

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.7160/M/2018  
Assessment Year: 2013-14**

M/s. Easylink Insurance Services Pvt. Ltd., A-607, Mahaavir Icon, Plot 89/90, Sector 15, CBD Belapur, Navi Mumbai <b>PAN: AABCE4170H</b>	Vs.	DCIT 1(1)(2), Room No.533, 5 <sup>th</sup> Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Gaurav Kabra, A.R.  
Revenue by : Shri Amit Pratap Singh, D.R.

Date of Hearing : 15.01.2020  
Date of Pronouncement : 18.02.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 29.06.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1.1) The Ld CIT-(A) erred in upholding the order of the Ld Assessing Officer by confirming the action of denying the credit for tax deducted at source amounting to of denying the credit for tax deducted at source amounting to Rs.36,85,776/-.

1.2) The Ld CIT(A) erred in not directing the Ld. Assessing Officer to grant credit for tax deducted at source which was attributable to the income accounted by the appellant in its profit & loss account and duly offered for tax by the Appellant. The Ld CIT-(A) has erred in holding that the non granting of TDS credit which was already claimed by the Appellant in its return of income is not a mistake apparent from record which can be rectified.

1.3) The Appellant submits that on passing the order u/s 154 of the Income-tax Act, the intimation u/s 143(1)(a) stands merged with the order u/s 154.

1.4) The Ld CIT(A) has erred in law in not following an order of the Hon'ble Co-ordinate bench of the Tribunal having similar facts which was subsequently upheld by the Hon'ble High Court.

2) All the above grounds are without prejudice to each other.

3) The Appellant craves leave to add, to alter and/or amend the grounds of appeal as and when given.”

3. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order of AO wherein the AO has denied the credit for tax deducted at source amounting to Rs.36,85,776/-.

4. The facts in brief are that the assessee is engaged in the business of insurance as corporate agent of M/S IFFCO Tokyo General Insurance Co. Ltd. (hereinafter referred as ITGICL) and issuing Pravasi Bharati Bima Yojana 2006 policies from the web portal of ITGICL. The Overseas Manpower Recruiting Agents (OMRA) generate PBBY policies from the web portal of ITGICL at their end as per requirements on behalf of the emigrants through the assessee. This policy is a mandatory requirement by the Government of India to get the emigration clearance for the ECR passport holders. The passengers and OMRA issue the PBBY policies and remit the amount of premium after deduction of discounts offered by the assessee. The assessee daily report the PBBY policies issued by it to the ITGICL and remits full amount of insurance premium. ITGICL gives to the assessee commission and additional incentives. The additional incentive received is credited to the bank account held in the name of one of the director of the assessee whereas, the same has been included in its profit and loss account and offered to tax in its return of income. As the income is credited to the bank account

held in the name of one of the director, credit for TDS in respect of the additional incentive is reflected in the Form 26AS of the director. The Director in his individual return of income has not considered the aforesaid income nor TDS thereon as the income belongs to the assessee company. For the assessment year 2013-2014 ,a regular assessment has been completed in the case of the director Shri Pramod Kumar Aggarwal wherein aforesaid income is not brought to tax and no credit for TDS has been granted as reflected in Form No. 26AS of the said director. The Assessing Officer while passing the rectification order has denied the credit for the said TDS on the ground that as per Rule 37BA of the Income-tax Rules, 1962 ( hereinafter referred to as the Rules) the director has not filed the declaration with the deductor. During the previous year relevant to assessment year under appeal, the assessee has filed its return of income declaring net taxable income amounting to Rs.1,55,87,3607- and tax due thereon works out to be Rs.50,94,523/-(including interest under section 234 amounting to Rs.37,204/-). Assessee had paid taxes by way of tax deducted at source (TDS) of Rs.47,20,605/- and self-assessment tax of Rs.3,73,918/-. The assessee received a demand notice from the Assessing Officer on 04th August, 2016 determining Rs.46,96,407/- payable by the assessee. The said demand was raised by the AO because the assessee has not been granted credit for tax deducted at source of Rs36,85,776/-. The assessee filed a rectification letter u/s 154 of the Act on 13th October, 2016 explaining the Assessing Officer about the income and TDS reflecting in Form 26AS of one of the director Shri Pramod Kumar Aggarwal. The Assessing

Officer passed rectification order under section 154 of the Act on 26<sup>th</sup> October, 2016 denying the credit of TDS to the assessee.

5. In the appellate proceedings, the Ld. CIT(A) dismissed appeal of the assessee after taking into consideration the arguments of the assessee by observing and holding as under:

“4.4.1. I have considered the rival contentions. In this case the two insurance companies paid commission to Shri Pramod Kumar Agrawal, Director of the appellant company and deducted tax at source as required under the Act. In its return the appellant declared the commission income in its return and also claimed the credit for the tax deducted at source by the two insurance companies. Shri Pramod Kumar Agrawal who was the actual recipient of the commission neither declared the commission nor claimed the credit for the TDS. The TDS was not reflected in the 26AS statement of the appellant and therefore no credit for TDS was given in the order passed u/s 143(1) of the Act or in the order passed u/s 154.

4.4.2. ....  
.....

4.4.3. I find that the decision of the Hon'ble Delhi High Court is not applicable to the appellant's case. In that case the payment was made by the deductor the assessee (REPL) though the TDS credit was reflected in the credit of sister concern of the assessee (due to quoting of a wrong PAN). But in this case, neither the commission was paid to the appellant nor was the TDS reflected in the credit of the appellant in 26AS.

4.4.4 U/s 143(1) of the Act, there is no scope for examining whether an assessee is eligible for any TDS credit other than those reflected in the 26AS statement pertaining to him. Therefore, there was no mistake in the order u/s 143(1) of the Act which was apparent from record. Therefore, the AO was justified in rejecting the appellant's claim for rectification u/s 154 since, as mentioned above, there is no mistake in the order under section 143(1) of the Act which was apparent from the records. The appellant has sought to rely on new material in the form of affidavit, letter from the AO of the Director etc to establish that there is a mistake in the order u/s 143(1). But under the provisions of section 154, no material which do not form part of the record at the time of passing the order which is the subject matter of the order u/s 154 can be relied upon. Therefore, in my view, the AO was justified in rejecting the appellant's claim for TDS credit.”

6. After hearing both the parties and perusing the material on record, we observe that in this case Shri Pramod Kumar Agrawal who is director of the assessee company has received additional commission from the IFFCO Tokyo General Insurance Co. Ltd.

on behalf of the assessee and TDS was also deducted by the said company . Both these amount additional incentives and TDS was reflected in form No.26AS of Shri Pramod Kumar Agrawal. However, the commission belonged to the assessee company and accordingly the same was included in the return of income of the assessee and corresponding TDS was also claimed. The AO while processing the return under section 143(1) denied the credit of TDS whereas the income was duly included and assessed in the hands of the assessee. Therefore, the only issue for adjudication before us whether the TDS claim is to be allowed to the assessee which was appearing in Form No.26AS in the name of Shri Pramod Kumar Agrawal a director of the assessee company. In this case, we find that the assessment of Shri Pramod Kumar Agrawal was completed by the AO vide order dated 03.03.2016 passed under section 143(3) wherein both the income as well as TDS were not considered and so much so that the AO of Shri Pramod Kumar Agrawal vide letter dated 02.05.2017 informed the AO of the assessee company that the credit of TDS of Rs.36,85,776/- may kindly be given to the assessee subject to verification of details. The contents of the letter are reproduced below:

“Sub: Intimation in the case of Shri Pramod Kumar Agarwal, PAN- AAJPA4843Q 6s TDS Credit for the A.Y. 2013-14 of Rs, 36,85,776/- in the case of M/s Easylink Insurance Services Pvt. Ltd; PAN: AABCE4170H.

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Please refer to the above.

In this case, assessment order was passed u/s.143(3) dated determined total income of Rs. 1 0,04,480/- without credit of TDS of Rs.36,85,776/- as shown in 26AS.

In this respect the assessee vide letter dated 01.05,2017 has stated that " The TDS as per the 26-AS for the A.Y. 2013-14, under the above PAN, of Rs. 36,85,776/- against the revenue receipts from the Insurance companies is neither claimed nor accounted for in the books of accounts of Pramod Kumar Agrawal because these

revenue receipts are pertaining to the initial transaction of M/s Easylink Insurance Services Pvt. Ltd. and therefore these revenue receipts are accounted for in the books of M/s Easylink Insurance Services Pvt. Ltd. and TDS on that is also claimed in the same books of account.

These revenue receipts of the A.Y. 2013-14 as per the 26-AS is not assessed under the PAN of Pramod Kumar Agrawal and the same can be verified from the assessment order".

The submission of the assessee is duly considered with facts of the case and assessment order. The comments of the A.O. in the assessment order for the A.Y. 2013-14 is as under:

During the course of assessment proceedings, assessee stated that the receipts as reflected in his PAN no. is actually the receipts of company i.e. Easylink Insurance Services Pvt. Ltd, and the company has offered the receipts for taxation and filed an affidavit on India Non Judicial STAMP PAPER on 29.02.2016, the part of the affidavit is reproduced as under:

"that I will not claim any refund of TDS for amount of Rs.36,85.7767- for the assessment year 2013-14 as shown in 26AS. Since the revenue receipt related to above TDS is the income of Easy Link Insurance Services Pvt. Ltd, and has been credit to the company and has been offered for taxation in that company only and hence the TDS thereon is also claimed in the income tax return of easylink Insurance Services Pvt. Ltd, having PAN AABCE4170H".

Considering the above facts, you are requested to give the claim of TDS credit of Rs.36,85,776/- by M/s Easylink Insurance Co. Ltd subject to verification of details under intimation to this office."

7. Thus, it is quite clear that the TDS was neither allowed credit in the hands of Shri Pramod Kumar Agrawal nor the assessee whereas the income is assessed in the hands of the assessee. The only technical objection raised by the authorities below are that the scope of 143(1) of the Act is very limited and only those adjustments are made which are prima-facie not allowable to the assessee on the basis of material available before the AO. The Ld. CIT(A) upheld the order of AO by reasoning that AO is correct in denying the credit of TDS to the assessee as the assessee sought to rely on the new material in the form of affidavit, letter of AO of Shri Pramod Kumar Agrawal to establish that there is a mistake in the order under section

143(1) of the Act, however, under section 154 of the Act the scope is very limited as the material sought to be relied by the assessee was not part of the record at the time of passing the order under section 143(1) of the Act.

8. After considering the facts on record, we are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue as it would be grossly unfair and unjust to deny the assessee the credit of TDS where the corresponding income has been assessed in its hand and this has been done despite the fact that the AO of Shri Pramod Kumar Agrawal has communicated to the AO of the assessee that the credit of TDS of Rs.36,85,776/- has not been allowed to Shri Pramod Kumar Agrawal and may be allowed to the assessee company after verification of facts. However, the authorities below have gone by the technicalities of the issue instead of correcting the wrongs. In our opinion, it would be gross injustice, if the assessee is denied credit of TDS in view of the fact that the income is already assessed in the hands of the assessee. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to grant the credit of TDS of Rs. 36,85,776/-to the assessee.

9. The appeal of the assessee is allowed.

**Order pronounced in the open court on 18.02.2020.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 18.02.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.