

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'D': NEW DELHI.**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2433/Del/2025
(Assessment Year: 2022-23)**

Abdul Rahman Asad,
House No.47, Behind Jain Mandi,
Mohalla Barihat,
Bahraich – 271 801 (Uttar Pradesh).

vs. DCIT,
Circle Int. Tax 1(1)(1),
New Delhi.

(PAN : AOFPA6981F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Alok Vasant, FCA
Ms. Poonam Ahuja, Advocate
REVENUE BY : Shri Vikram Singh Sharma, Sr. DR

Date of Hearing : 21.08.2025
Date of Order : 12.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income-tax (Appeals), Delhi - 42 ["Ld. CIT(A)", for short] dated 03.03.2025 for the Assessment Year 2022-23.
2. Brief facts of the case are, the assessee is a Non-Resident and filed the original return of income for AY 2022-23 on 27.07.2022 declaring taxable income of Rs.4,86,560/- (income from house property Rs.4,64,444/-, income from other sources Rs.32,115/- and loss from long

term capital gain of Rs.5,55,123/-) and claimed the prepaid tax of Rs..21,60,112/- against the total tax payable of Rs.12,301/-. While processing the return of income credit of TDS was allowed of Rs.60,872/- against the claim of prepaid taxes of Rs.21,60,112/- in his return of income by the CPC. The CPC not allowed the credit of TDS of Rs.20,99,240/- which was deducted/deposited on sale of the immovable property by the buyer of the property.

3. Aggrieved the above order, the assessee preferred an appeal before the Id. CIT (A), Delhi-42 and assessee filed detailed submissions before the Id. CIT (A) which was logically reproduced by the Id. CIT (A) at pages 2 to 5 of the impugned order. After considering the detailed submissions of the assessee, Id. CIT (A) dismissed the grounds raised by the assessee by observing as under :-

“9. During the course of appellant proceedings, on perusal of the sale deed it is evident that Rs. 20,99,240/- has been deducted by the buyer on the sale value i.e. Rs.91,75,000/- @ 22.88%. The TDS was deducted by the buyer at the time of the sale, however, the buyer filed TDS returns in the next Assessment year i.e. 2023-2024 instead of AY 2022-23. On perusal of the Form 26AS it is evident that the TDS deducted by the buyer has been filed in the financial year 2022-23 i.e. on 28.03.2023 instead of financial year 2021-22, which is verifiable from the copy of Form 26AS submitted by the assessee for the financial year 2021-22 & 2022-23.

10. In his written submissions, the assessee has stated that CPC has not given the credit of TDS of INR 20,99,240/- which is duly reflecting in the Form 26AS of AY 2023-24 and the corresponding income has been duly offered to tax in the return of income filed for AY 2022-23 and as per section 199 of the Act read with rule 37BA of the Income Tax Rules 1962, credit for TDS shall be given for the assessment year for which such income is assessable. In support of his claim assessee has attached copy of form 26AS for AY 2022-23 & 2023-24. On perusal from the Form 26AS for AY 2022-23,

it is clearly evident that purchaser has neither deducted nor deposited the said TDS on the sale consideration in AY 2022-23 whereas in Form 26AS for A Y 2023-24, the TDS deducted by the purchaser amounting to Rs. 20,99,2401- is clearly appearing. The appellant in his reply has clearly stated that the amount of TDS deducted by the buyer has been deposited in the financial year 2022-23 instead of financial year 2021-22. In support of his claim appellant has submitted form 26AS for both the financial year i.e. 2021-22 & 2022-23 and its corresponding TDS of Rs. 20,99,2401- has been reflected in form 26AS for the financial year 2022-23 relevant to assessment year 2023-24 whereas in the form 26AS for the financial year 2021-22 no data has been reflected i.e. neither the amount of sale consideration has been credited nor corresponding TDS is reflected in form 26AS for the financial year 2021-22. From the above mentioned reply of the assessee company and form 26AS it is not clear that at what basis assessee has offered sale consideration income in the return of income for AY 2022-23 when the form 26AS clearly shows that date of payment/ credit of income as 28.03 2023 (AY 2023.-24).

11 As is clear from the above detailed discussion, the income earned by the assessee on sale of property is clearly reflected in the form 26AS in financial year 2022-23, that is the next year of the year under consideration, on which TDS amount of Rs.20,99,240/- has been deducted by the purchaser Pratima Bhatnagar (TAN- RTKP12561 D), therefore, the contention of the appellant is devoid of merit. Based on the facts mentioned above ground of appeal no. 1 &2 raised by the assessee are dismissed.”

4. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax, Appeals, Delhi - 42 [' Ld, CIT(A)'J has erred in passing the Appellate Order under section 250 of the Income Tax Act, 1961 C Act') denying the credit of TDS to the Assessee, in complete disregard of the facts of the case.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of Ld. Centralised Processing Center, Bengaluru ('Ld. AO') in not allowing the credit of tax deducted at source ('TDS') of Rs.20,99,240 in accordance with the provisions of section 199 of the Act even though he duly acknowledged that TDS was deducted by the buyer on the sale value at the time of sale, as evidenced by sale deed, but was deposited in the subsequent year.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) was not justified in confirming the action of Ld. AO in disallowing the credit of TDS in complete disregard of the fact that the Appellant had duly

filed application in prescribed Form 71 in accordance with Section 155(20) of the Act read with Rule 134 of the Income Tax Rules, 1962 ('the Rules').

4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in suggesting that the income from sale of property ought to have offered in the subsequent year since the TDS was paid by the purchaser in the subsequent year completely disregarding the sale deed, the provisions of section 45, 199, 155(20) of the Act as well Rule 134 of the Rules and Form 71 specifically prescribed for this very purpose.”

5. At the time of hearing, Ld. AR of the assessee brought to our notice the relevant facts on record and also filed paper book in which assessee has filed computation of income for AY 2022-23, copy of return of income for AY 2022-23, copy of Form 26AS for AY 2022-23 & AY 2023-24 and also copy of sale deed with respect to property sold by the assessee to Mrs. Pratima Bhatnagar, copy of challan paid for TDS on sale of property by the buyer, Mrs. Pratima Bhatnagar and copy of Form 71 filed by the assessee on the income tax portal along with its acknowledgement. He submitted that the assessee claimed credit for the aforesaid TDS in his return of income for AY 2022-23 filed on 22.07.2022. He further submitted that though the TDS was deducted at the time of sale i.e. in AY 2022-23, however the buyer purportedly filed her TDS return in the next AY i.e. 2023-24. He submitted that consequently, the TDS was reflected in Form 26AS of the assessee for AY 2023-24 and not for AY 2022-23. He submitted that since the assessee has already declared the relevant income, the AO cannot deny the same. Ld. AR of the assessee further

submitted the legal submissions in his written submissions which are reproduced below :-

“In the facts of case, the legal submissions are summarized here-in-below:

In terms of section 45(1) of the Act, gains/ losses arising on transfer of a capital asset is chargeable to income-tax under the head Capital Gains and is deemed to be income of the previous year in which the transfer took place. The registered Sale Deed confirms that the property was sold on 15.09.2021 i.e. in the previous year 2021-22. Consequently, the Appellant was right in declaring the gains/ losses from the transfer of the capital asset in the ITR for AY 2022-23. To this extent, the Ld. CIT(A) grossly erred in suggesting that the transaction ought to have been reflected in the ITR for AY 2023-24.

Section 199(3) of the Act read with Rule 37BA(3)(i) mandates that credit of TDS shall be given for the assessment year for which such income is assessable. Consequently, the Appellant was right in claiming the credit of the TDS in the year in which the capital gains/loss arose to him.

Section 155(20) of the Act provides for a scenario where income has been included in a particular year, but tax deduction/ payment is reflected in a subsequent year. In such a case, an assessee is enabled to file an application in Form 71 (as prescribed in Rule 134) within 2 years and the Assessing Officer is under an obligation to amend the intimation allowing the credit of TDS. The Appellant duly filed Form 71 within the prescribed time frame, but the credit was still not granted neither by the Assessing Officer nor by the Ld. CIT(A).

It is humbly urged that the Ld. CIT(A) has failed to take cognizance of the effect of the registered Sale Deed dated 15.06.2021, provisions of Sections 45, 199, 155(20) of the Act and Rules 37BA, 134 and Form 71, while adjudicating the issue of grant of credit of TDS. He fairly acknowledged the facts in Para 9 of his order, reproduced below:

“9. During the course of appellant proceedings, on perusal of the sale deed it is evident that Rs.20,99,240/- has been deducted by the buyer on the sale value i.e. Rs. 91,75,000/- @ 22.88%. The TDS was deducted by the buyer at the time of the sale, however, the buyer filed TDS returns in the next Assessment year i.e. 2023-2024 instead of A Y 2022-23. On perusal of the Form 26AS it is evident that the TDS deducted by the buyer has been filed in the financial year 2022-23 i.e. on 28.03.2023 instead of financial year 2021-22, which is verifiable from the copy of form 26AS submitted by the assessee for the financial year 2021-22 & 2022-23.”

However, the Ld. CIT(A) instead of allowing the credit of TDS to the Appellant due to it under law, inexplicably and incorrectly suggested that the Appellant ought to have offered the income from transfer of property in the subsequent year i.e. in the year in which the Buyer filed the TDS return. Kind

attention is drawn to para 10 of the impugned order, reproduced here-in-below:

"10 ... From the above mentioned reply of the assessee company and form 26AS it is not clear that at what basis assessee has offered sale consideration income in the return of income for AY 2022-23 when the form 26AS clearly shows that date of payment/ credit of income as 28,03,2023 (AY 2023-24)."

In view of the above submissions and evidence placed on record, it is humbly prayed that the credit of TDS amounting to Rs.20,99,240 deducted by the Buyer may please be directed to be allowed to the Appellant in AY 2022-23."

6. On the other hand, ld. DR of the Revenue relied on the findings of the lower authorities.
7. Considered the rival submissions and material placed on record. We observe that assessee has sold the property and declared long term capital gain by declaring the full value of consideration in AY 2022-23 and assessee has claimed the TDS in AY 2022-23. However, the purchaser has deposited the above tax deducted only during AY 2023-24. The facts were clearly brought on record and also submitted before the lower authorities. The issue under consideration is when the tax credit can be availed by the assessee. As per the procedure, the assessee has to submit Form 71 within 2 years to claim the same. It is brought to our notice that the assessee had already filed the Form 71 through ITBA portal. Therefore, the assessee has to declare the income in year of transfer not on the basis of TDS credit. Therefore, the Assessing Officer has to follow the matching principle and give the TDS credit based on the Form

71 uploaded by the assessee. We noted that the lower authorities denied the tax credit. Therefore, we direct the Assessing Officer to give the TDS remitted by the buyer in the subsequent assessment year, however the actual transaction relates to AY 2022-23, therefore, the Assessing Officer is directed to assess the income declared by the assessee in the Assessment Year 2022-23 and give credit of AY 2023-24 based on the Form 71 submitted by the assessee. Therefore, the grounds of appeal raised by the assessee are allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 12th day of November, 2025.

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 12.11.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**