

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.714/Hyd/2022		
Assessment Year: 2019-20		
M/s. Sushee TTS JV Hyderabad PAN:ABSFS5848K (Appellant)	Vs.	Dy. C.I.T Circle 6(1) Hyderabad (Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	24/01/2023	
Date of pronouncement:	25/01/2023	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 20/10/2022 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2019-20.

2. Facts of the case, in brief, are that the assessee is a firm carrying on the business of work contracts. It filed its return of income u/s 139(1) of the I.T Act on 31.10.2019 for the A.Y 2019-20, declaring total loss of Rs.29,618/- and claimed refund of Rs. 5,16,127/-. The CPC Bengaluru in the intimation u/s 143(1) of the Act dated 15.6.2020 computed the total income of the assessee at Rs.68,82,806/- wherein an amount of Rs.69,12,416/- was added u/s 40(a)(ia) of the Act being 30% of the sub-contract expenditure of Rs.2,30,41,386/- on the ground that as per the

audit report in Form 3CD, the TDS was not deposited in respect of the sub-contract.

3. Before the learned CIT (A)-NFAC, it was argued that the mistake was rectified and subsequently the assessee filed revised Form 3CD dated 28.12.2020. However, the learned CIT (A)-NFAC was not satisfied with the arguments advanced by the assessee and upheld the action of the CPC by holding that the stand taken by the Assessing Officer in the present intimation is based on the information as per Form 3CD dated 29.10.2019 in which there were certain items requiring adjustment. Thus, there is no error in the intimation issued by the CPC.

4. Aggrieved with such order of the learned CIT (A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

*"1. The order of the Hon'ble CIT(A) dated 20.10.2022 is erroneous both in law and on facts of the case.*

*2. The order of the Hon'ble CIT passed u/s 250 of the IT Act is erroneous in not considering the figures as per the ROI. read with revised Form 3CD filed by the assessee on 28.12.2020, wherein there is no figure mentioned in Col.21. inasmuch as due TDS on sub-contract expenses of Rs.2,30,41.385/- was deducted and remitted to Government account on 30.10.2019 along with interest well within the time specified u/s 139(1) of the IT Act.*

*3. The Hon'ble CIT ought to have considered the fact that when due TDS was deducted on sub-contract expenses and paid well within the due date of filing of return as per section 139(1) of the IT Act, there cannot be any room for disallowance u/s 40(a)(ia) of the IT Act.*

*4. The Hon'ble CIT(A) erred in restricting his observations to the facts available till passing of intimation passed u/s 143(1), in as much as it was observed that there is no error in the intimation, making the appeal process as 'rectification of error apparent from record' and not quasi-judicial proceedings, which should encompass the material facts available till the time of disposal of appeal.*

*5. Any other ground that will be raised at the time of hearings."*

5. The learned Counsel for the assessee referring to page 1 of the paper book drew the attention of the Bench to the copy of the return filed on 31.10.2019. Referring to page 36 to 47 of the Paper Book, he drew the attention of the Bench to the copy of the audit report which was uploaded on 29.10.2019. Referring to page 62 to 64 of the Paper Book, he submitted that the TDS amount of Rs.5,18,627/- on the sub-contract payment of Rs.2,30,66,386/- was deposited on 30.10.2019 vide Challan No.54600 and 54634. He submitted that on the date of uploading of the audit report in Form 3CD and 3CB admittedly the TDS was not deposited. However, when the return u/s 139(1) of the Act was filed on 31.10.2019, the tax so deducted was deposited on 30.10.2019 which is before the date of filing of the return of income. He drew the attention of the Bench to the provisions of section 40(a)(ia) which reads as under:

*“40. Notwithstanding anything to the contrary in section 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession:-*

*a).....*

*.....*

*“(ia) (ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139”.*

*.....*

6. He accordingly submitted that when the assessee has admittedly deposited the TDS on 30.10.2019 i.e., before the due date of filing of the return of income u/s 139(1) of the Act, no disallowance should have been made. He submitted that deposit of these details were available before the learned CIT(A)-NFAC. However, he did not consider the same and sustained the action of the CPC which is not justified.

7. Referring to various decisions, he submitted that it has been held in these decisions that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. He submitted that it has also been held in these decisions that the Courts may in the larger interest of administration of justice may excuse or overlook a mere irregularity of a trivial breach of law for doing real and substantial justice to the parties. He accordingly submitted that the order of the learned CIT (A)-NFAC be set aside and the grounds raised by the assessee should be allowed.

8. The learned DR, on the other hand, heavily relied on the order of the CPC and the learned CIT(A)-NFAC. He submitted that on the date of uploading of the audit report, admittedly, the assessee has not deposited the TDS for which the CPC Bengaluru had made the disallowance. The assessee could have filed a rectification petition instead of wasting the time of this Court. He accordingly submitted that the order of the learned CIT (A)-NFAC being in accordance with law should be upheld and the grounds raised by the assessee should be dismissed.

9. We have heard the rival arguments made by both the sides and perused the orders of the CPC and CIT(A)-NFAC and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has filed the return of income on 31.10.2019. It is also an admitted fact that the assessee has uploaded the audit report on 29.10.2019 according to which the TDS made from the payments made to the sub-contractors was not deposited as on 29.10.2019. It is also an admitted fact that

such TDS so made were deposited on 30.10.2019 which is evident from page 62 to 64 of the Paper Book. Under these circumstances, we have to see as to whether the provisions of section 40(a)(ia) are applicable to the facts of the present case. A perusal of the provisions of section 40(a)(ia) which has already been reproduced in the preceding paragraph shows that 30% of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 shall not be allowed as deduction from the total income. Admittedly, in the instant case, the assessee has made the payments before the due date of filing of the return u/s 139(1) of the I.T. Act. Under these circumstances, the disallowance u/s 40(a)(ia) could not have been sustained by the learned CIT (A)-NFAC. We, therefore, set aside the order of the learned CIT (A)-NFAC and the grounds raised by the assessee are allowed.

10. In the result, appeal filed by the assessee is allowed.  
Order pronounced in the Open Court on 25<sup>th</sup> January, 2023.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 25<sup>th</sup> January, 2023.

*Vinodan/sps*

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3	CIT (A)-NFAC Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*