete the interest charged under sections 234B and 234C while giving effect to this order.

29. For the reasons aforesaid the appeal is allowed. The Assessing Officer shall give effect to this order by granting due credit of TDS on verification of the material on record and by deleting the consequential interest, in accordance with law.

30. In the result, appeal of the assessee is allowed.

Order pronounced on 30th September, 2025.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30/09/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai