

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 151/JP/2021
निर्धारण वर्ष / Assessment Year: 2009-10

Shri Amit Mantri, A-3-A, Anaj Mandi, Chandpole Bazar, Jaipur.	बनाम Vs.	D.C.I.T., Circle-1, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGYPM 7430 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/01/2022
उदघोषणा की तारीख / Date of Pronouncement : 04/01/2022

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 30/07/2021 of Id. CIT(A), National Faceless Appeal Centre, Delhi (NFAC) for the A.Y. 2009-10. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A), NFAC has erred on facts and in law in upholding the order of AO holding that the assessee's application for allowing credit of TDS and issuing refund as against order u/s 143(1) dy. 12/08/2010 raising demand of Rs. 17,950/- cannot be entertained u/s 154(7) of the Act.*

2. *The Id. CIT(A), NFAC has erred on facts and in law in not considering the legal position that in the application filed by the assessee before the AO, he has not sought any amendment in the income assessed but only claimed credit for the tax deducted at source and therefore, section 154(7) is not applicable.*
3. *The Id. CIT(A), NFAC has erred on facts and in law in not directing to allow the credit of tax deducted at source by Centurion bank of Punjab of Rs. 39,130/- even when the assessee vide letter dt. 13/03/2013 has requested the AO to grant him the refund of Rs. 24,270/- due as per the return.*
4. *The appellant craves to alter, amend and modify any ground of appeal.*
5. *Necessary cost be awarded to the assessee.”*

2. The assessee is a salaried employee and received salary from HDFC Bank and Centurion Bank of Punjab during the previous year relevant to the assessment year under consideration. The assessee filed his return of income on 30/07/2009 declaring total income of Rs. 4,64,026/-. In the return of income, the assessee had claimed credit of TDS of Rs. 73,505/- against the tax liability of Rs. 49,240/- and consequently claimed the refund of Rs. 24,265/-. The return of income was processed U/s 143(1) of the Income Tax Act, 1961 (in short, the Act) on 12/08/2010 raising demand of Rs. 17,950/- due to non-allowing the credit of TDS of Rs. 39,130/- deducted by Centurion Bank of Punjab. The assessee vide letter dated 13/03/2013 requested the A.O. to issue/grant refund as claimed in the return of income of Rs. 24,265/-

but no action was taken on the said application of the assessee. Thereafter, the assessee again filed a letter dated 03/08/2017 with the A.O. for issuing the refund of Rs. 24,265/- by allowing the credit of TDS of Rs. 39,130/- which was inadvertently not allowed while processing the return of income. The A.O. vide its order dated 12/07/2018 rejected the claim of the assessee for refund on the ground that the application of the assessee which was treated as filed U/s 154 of the Act is time barred as per the limitation prescribed U/s 154(7) of the Act. The assessee challenged the said order of the A.O. before the Id. CIT(A) but could not succeed as the Id. CIT(A) has upheld the action of the A.O. by treating the letter dated 03/08/2017 as barred by limitation.

3. Before the Tribunal, the Id. AR of the assessee has submitted that the assessee has not filed any application U/s 154 of the Act but these applications were filed for grant of refund as claimed in the return of income. He further submitted that even otherwise the first letter dated 13/03/2013 filed on 14/04/2013 as per acknowledgment, is within the period of limitation as prescribed U/s 154(7) of the Act. Therefore, the question of limitation does not arise when the assessee claimed the refund vide letter dated 13/03/2013. The Id. AR has further contended that it was the duty of the tax authority to assess the correct income to tax and grant due refund to the assessee which is not in dispute as the

TDS amount is duly reflected in 26AS for which the assessee has claimed a credit of Rs. 73,505/- out of which the department has not granted the TDS credit of Rs. 39,130/- which was deducted by Centurion Bank of Punjab. The Id. AR has submitted that it is failure on the part of the department and the A.O. to grant TDS which is otherwise available to the assessee as per the provisions of Section 198 and 199 of the Act. The Id. AR has also relied upon the CBDT Instructions dated 07/05/2018 to all the tax authorities for expeditiously dispose off the appeal effect and rectification claims to taxpayers within first fortnight of June, 2018. The Id. CIT(A) has misunderstood the said instructions/guidelines issued by the CBDT while passing the impugned order. He has also relied upon the decision of the Hon'ble Supreme Court in the case of S. Nagaraj & Others Vs State of Karnataka & Another 4 SCC 595 and submitted that the Hon'ble Supreme Court has held that rule of procedure and technicalities of law cannot stand in the way of justice. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for erroneous assumption resulting miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Thus, the Id. AR has submitted that non-grant of TDS credit and consequential refund on technical grounds by the A.O. and the Id. CIT(A) is not justified and liable to be aside. The Id. AR has

prayed that undisputed amount of TDS refund credit and consequential refund may be granted to the assessee.

4. On the other hand, the Id. DR has submitted that the impugned order passed by the A.O. on the application of the assessee filed on 03/08/2017 which is undisputedly barred by limitation as prescribed U/s 154(7) of the Act. The Id. DR has further submitted that letter dated 13/03/2013 as claimed by the assessee is neither mentioned in the order of the A.O. nor in the impugned order of the Id.CIT(A), therefore, for the purpose of limitation, the said letter cannot be considered. She has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. On careful perusal of the impugned orders of the A.O. and the Id. CIT(A) as well as the relevant documents regarding the filing of return of income and TDS credit shown in the Form 26AS, it is noted that the department has not disputed the factual matrix relating to this issue of non-grant of TDS credit of Rs. 39,130/- and consequential claim of refund of Rs. 24,265/-. The department has not disputed that the assessee has offered the salary income received from HDFC Bank as well as Centurion Bank of Punjab to tax in his return of income. The TDS deducted by these two banks on the salary income of

the assessee is also duly reflected in Form 26AS which is a record maintained by the department itself. Once the income on which the TDS was deducted is offered to tax by the assessee for the year under consideration then as per the provisions of Sections 198 and 199 of the Act, the credit of such advance tax in the form of TDS is bound to be allowed to the assessee for this year. The A.O. has denied the claim of credit of TDS on technical ground of limitation, however, when nothing was to be performed on the part of the assessee to claim such credit of TDS and refund except claiming the same in the return of income then the A.O. cannot be absolved from performing his duties as mandated under the provisions of this Act. When the TDS credit available to the assessee is reflected in Form 26AS then the assessee is even not required to assist the tax authorities to justify the claim once it is declared and claimed in the return of income. Further, the letter dated 13/03/2013 is well within the period of limitation as prescribed U/s 154(7) of the Act then non-performance of duties by the A.O. to take a decision on the said letter cannot be taken to be prejudicial to the assessee when the second letter is filed by the assessee on 03/08/2017 for reminding the A.O. for the said claim. The whole conduct on the part of the authorities below for non-granting of due credit of TDS as well as refund is nothing but amounts to undue enrichment of the department

by failure to perform its duties. The Hon'ble Supreme Court in the case of S. Nagaraj & Others Vs State of Karnataka & Another (supra) has observed in para 18 as under:

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.”

Thus, when it was the duty on the taxing authority to grant undisputed due TDS credit and consequential refund and non non-performing of its duties on technical ground certainly results injustice to the assessee. Accordingly, in the facts and circumstances of the case, the impugned orders of the authorities below are set aside and the claim of TDS credit

of Rs. 39,130/- deducted by Centurion Bank of Punjab from the salary of the assessee duly offered to tax is allowed and the A.O. is directed to grant consequential refund to the assessee.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 04th January, 2022.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04th January, 2022.

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Amit Mantri, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 151/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar