IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.2767/Mum/2022

(Assessment Year: 2019-20)

M/s Kalyaniwalla & Mistry LLP Esplanade House, 2nd Floor, 29 Hazarimal Somani Marg, Fort, Mumbai-400 001	Vs.	The Asst. Director of Income Tax, Centralized Processing Centre, Bangalore
(Appellant)		**(Respondent)**

PAN No. AAAFK7554R

Assessee by	:	Shri M.M. Golwala, AR
Revenue by	:	Shri Tejinder Pal Singh Anand, DR

Date of hearing: 19.12.2022
Date of pronouncement : 20.02.2023

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by theassessee M/s Kalyaniwalla & Mistry LLP (the assessee/ the appellant) against the appellate order passed by the National faceless appeal Centre (Delhi) (the learned CIT − A)dated 8/9/2022 for assessment year 2019 − 20 wherein the appeal filed against the assessment order dated 23/9/2020 passed by The Assistant Director Of Income Tax, Central Processing Centre Bangalore (the learned AO) was partly allowed.

02. The assessee is aggrieved with the same and has preferred this appeal raising almost 9 grounds of appeal as under: –

> *"This appeal is against the order passed us. 250 by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NEAC), Delhi and relates to Assessment Year 2019-20,*
>
> *1) The Appellant objects to the tax demand of Rs.2,23,46,830/- in an order passed under section 154 of the Act.*
>
> *2) CPC Bangalore/Assessing Officer erred in passing an order under section 154 of the Act, withdrawing credit for tax deducted at source of Rs.2,09,15,619/-, without issue of a notice under section 154(3) of the Act.*
>
> *3) CPC Bangalore/Assessing Officer failed to considered that an order passed under section 154 of the Act, without issue of notice under section 154(3) is a nullity, and the said order requires to be cancelled on that ground alone.*
>
> *4) Having regard to the facts of the case and the provisions of law, the Appellant submits that CPC Bangalore/Assessing Officer be directed to restore credit for tax deducted at source to Rs.4,19.47,695/-, as was allowed in Intimation under section 143(1) dated June 3, 2020.*
>
> *5) Both the lower authorities failed to consider that the Appellant was following cash basis of accounting,*

and had claimed credit for tax deducted at source, following the mechanism laid down by CBDT in the Income tax form of the respective years.

6) Both the lower authorities erred in not granting credit for tax deducted at source, in spite of assessing the gross income from which tax is deducted and in ignoring the provisions of section 199 r.w Rule 37BA(3).

7) Both the lower authorities erred in not granting credit for tax deducted at source in spite of the same appearing in Form 26AS of the current year or of the earlier years.

8) Both the lower authorities erred in ignoring the Schedule TDS filled up in the ITR form, giving details of TAN of deductor, Gross amount received during the year. TDS deducted therefrom, and the year of deduction of the said TDS.

9) The learned Commissioner of Income Tax (Appeals) erred in confirming levy of interest. The Appellant denies its liability to be levied any interest under section 234B & 234C of the Act.

The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to time."

03. The brief fact of the case shows that assessee is a limited liability partnership , assessed as a firm , filed its return of income for assessment year 2019 – 20 on 30/10/2019 at

a total income of Rs. 68,818,720/−. In the return of income assessee claimed a tax credit of tax deduction at source of Rs. 43,630,555/−. When the central processing Centre Bangalore passed an intimation under section 143 (1) of the act on June 3, 2020 the income was computed at the same figures but tax credit of only Rs 41,947,695/− was allowed. Therefore, the assessee's claim for tax deduction at source was of Rs 4,36,30,555/− whereas the claim of TDS was allowed at Rs. 4,19,47,695/−.

04. Assessee filed an application for rectification of the intimation for a correct grant of tax deduction at source credit. The order under section 154 was passed on 9/9/2020. The TDS credit was restricted in that order at Rs 21,032,076/− as against the tax deduction at source credit of Rs 43,630,555 claimed in the return of income and Rs. 41,947,695/− accepted in the intimation. Therefore, where rectification order was passed, TDS credit granted to the assessee in intimation of amount of Rs 41,947,695/− was also reduced to Rs. 2,10,32,076 only.Therefore, the assessee preferred an appeal before the learned CIT − A.

05. Assessee claimed that it follows a cash system of accounting hence professional fees are accounted as income on cash or receipt basis. According to the provisions of section 199 of the act credit for tax deducted at source from professional fees is claimed in the year in which professional fees are actually received /accounted as income. It was further stated that most of the clients of

the assessee follow mercantile system of accounting and deduct tax at source from the provision made at the end of the year of professional fees payable. The professional fees are actually paid by them in the subsequent year. Therefore the year in which taxes deducted by the payer and the year in which credit thereof is claimed by the assessee are different. This is so because the claim of year in which deduction available to the payer is different and the assessment year in which the income of assessee is taxable is also different. Therefore the tax deduction at source credit claimed and TDS reflected in form number 26AS differs. Accordingly in the return of income assessee has claimed tax credit of Rs 43,630,555/−. In the return of income filed by the assessee, assessee provided all details of tax which was deducted in previous year and for which credit is claimed in the year under consideration and tax which is deducted during the year but for which credit has not been claimed in the year under consideration. Corresponding income offered by the assessee is also disclosed. The central processing Centre at the time of issue of intimation under section 143 (1) granted TDS credit of Rs. 4,19,47,695 and found 36 unmatched tax deduction at source entries aggregating to Rs. 1,682,860/−.

06. When this ground was agitated before the learned CIT − A, following order was passed as per paragraph number 4: −

> "4. In its written submission the appellant submitted that there was a short credit of TDS

at Rs. 22,598,479/− due to typographical mistakes appellant from record while filing up details in its income tax return form ITR − 5 . The appellant submitted that item wise detailed report of 36 unmatched TDS entries aggregating to Rs 1,682,816/− (for which TDS credit was not granted). The appellant rectified 14 TDS entries aggregating to Rs. 314,079/− and online rectification was filed on August 17, 2020. It is evident from the appellant's submission that, therefore TDS amount of Rs. 43,630,555/− (out of which only TDS amount of Rs. 21,032,076/− was allowed under section 143 (1)). The appellant consistently follows cash system of accounting hence professional fees are accounted as income on cash/receipt basis as provided in section 199 of the act. Hence, TDS credit claimed in TDS reflected in form number 26AS differs. The hearing notice was sent on 11/8/2022 and directed to produce the TDS and TAN details for verification of claim of the appellant for TDS . The appellant failed to produce the TDS and TAN details for verification of TDS till the hearing date fixed for 18/8/2022. Therefore, the appeal is being disposed of considering the materials available on record. In view of the above, the disallowance made by the AO of Rs.

22,598,479/− is confirmed. The appeal on this ground is dismissed."

07. Therefore, assessee is aggrieved and preferred this appeal. The grievance of the assessee is manifold. It was submitted that when there is a rectification under section 154 of the act and if it decreases the refund to the assessee, a specific notice is required to be given to the assessee giving reasonable opportunity of being heard. This was not given. Further the assessee submitted a detailed paper book containing 408 pages to contest the above appeal. The learned authorized representative vehemently submitted that assessee must be granted the tax credit of Rs. 43,630,555.

08. The learned departmental representative vehemently supported the order of the learned CIT − A.

09. We heard the rival contentions and carefully perused the orders of the National faceless appeal Centre and intimation issued by the central processing Centre Bangalore and a rectification order passed. There is no need to reiterate the facts. Only grievance of the assessee is that a tax credit of Rs. 43,630,555 should be made available to the assessee. We find that in the detail as per schedule TDS − 1 in form number ITR − 5 as per serial number 15 B (1) details of tax deducted at source, income shown by the assessee connected with claim of TDS, assessee has given the details of 896 entries showing the corresponding receipt offered as income and corresponding tax credit claimed by the assessee. We find

that assessee has given proper details in the return of income filed ,therefore, there is no reason that why the assessee should not be granted tax credit as claimed in the return of income. Reduction of the claim of the assessee in rectification proceedings under section 154 of the income tax act is in clear violation of the provisions of section 154 (3) of the act. That section specifically provides that if any amendment made to the order which is effect of enhancing an assessment and reducing the refund of the assessee , proper notice should be given to the assessee and he must be allowed a reasonable opportunity of being heard. In the present case when the tax credit already granted to the assessee is withdrawn, no such notice was issued to the assessee. Therefore the withdrawal of tax credit already granted to the assessee is not in accordance with the law.

010. In the present case the only dispute was unmatched tax deduction at source entries aggregating to Rs. 1,682,860. Therefore, in the interest of justice we direct the learned assessing officer to grant tax credit to the assessee as per claim of the assessee in the return of income. If the AO wants to verify on sample basis with respect to the tax deduction at source amounting to Rs. 1,682,860/−, he may do so. The assessee may also show to the learned assessing officer on sample basis how the income is shown in the return of income as well as the relevant tax deducted at source claimed as credit during the year. In the nutshell, we direct the learned assessing officer to

allow the claim of the assessee of tax credit claimed on above verification.

011. In view of this ground number 1 – 8 of the appeal of the assessee are allowed with above direction.

012. Ground number 9 is with respect to the levy of interest under section 234B and 234C which is consequential in nature, the AO is directed to compute the interest in accordance with the law.

013. In the result appeal of the assessee is allowed with above directions.

Order pronounced in the open court on 20.02.2023.

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.02.2023
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai