

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

**ITA No.1553/DEL/2020
[Assessment Year: 2017-18]**

Sh. Bharat Gupta, 1372, Above Singh Bros, Kashmere Gate, Delhi-110006	Vs	Income Tax Officer, Ward-35(5), New Delhi-110002
PAN-AEAPG5222N		
Assessee		Revenue

Assessee by	Sh. V.K. Sabharwal, Advocate
Revenue by	Sh. Om Prakash Sr. DR

Date of Hearing	01.02.2022
Date of Pronouncement	25.04.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 31.07.2020 of the learned CIT(A)-12, New Delhi, relating to Assessment Year 2017-18.

2. The grounds raised by the assessee are as under:-

1. *That the orders passed u/s 143(1) r.w.s. 154 of the Income Tax Act 1961 on dated 06.07.2019 and 06.08.2019 were perverse to the law and to the facts of the case, because of having inconsistency thereof as in the orders passed on 06.07.2019, because of intimating NIL demand in the A.Y. 2017-18 and in the order passed on 06.08.2019 the demand was raised of Rs. 89510/- for the A.Y. 2017-18, which the Ld. CIT(A) has failed to appreciate while passing the appellate order on 31.07.2020.*

2. *That the order passed u/s 143(1) r.w.s. 154 of the Income Tax Act 1961, was further illegal under the law and to the facts of the case, because of computing income only on the basis of Form-26 AS by the concerned Assessing Officer, wherein the gross income appears to be credited wrongly by his both the employers without doing any verification from his said employers, though the appellant has pointed out the mistake in his application filed u/s 154 of the Income Tax Act 1961 before the concerned Assessing Officer.*
3. *That the order passed u/s 143(1) r.w.s. 154 of the Income Tax Act 1961 was further wrong on the facts and erroneous on the point of law, because of failed to pass the speaking order as denial of deductions claimed u/s 10 of the Income Tax Act 1961, without taking into consideration that the same has already been allowed by the employer of the appellant after verification of the documents produced and placed upon records by the appellant.*
4. *That the order passed u/s 143(1) r.w.s. 154 of the Income Tax Act 1961, was further perverse to the law and to the facts of the case, because of passing two simultaneous orders on 06.08.2019, one of which the additional demand of tax and interest has been raised of Rs. 89,510/- and in other order, the demand comes to 'O' while processing.*
5. *That while passing order u/s 143(1) r.w.s. 154 of the Income Tax Act 1961, the DCIT failed to appreciate that the appellant was entitled for respective exemption / deductions as claimed in the ITR, u/s 10 of the Income Tax Act 1961.*
6. *That the order passed u/s 143(1) r.w.s. 154 of the Income Tax Act 1961, was further wrong on facts and erroneous on the point of law, because no opportunity if any has ever been afforded prior to disallow the deductions / exemption claimed u/s 10 of the Income Tax Act 1961, prior to pass the order, as only based upon on form-26AS, on which the gross amount of salary credited has been taken into consideration while passing the said orders.*
7. *That the finding given by the Ld. CIT(A) in his order dated 31.07.2020 was further incorrect under the law and to the facts of the case, thereby holding that in case any mistake appears in Form-26 AS in the figures uploaded by his employers, the appellant has to approach his employer only and not the duty of the concerned Assessing Officer to verify the same from his*

concerned employer.

8. *That the Ld. CIT(A) has further failed to appreciate that the orders passed are entirely against the consonance of provisions of law contained u/s 143(1) of the Income Tax Act 1961 as no verification if any has ever been done by the concerned Officer prior to disallow the legitimate and bonafide claim of deductions allowed by the employer after verification and examination of the information provided and documents produced.*

9. *That the orders passed becomes further non-est because the Assessing Officer and Ld. CIT(A) have failed to follow the guidelines and notification issued by the CBDT and judgments pronounced by the Hon'ble Supreme Court of India, thereby hold the system / manner prior to make any of the prima facie adjustments while issuing intimation u/s 143(1) to the appellant.*

