

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 269/Ahd/2021  
(Assessment Year: 2019-20)

D And C Phoenix, 502, Kairos, Opp. Mahatma Gandhi Labour Institute, Near Manav Mandir, Ahmedabad-380052	Vs.	Asst. Director of Income Tax, CPC, Bangalore- 560500
[PAN No.AAKFD3578J]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Sanjay R. Shah, A.R.
<b>Respondent by:</b>	Shri M. Anand Kumar, Sr. D.R.
<b>Date of Hearing</b>	02.05.2023
<b>Date of Pronouncement</b>	26.05.2023

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre(in short “NFAC”), Delhi in Order No. ITBA/NFAC/S/250/2021-22/1035775329(1) vide order dated 21.09.2021 passed for Assessment Year 2019-20.

2. The assessee has taken the following grounds of appeals:-

“1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on the facts of the case by not allowing TDS credit of Rs. 13,04,500/- which is brought forward from earlier assessment years.

- 2 -

2. *The Learned Commissioner of Income Tax (Appeals) failed to appreciate that TDS OF Rs.13,04,500/- though deducted in earlier assessment years was relating to income of current assessment year 2018-19 and hence credit of the same was rightly claimed in current assessment year 2018-19 as per provisions of section 199 of the I.T. Act. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the same could not be a subject matter of adjustment u/s. 143(1).”*

3. The brief facts of the case are that assessee filed return of income for assessment year 2019-20 on 27-09-2019 declaring total income of Rs. 3,14,99,783/-. Thereafter, the return was processed under section 143 (1) of the Act by CPC, Bengaluru vide intimation dated 08-05-2020, in which the credit of TDS brought forward from earlier years was not allowed to the assessee. In the earlier years, the assessee had received advance towards sale of property on which TDS was deducted, however, since the conveyance deed with respect to this property was entered into during the impugned assessment year, the assessee offered the income from sale of aforesaid property in this year and took the credit of TDS deducted in the earlier assessment year, during this assessment year. The assessee filed appeal before Ld. CIT(Appeals) against non-granting of TDS which was denied, vide intimation issued under section 143 (1) of the Act.

4. In appeal, Ld. CIT(Appeals) dismissed the appeal of the assessee on the ground that in the instant case, no adjustment to the income has been done in the 143 (1) intimation, and accordingly, no appeal lies against the non-granting of TDS credit in order passed under section 143 (1) of the Act.

While dismissing the appeal of the assessee, Ld. CIT(Appeals) observed as under:

*“Section 246 deals with the appealable orders to the CIT(A); more specifically Clause(a) of Sub-Sec.1 of the said section deals with the filing of appeal against the intimation u/s 143(1). The relevant provisions of Sec.246(1)(a) are reproduced hereunder for ready reference:*

**Appealable orders before Commissioner (Appeals).**

*246A. (1) Any assessee [or any deductor] or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—*

*(a) an order [passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order] against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of [section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects **to the making of adjustments**, or any order of assessment under sub-section (3) of section 143 [except an order passed in pursuance of directions of the Dispute Resolution Panel [\*\*\*] [or an order referred to in sub-section (12) of section 144BA] or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;*

- 4 -

*As can be seen from the above, appeal can be filed against the intimation u/s 143(1) where the appellant objects to the making of adjustments u/s 143(1). In the case under consideration, no adjustment u/s 143(1) has been made, **whereas, the appellant has sought for granting of TDS credit of earlier years which is not an adjustment u/s 143(1) of the total income.** Therefore, the issue raised by the appellant is not within the mandate provided u/s 246(1)(a) of the Act. In view of this, the issue raised by the appellant cannot be adjudicated herein.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the counsel for the assessee submitted that clearly the claim of the assessee has been denied in the order/intimation passed under section 143 (1) of the Act. According to the counsel for the assessee, Ld. CIT(Appeals) erred in fact and in law in holding that no adjustment has been made under section 143 (1) of the Act and in the alternative, the counsel for the assessee placed reliance on judicial precedents to take the alternate contention that it may be considered that the aforesaid order has been passed under section 237 of the Act, and therefore, appeal lies against the aforesaid order before CIT(Appeals).

6. In response, DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. Before proceeding to decide this issue, it would be useful to reproduce the contents of section 246A of the Act for ready reference:

**“Appealable orders before Commissioner (Appeals).**

246A. (1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act **or an intimation under sub-section (1) or sub-section (1B) of section 143** or sub-section (1) of section 200A or sub-section (1) of section 206CB, **where the assessee** or the deductor or the collector **objects to the making of adjustments**, or any order of assessment under sub-section (3) of section 143 [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA] or section 144, **to the income assessed, or to the amount of tax determined**, or to the amount of loss computed, or to the status under which he is assessed;”

8. We observe that section 246A speaks about appeal against order passed under sub-section (1) or sub-section (1B) of section 143(1) of the Act, where the assessee objects to “the making of adjustments”... to the income assessed, or **“to the amount of tax determined”**. Therefore, a reading of section 246A shows that appeal against section 143(1) lies before CIT(Appeals) in the case where the assessee objects to the making of adjustments, both to the **“income assessed”** as well as to the **“amount of**

**tax determined**". Accordingly, in our view, section 246A cannot be read in a manner so as to only include those cases where adjustments have been made to the "income" of the assessee and exclude adjustments made in the intimation issued under section 143(1), which have an impact on the "amount of taxed determined". Accordingly, in our view, appeal before Ld. CIT(Appeals) lies against the intimation issued under section 143(1) of the Act, wherein adjustments have been made in the said intimation, which have a bearing on the "amount of tax determined". Accordingly, in our considered view, Ld. CIT(Appeals) has taken a very restrictive view of the provisions of section 246A of the Act, and accordingly, the matter is being set aside to the file of Ld. CIT(Appeals) to hear the appeal of the assessee on merits, after giving due opportunity of hearing to the assessee, in accordance with law.

9. Without prejudice to the above observations, we also observe that in the case of Deere & Company<sup>138</sup> taxmann.com 46 (Pune - Trib.), the Pune ITAT held that any order passed under Act against assessee, impliedly including an order under section 139(9), having effect of creating liability under Act which he denies or jeopardizing refund, gets covered within ambit of clause (a) of section 246A(1). The ITAT held that where Assessing Officer treated return as invalid under section 139(9) because of mismatch between figure of income shown in return and that in Form 26AS, order passed by him was akin to an order refusing refund under section 237 making it appealable under section 246A(1)(i). Accordingly, even looking into the ratio of the aforesaid ruling, the ITAT held that any order passed under the Act against the assessee, impliedly including an order u/s 139(9)

- 7 -

in the circumstances as are obtaining in this case, having the effect of creating liability under the Act which he denies or jeopardizing refund, gets covered within the ambit of clause (a) of section 246A(1). Therefore, even otherwise, appeal lies before the Ld. CIT(Appeals) against the adjustments to the TDS credit made by the assessing officer under section 143 (1) of the Act, in view of the observations made by the ITAT in the aforesaid order.

10. Accordingly, the appeal of the assessee is allowed.

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

<b>This Order pronounced in Open Court on</b>	<b>26/05/2023</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 26/05/2023

TANMAY, Sr. PS

**TRUE COPY**

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad