

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “B”, BANGALORE**

**Before Shri George George K, JM and Shri B.R.Baskaran, AM**

ITA No.1249/Bang/2016 : Asst.Year 2006-2007

The Joint Commissioner of Income-tax (LTU) Bangalore.	v.	M/s.Hewlett Packard India Sales Private Limited No.24, Salarpuria Arena Hosur Main Road, Adugodi Bangalore – 560 030. <b>PAN : AAACC9862F.</b>
(Appellant)		(Respondent)

Appellant by : Sri.Amrit Raj Singh, JCIT-DR  
Respondent by : Sri.Percy Pardiwalla, Sr.Advocate

<b>Date of Hearing : 21.10.2021</b>	<b>Date of Pronouncement : 21.10.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 13.04.2016. The CIT(A)'s order arises out of the A.O.'s order dated 28.03.2014 passed u/s 154 of the I.T.Act. The relevant assessment year is 2006-2007.

2. The grounds raised read as follows:-

*“1. The order of CIT(A) has erred in directing the AO to grant TDS credit which was restricted while passing order u/s 154 of the Act.*

*2. The learned CIT(A) erred in not appreciating the fact that the order u/s 154 dated 28.03.2014 was passed after considering the fact that the assessee had not disclosed the income for the Asst.Year 2006-07 and deferred the same to subsequent years and such grant is in violation of Sec.199 of the Act which bars granting credit for TDS if corresponding income is not taxed in the relevant year.*

*3. Any other ground urged at the time of appeal.”*

3. The brief facts of the case are as follows:

The assessee is a company engaged in trading of computer system and components. For the assessment year 2006-2007, the return of income was filed on 28.11.2006 declaring total income of Rs.478,70,14,448. In the return of income, the assessee had claimed credit for TDS for a sum of Rs.13,11,93,339. Thereafter the assessment order u/s 143(3) of the I.T.Act was passed vide order dated 11.12.2009, wherein the TDS credit was restricted to Rs.11,96,28,156 (Rs.13,11,93,339 claimed by the assessee). Thereafter the A.O. issued notice u/s 154 of the I.T.Act to reduce the TDS credit by further Rs.2,36,33,098. The assessee objected to the proposed notice. It was submitted that the A.O. after due verification has granted TDS credit of Rs.11,96,28,158 while completing the assessment u/s 143(3) of the I.T.Act. Therefore, it was contended that the rectification notice to further reduce the TDS credit to Rs.9,59,95,058 would clearly indicate the change of opinion. The Assessing Officer, however, rejected the objections raised by the assessee and passed an order of rectification u/s 154 of the I.T.Act (order dated 28.03.2014) wherein the TDS credit was restricted to Rs.9,59,95,058.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) allowed the appeal of the assessee. The CIT(A) held that the A.O. has erred in making rectification since it is not a mistake apparent from record. The relevant finding of the CIT(A) reads as follows:-

*“5.2 I have considered the submission of the Appellant and the order of the AO. Section 154 of the Act provide for rectification of mistake apparent from the records. I agree with the submission of the Appellant and agree that the action of the AO to rectify the TDS credit, which has been verified and granted in the assessment order represents ‘change of opinion’ on the matter which has already been decided upon by the AO and the discussion of the AO in the 154 order which is running into few pages to explain the reason for the certification of the order itself and shows that it is not a mistake apart from records and in calling for information for verification is a long drawn process, and hence, the subject matter is not within the purview of section 154 of the Act. This ground, therefore succeeds.”*

5. Aggrieved by the order of the CIT(A), the Revenue has filed this appeal before the ITAT. The learned Departmental Representative submitted that while completing the reassessment for assessment year 2008-2009 it was noticed that the assessee has not disclosed income to the extent of Rs.105 crore for the relevant assessment year, consequently, the TDS claimed on such income was rightly not given credit by the Assessing Officer in the proceedings u/s 154 of the I.T.Act dated 28.03.2014. In this context, the learned DR relied on the judgment of the Hon’ble Calcutta High Court in the case of Indra Singh and Sons Private Ltd. v. Union of India and Another reported in (1967) 64 ITR 501 (Cal.).

6. The learned AR, on the other hand, submitted that the present proceedings has been subsumed by the subsequent order of the CIT(A) and the order of the Assessing Officer giving effect to the CIT(A)’s order. It was submitted that in the assessment order completed u/s 143(3) of the I.T.Act (order dated 11.12.2009), the Assessing Officer had restricted the TDS credit to Rs.11,96,28,156. As against the restriction of

the TDS credit, the assessee filed rectification application u/s 154 of the I.T.Act and on rejection of the same, the assessee filed appeal to the CIT(A). The CIT(A) vide order dated 05.12.2018 had restored the issue to A.O. for determination of the correct TDS credit for the relevant assessment year. The A.O. vide order dated 25.10.2019 had given effect to the CIT(A)'s order dated 05.12.2018, wherein the A.O. has granted TDS credit to the extent of Rs.13,11,93,339. Therefore, it was submitted that the Revenue's appeal has been rendered infructuous.

7. We have heard rival submissions and perused the material on record. The assessee in the return of income had claimed TDS credit of Rs.13,11,93,339. As against the TDS credit of Rs.13,11,93,339 the A.O. in the assessment order passed u/s 143(3) of the I.T.Act had restricted the TDS credit to Rs.11,96,28,156. As against the restriction of TDS credit to Rs.11.96 crore, the assessee preferred a rectification application u/s 154 of the I.T.Act. On rejection of the rectification application, the assessee preferred an appeal to the CIT(A). The CIT(A) restored the issue to the A.O. for examination and grant of correct TDS credit. The direction of the CIT(A) in his order dated 05.12.2018 reads as follows:-

*“In background of the above discussion and facts & circumstances, the AO is directed to take appropriate rectificatory action and allow the claim of TDS in the year under consideration, after due verification. In the event of denial in the current year, necessary readjustments have to be made if required in any other year, as a consequence wherein the relevant incomes are found to be offered / declared. The assessee is simultaneously directed to furnish*

*all relevant proof of TDS certificates and reflection of corresponding income in the respective years as per respective returns of income and the period-wise TDS certificates. The assessee's grounds of appeal are therefore allowed subject to above direction."*

7.1 The A.O. while giving effect to the CIT(A)'s order dated 05.12.2018 granted the TDS credit as originally claimed in the return of income, namely, Rs.13,11,93,339. Therefore, the present proceedings, which arise out of 154 proceedings of the A.O. dated 28.03.2014 has been subsumed by the later proceedings of the CIT(A) dated 05.12.2018 and the order giving effect to the CIT(A) by the A.O. dated 25.10.2019. Therefore, this appeal of the Revenue in essence is rendered infructuous and the same is dismissed as such.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 21<sup>st</sup> day of October, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 21<sup>st</sup> October, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-14, Bangalore.
4. The CIT-LTU, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore