

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 2873/Del/2018
(Assessment Year: 2011-12)

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| Shri Sandeep Jain, Flat No. 2, Kewal Kunj Society, Sector : 13, Rohini, Delhi – 110 085. PAN: AALPJ3207D | Vs. | ACIT, (CPC) Bengaluru. |
| (Appellant) | | (Respondent) |

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| Assessee by : | Shri Ved Jain, Advocate; & Shri Ashish Goel, C. A.; |
| Department by : | Shri Rajesh Kumar, Sr. D. R.; |
| Date of Hearing : | 17/08/2021 |
| Date of pronouncement : | 17/08/2021 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order dated 20.02.2018 passed by the Id. Commissioner of Income Tax (Appeals)-13, New Delhi, for assessment year 2011-12, raising the following grounds of appeal:-

“ 1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the disallowance of TDS Credit claimed by the assessee amounting to Rs.49,440/- and thereby creating a demand of Rs.52410/-.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the action of the AO despite the fact that the rectification order passed u/s 154 of the Act is barred by limitation.

4. The appellant craves leave to add, amend, or alter any of the grounds of appeal. “

2. Brief fact of the case shows that assessee is an individual who filed its return of income for assessment year 2011 – 12 claiming refund on 29/7/2011. The return of the assessee was processed u/s 143 (1) (a) on 12th/10/2011 and refund was issued to the assessee. At the time of processing of the return for credit of TDS was not given to the assessee. Therefore, the assessee filed an application u/s 154 of the act on 9/2/2012, which was processed on 22/2/2012, and the balance refund was issued to the assessee. The assessee claimed before the lower authorities that it did not file any other application u/s 154 of the act. However, the learned assessing officer suomotu made a rectification order by reversing credit of TDS and further raised the demand of ₹ 52,410. The claim of the assessee before the lower authorities is that that the learned assessing officer has not given any opportunity to the assessee of being heard before passing an order u/s 154 of the act. With this grievance the assessee preferred an appeal before the learned CIT – A against the order passed u/s 154 of the income tax act by the central processing unit on 21 April 2016.
3. On appeal before the learned CIT – A the assessee submitted that the order u/s 154 of the act cannot be passed after the expiry of 4 years from the end of the financial year in which the order shot to be amended was passed and therefore the order is barred by limitation of time. Even otherwise stated that the order cannot be passed prejudicial to the interest of the assessee without giving an assessee reasonable opportunity of being heard. The learned and CIT – A accepted the contention of the assessee in paragraph number 3.5 of the order that the apparently the impugned order is barred by time limitation. He further at that despite that fact, the assessee has been granted credit of the tax, which assessee is not due for and therefore the order of the learned assessing officer by the central processing unit is valid. He further held that not giving an opportunity of hearing to the assessee is against the principle of natural justice and therefore he set-aside the order back to the file of the learned assessing officer to examine the facts of the case after giving the assessee proper opportunity of hearing. Therefore, he allowed the appeal of the assessee partly.

4. The assessee is aggrieved with the order of the learned CIT – A for the reason that the order passed by the learned assessing officer is into bracket central processing unit/– is barred by limitation and further the order could have been passed without giving assessee of proper opportunity of hearing if the interest of the assessee is at stake. Learned authorised representative submitted the same facts as stated before the learned CIT – A and submitted that when the learned CIT – A has categorically held that the order is passed beyond the time limit prescribed u/s 154 of the income tax act, irrespective of the any consequences, the order cannot be set-aside to the file of the learned assessing officer to examine the credit already granted by him in proceedings u/s 154 of the act itself at the time of granting those credit to the assessee.
5. The learned departmental representative relied upon the order of the learned CIT – A and submitted that when the learned CIT – A set-aside the issue to the back to the file of the learned assessing officer for verification of the credit and after giving the assessee and opportunity of hearing, the assessee should not be aggrieved with that order. In fact, he submitted that the issue has been decided in favour of the assessee and therefore the appeal filed by the assessee on various grounds is not maintainable.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that assessee is an individual who filed his return of income on 29/7/2011 which was processed u/s 143 (1) of the act and order was passed on 12/10/2011 whereby the credit was allowed to the assessee of ₹ 112,862/–. The assessee filed a rectification application on 9/2/2012 and against that request and order was passed on 22/2/2012 u/s 154 of the act where the credit of the TDS was granted to the assessee of ₹ 193,769/–. Subsequently one more order was passed by the learned assessing officer u/s 154 of the income tax act on 21/4/2016 wherein the original credit allowed to the assessee of ₹ 193,769/– was restricted to ₹ 144,329 only. Consequently, demand of ₹ 52,410 was raised. The whole proceeding took place for assessment year 2011 – 12. In fact the order passed by the learned assessing officer

on 21/4/2016 is passed beyond the time of four years from the end of the financial year in which the order sought to be amended was passed therefore naturally it is barred by limitation of time. The learned CIT – A in his order in paragraph number 3.5 has categorically held that the impugned order is barred by time limitation. The learned departmental representative does not have any answer to the above finding of the learned CIT – A. Once the order is barred by limitation of time other consequences arising from such order should be taken cognizance of. Therefore, the order of the learned CIT – A further setting aside the file of the learned assessing officer is not in accordance with the law. In view of this we uphold the finding of the learned CIT – A that impugned order passed by the central processing unit withdrawing the credit already granted to the assessee is not sustainable in law as it is barred by limitation. In view of this, we reverse the order of the learned CIT – A in setting aside the issue back to the file of the learned assessing officer. Accordingly, the issue in the appeal is decided in favour of the assessee.

7. Accordingly, the appeal of the assessee is allowed. Order pronounced in the open court on the conclusion of the hearing on 17/8/2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 17/08/2021.

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date of dictation | 17.08.2021 |
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| Date on which the fair order is placed before the dictating member for pronouncement | 17.08.2021 |
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| date on which the file goes to the Bench Clerk | 17.08.2021 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the order | |