

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No. 1703/Bang/2016
Assessment year : 2010-11

iGate Infrastructure Management Services Ltd., No.158-162 & 165-170, EPIP Phase II, Whitefield, Bangalore – 560 066. <b>PAN: AABCI 1844G</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 11(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Padam Chand Khincha, CA
Respondent by	:	Ms. Renuga Devi, Jt. CI(T(DR)

Date of hearing	:	27.04.2017
Date of Pronouncement	:	28.04.2017

**ORDER**

*Per Sunil Kumar Yadav, Judicial Member*

This appeal is preferred by the assessee against the order of CIT(Appeals) *inter alia* on the following grounds:-

“1.1 The learned Commissioner of Income Tax (Appeals) - 3, Bengaluru has erred in passing the order in the manner passed by him.

1.2 The learned Commissioner of Income Tax (Appeals) - 3, Bengaluru has erred in not allowing credit in respect of TDS deducted and deposited by certain customers wrongly in the erstwhile name of the appellant (IT &T Technology Services Limited now known as IGATE Infrastructure Management Services Limited) of Rs. 61,84,211/-.

1.3 The learned Commissioner of Income Tax (Appeals) - 3, Bengaluru has erred III concluding that;

- (i) IT &T Technology Services Limited (IT &T) and the appellant are two different entities as it has a different PAN
- (ii) the payers who have deducted tax in the old name of the appellant has not furnished a statement indicating the new name of the appellant

1.4 The learned Commissioner of Income Tax (Appeals) – 3 has erred in not appreciating that

- (i) the IT &T Technology Services Ltd was the earlier name of the appellant having an old PAN [AAACI934L] and a new PAN [AABCI1844G] was obtained after changing the name;
- (ii) Subsequent to the change in name, the appellant has been filing its return of income in the new name / new PAN and no separate return has been filed in the old name.
- (iii) Since there is no separate entity with the name IT &T Technology Services Limited, the amount of TDS deposited in its name cannot be claimed as no separate return of income is filed; and
- (iv) the statutory right of credit of TDS cannot be denied merely for the fact that the payers have not filed a statement indicating the new name of the appellant.

1.5 On facts and in the circumstances of the case and law applicable, the appellant is entitled for credit of TDS of Rs. 61,84,211/-deducted in its erstwhile name [IT &T Technology Services Limited].

- 1.6 The learned Commissioner of Income Tax (Appeals) - 3 has erred in not allowing the differential TDS credit of Rs. 41,173 (Rs. 1,41,10,000 - Rs. 1,40,68,827), i.e., the difference between the TDS claimed in the return of income as per the original certificates available and TDS as appearing in Form 26AS of both the above mentioned names of the appellant.
- 1.7 On facts and in the circumstances of the case and law applicable, the credit of TDS to be allowed on the basis of TDS certificates which were at all times available with the appellant and furnished before the lower authorities.

**Prayer**

8.1 In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the lower authorities be quashed

Or in the alternative

- (i) Credit towards TDS deducted in the erstwhile name of the appellant to be allowed.
- (ii) Credit of TDS to be allowed on the basis of the basis of TDS certificates and not on the basis of form 26AS.

The appellant prays accordingly.”

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the fact that AO has not allowed the TDS credit deducted by the payers, while making the payment to the assessee. The Id. counsel for the assessee has further contended that name of the appellant-assessee was earlier IT&T Technology Services Ltd. (IT&T) with PAN No.AAACI 9340L, but alter the name of the company was changed to iGate Infrastructure Management Services Ltd. with PAN No.AABCI

1844G. Subsequent to change in the name, assessee has been filing its return of income in new name and new PAN, but unfortunately some of the payers have deducted TDS and deposited in the erstwhile name of assessee i.e., IT&T Technology Services Ltd. with old PAN No. The credit of TDS deducted and deposited in the old name and old PAN No. and the credit of the same was not given to the assessee on account of mismatch, though entity is the same.

3. The Id. counsel for the assessee further invited our attention to Circular issued by the CBDT vide Instruction No.5/2013 dated 8.7.2013, through which it has been clarified that if the assessee approaches the AO with requisite details and particulars in the form of TDS as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made the payment of the TDS in the Government account and if the payment has been made, credit of the same should be given to the assessee.

4. The Id. counsel for the assessee further contended that instead of rejecting the claim of credit to the assessee, the AO should have examined the facts and if it was found that TDS was deducted and credited by the deductor in the Government account, then the credit of the same should have been given to the assessee.

5. The Id. DR placed reliance upon the order of CIT(Appeals) with the submission that deductor can make necessary rectification with the

authorities concerned with regard to error in the name of the deductee and its PAN No.

6. Having carefully examined the order of lower authorities in the light of rival submissions, we find that undisputedly there is a mistake committed by the deductor while deducting and depositing the TDS, but it does not mean that deductee should suffer for the act of deductor. When there is mismatch in the TDS accounts, the AO should make necessary verification and if it is found that TDS was deducted and paid in the Government account, credit of the same should be given to the deductee. This aspect was also clarified by the CBDT by issuing Instruction No.5/13. For the sake of reference, we extract the Instruction as under:-

“3. In view of the order of the Hon’ble Delhi High Court (reference: para 50 of the order); it has been decided by the Board that when an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee. However, the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO (TDS). The AO may also, if deemed necessary, issue a notice to the deductor to compel him to file correction statement as per the procedure laid down.”

7. In the light of this Instruction, we set aside the order of CIT(Appeals) and restore the matter to the file of Assessing Officer to adjudicate the issue afresh, after making necessary verification and if it is found that the

deductor has deducted the TDS and deposited in the Government account, credit of the same should be given to the assessee.

8. In the result, the appeal of assessee is allowed for statistical purposes.

Pronounced in the open court on this 28<sup>th</sup> day of April, 2017.

Sd/-

( A.K. GARODIA )  
Accountant Member

Sd/-

(SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 28<sup>th</sup> April, 2017.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.