



MUM ITAT: Credit For The Tax Deducted And Paid Could Not Be Denied In The Hands Of Ultimate Beneficiary Solely On The Ground Of A Procedural Lapse By A Third Party In Complying With Rule 37BA

Facts in brief

Florida Retirement System (Florida System/ the assessee), is an Artificial Juridical Person organised in the United States of America and a registered FPI.

Florida System invested in Indian capital markets under a multi manager structure through investment managers registered as Foreign Portfolio Investors with the Securities and Exchange Board of India. Florida System had invested in depository receipts whose underlying assets were equity shares of Indian companies. Florida System earned dividend income on the shares. The Indian companies paying dividend deducted tax at source on the dividend that was received by the overseas depository bank/s acting as depository agents and on the shares lying under the depository receipts. The TDS credit accordingly flowed into the hands of overseas depository banks being holders of depository receipts instead of the beneficial owners of the equity shares.

In the assessment for A.Y. 2022 23 the department denied credit for the TDS since it was not reflected in the 26AS of Florida System, the credit having gone to the depository agents/banks.

The assessee went in appeal before the ITAT contesting the said additions to income.

Ruling of the Honourable ITAT Mumbai

Contentions of the Assessee before the ITAT

- Operational difficulty in having the credit transferred from the depository bank to the account of the assessee cannot defeat credit for tax withheld when income has been offered to tax;
- Reliance was placed on the decision of Honourable Ahmedabad Tribunal in Testec Asia Ltd, which held that where tax had already been deducted at source and such a provision embodied a substantive safeguard that could not be rendered otiose by insistence on procedural formalities viz. transfer of TDS credit u/r 37BA.

Decision of the ITAT Mumbai

- Relying on certain ITAT decisions the Tribunal held that non-compliance with procedural aspects could not override the mandate of section 199 of the Act to the effect that credit should be given to the person in whose hands the income is ultimately taxed. The Tribunal accordingly directed grant of credit for the TDS

Citation

Florida Retirement System [TS-1588-ITAT-2025(Mum)]

Our Comments

Honourable Tribunal has applied the principle of substance over form instead of being bogged down by procedural non-compliances with a view to meet the ends of justice.