10. *That no proper and reasonable opportunity if any has ever been afforded by the concerned Officer prior to disallow the legitimate and bonafide deductions claimed as allowed by his employers under the law in Form No. 16A issued, in accordance to which the appellant has filed his ITR.*

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 20.07.2017 declaring total income of Rs.21,09,960/-. The CPC issued an intimation dated 29.05.2018, wherein it was stated that there are certain inconsistencies between the salary income declared in the ITR and Form 26AS and the difference is required to be explained. The assessee filed its reply dated 31.05.2018 and made request to pass the order u/s 143(1)/154 of the Income Tax Act, 1961 (hereinafter 'the Act'). The CPC vide order dated 06.08.2019 issued a fresh computation of income, wherein the

claim of deduction u/s 10 of the Act was disallowed and demand of tax and interest to the tune of Rs.89,510/- was raised. The assessee filed the appeal before the Ld.CIT(A) who vide order dated 31.07.2020 dismissed the same by observing as under:-

“4. Decision:- As the issues are common, the decisions on various grounds of appeal are being disposed off in a consolidated manner.

4.1 During the course of appellate proceedings the appellant has raised the following rounds:

“i) That during the year under assessment, the appellant worked with two different employers for a different period, one with M/s ADS Data Science Pvt. Ltd. and another with M/s Price Water House Coopers Pvt. Ltd, as such on the basis of salaries received from two different organizations, the appellant has filed his ITR for the A.Y. 2017-18 on 20.07.2017 on the basis of the Form-16 issued containing all the details contained in the said Form-16 by his both the employers.

ii) That the exemption claimed as allowed u/s 10 of Rs. 1,93,443/- by the employer M/s Price Water House Coopers Pvt. Ltd. as per the salary certificate issued on Form-J6A was bifurcated by them in Form-16A as under:-

<i>HR A allowed u/s 10</i>	<i>Rs. 170000/-</i>
<i>Conveyance allowance allowed</i>	<i>Rs. 13161/-</i>
<i>Medical exemption</i>	<i>Rs. 10280/-</i>
<i>Total</i>	<i>Rs. 193443/-</i>

iii) That besides the above, the appellant has also drawn a salary of Rs.5,69,545/- from M/s ADF Data Science Pvt. Ltd. during the year under assessment as reflected in the computation of income and ITR filed, out of which the deductions have been allowed u/s 10 by the employer of Rs. 58,215/- as per the salary certificate

issued after having been satisfied and scrutinized the documents filed with them by the appellant.

The details of deductions claimed as allowed by the employer in Form-16A is as under:-

Leave encashment	Rs. 13,920/-
Conveyance allowance	Rs. 5600/-
HRA	Rs. 37600/-
Tax on employment	Rs. 1095/-
Total	Rs. 58,215/-

iv) That thereafter the appellant has received intimation from the Deptt. on dated 29.05.2018 wherein it contained:

“that since there is inconsistency appears between the salary income declared in the ITR and Form-26AS, therefore, the difference is required to be explained. ” The said intimation does not mention, the difference of TDS if any appears of Rs.19,775/- as claimed and appears in Form-26AS”.

For which the detailed reply was e-filed on 31.05.2018, briefing all the facts as discussed hereinabove, as such it was requested and prayed to pass the order u/s 143(1) / 154 of the Income Tax Act 1961 accordingly.

That thereafter, after filing the rectification application online, the orders were passed on 07.07.2019 by the Officer concerned of CPC, Bangalore, the additional demand of tax & interest levied as raised while disallowing the legitimate claim of deduction u/s 10 of the Income Tax Act 1961, were entirely deleted on a Zero tax liability if any be paid by the. assessee pertaining to the Assessment Year 2017-18.

v) That thereafter again vide order dated 06.08.2019 the fresh orders were passed, wherein again the legitimate and bonafide claim of deductions u/s 10 of the Income Tax Act 1961 as per law were entirely disallowed without affording any opportunity to the appellant and without the support of any material either collected or ever placed upon records prior to do the same, therefore, the additional demand of tax and interest were raised of Rs.89,51 ()/- against which the appellant has filed an appeal, thereby challenging the legality and validity of the intimation order provided u/s 143(1) of the Income Tax Act 1961.

vi) That the intimation order passed finally on 06.08.2019 by the concerned / competent authority (CPC) was perverse to the law and to the facts of the case, as such not tenable, because the officer concerned has not taken into consideration and appreciated that the information appearing in Form-26AS is not correct, as such not liable to be relied upon while proceeded to provide the intimation u/s 143(1) of the Income Tax Act 1961.

That as per the salary certificate issued from M/s Price Water House Coopers Pvt. Ltd., the gross salary comes to Rs. 19,61,664/- and after allowing the claim of deductions u/s 10 of the Income Tax Act 1961 of Rs. 1,93,443/- on verification and scrutinization of the information provided and documents produced by the appellant, the balance salary comes to Rs. 17,68,221/-, but while providing intimation u/s 143(1) of the Income Tax Act 1961, the concerned officer has taken the gross salary only as appearing in Form-26AS of Rs. 19,61,664/- and the claim of deductions allowed by the employer u/s 10 has not been considered without appreciating that the appellant has already filed and placed upon records proper evidence for claiming and entitlement of deduction u/s 10 of the Income Tax Act 1961 which the employer has allowed in accordance with the law.

This apart, the claim of TDS has further been taken/allowed in the intimation order passed u/s 143(1) of the Income Tax Act 1961 of Rs. 4,46,999/-, though the TDS deducted by his both the employers comes to Rs. 4,66,774/- in Form-26AS, the reason to allow less claim of TDS of Rs. 19,775/- has not been intimated/incorporated in the said intimation, therefore, the order passed becomes perverse under the law and to the facts of the case, as such not tenable.

That the intimation order passed as provided u/s 143(1) of the Income Tax Act 1961 was further wrong, because from the perusal of Form-26AS, it appears that the employer has credited the total salary of Rs. 4,80,000/- in the account of appellant on which the TDS has been deducted of Rs. 78,644/-, though the information contained in Form-26AS is incorrect, as the total salary paid was liable to be credited of Rs. 5,69,545/- out of which the deductions claimed have been allowed u/s 10 of the Income Tax Act 1961 after examination and verification of

the documents produced and placed upon records by the appellant of Rs.57,120/-, as such the balance salary comes to Rs. 5,12,425/-, out of which the appellant was entitled to claim tax on employment of Rs. 1.095/-, therefore, the balance salary comes to Rs.5,11,330/-, as per the copy of salary certificate attached.

4.2 From the above facts enumerated hereinabove, it is noted that the difference is essentially attributable to the differences appearing in 26AS vis-a-vis Form 16A issued by two different employers.

4.3 Form 16A provided by the employer essentially contains the details payments made and tax deducted thereon. On the other hand, Form 26AS is an annual consolidated credit statement issued with regards to a particular PAN. Any discrepancy, between the two needs to be rectified by the appellant by getting in touch with his employer. From the facts on record, it seems that the rectification, if any has not been undertaken by the employer of the appellant. Accordingly, the action of DCIT (CPC) Bangalore, cannot be faulted. Processing of returns u/s 143(1) of the Act, presupposes matching of data. Any mismatch in data, therefore, will result in situations as depicted by the appellant in the preceding para. In fact, as admitted by the appellant in the grounds of appeal filed that the order, both section 143(1) & 154 are based on Form 26AS, reflecting gross amount of salary credited. Accordingly, the grounds of appeal are rejected.

5. In the result, the appeal is dismissed.”

4. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee submitted that the assessee during the impugned Assessment Year had worked with two different employers for different periods i.e. one with M/s ADF Data Science Pvt. Ltd. and another with M/s Price Water House Coopers Pvt. Ltd. As such on the basis of

salaries received from two different organizations the assessee filed his return of income on the basis of Form-16 issued by respective companies containing all the details contained in the said Form-16 as issued by both the employers. He submitted that as per salary certificate issued by M/s Price Water House Coopers Pvt. Ltd. salary comes to Rs.19,61,664/- and after allowing deduction u/s 10 of the Act of Rs.1,93,443/-, the balance salary comes to Rs.17,68,221/-. However, in the intimation u/s 143(1) of the Act, the AO has taken gross salary at Rs.19,61,664/- without allowing deduction u/s 10 of the Act allowed by the concerned employer. Similarly, the TDS of Rs.4,46,999/- deducted by both the employers are also appearing in the Form-26AS. He submitted that although the TDS as per Form 26AS comes to Rs.4,66,774/-, however TDS credit to the tune of Rs.4,46,999/-only has been given and TDS credit of Rs.19,775/- has not been incorporated/intimated in the said intimation. He submitted that a perusal of Form 26AS shows that M/s ADF Data Science Pvt. Ltd. has deducted tax of Rs.78,644/- on salary income of Rs.4,80,000/-, whereas the assessee in his computation of income has declared salary income of Rs.5,69,545/-. He submitted that Form 26AS

received from M/s ADF Data Science Pvt. Ltd. is wrong. Although the assessee has filed the salary certificate issued by M/s ADF Data Science Pvt. Ltd. giving full details including deduction u/s 10 of the Act, the Assessing Officer has not allowed the claim of deduction u/s 10 of the Act. He submitted that the lower authorities without considering the details already filed in the Form 16A issued by both the employers containing all the details of salary paid and deduction allowed therefrom have passed the order which is not in accordance with law. Relying on various decisions, the ld. Counsel for the assessee submitted that the order passed without taking into consideration, the information provided, documents produced and available with the Assessing Officer, becomes invalid. He accordingly submitted that the order passed u/s 154 of the Act on 06.08.2019 should be quashed.

6. Alternatively, he submitted that the respective exemptions/deductions claimed u/s 10 of the Act should be allowed and the additional impugned demand of tax and interest raised at Rs.89.510/- should be deleted.

7. The ld. DR on the other hand heavily relied on the orders of the AO and the Ld. CIT(A). He submitted that there

are difference in the Form 16A and 26AS and it is the duty of the assessee to reconcile the same through his employer and since, the assessee failed to do so, the Ld. CIT(A) was justified in dismissing the appeal filed by the assessee.

8. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the Form 16A issued by both the employers shows that the assessee has received salary of Rs.19,61,664/- from M/s Price Water House Coopers Pvt. Ltd. and Rs.5,12,425/- from M/s ADF Data Science Pvt. Ltd. The salary certificate of M/s Price Water House Coopers Pvt. Ltd. clearly shows deduction u/s10 at Rs.1,93,443/-. I am therefore, of the opinion that the AO while passing rectification order should have allowed the claim of the exemption u/s 10 at Rs.1,93,443/-. Since, the ld. CIT(A) without considering the claim of exemption u/s 10 allowed by the employers at Rs.1,93,443/- has dismissed the appeal filed by the assessee, therefore, I accept the alternate contention of the ld. Counsel for the assessee that the exemption/deduction u/s 10 of the

Act of Rs.1,93,443/- should be allowed. Accordingly, I set-aside the order of the Ld. CIT(A) and direct the AO to allow the claim u/s 10 of the Act of Rs.1,93,443/-.

9. So far as the difference in TDS of Rs.19,775/- is concerned, the assessee is entitled to get the credit of TDS to the extent the amount reflected in Form 26AS. It is the responsibility of the assessee to get it rectified from the concerned employer and make necessary application before the concerned authorities as prescribed for getting credit of the TDS of Rs.19,775/-.

10. The grounds raised by the assessee are accordingly partly allowed.

11. In the result, the appeal filed by the assessee is party allowed.

Order pronounced in the Open Court on 25.04.2022.

Sd/-

[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 25.04.2022.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi