

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.121/Ind/2022
(Assessment Year:2018-19)

Rajendra Agri Product P. Ltd. 302, Royal House,11/13 Usha Ganj Indore (Appellant / Assessee)	vs.	DCIT CPC Banglore (Respondent/ Revenue)
PAN: AABCR 3053 L		
Assessee by	Ms. Shreya Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.04.2023	
Date of Pronouncement	11.04.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 25.03.2022 of Ld. Commissioner of Income Tax (Appeals) (in short Ld. CIT(A), National Faceless Appeal Centre, Delhi arising from the order passed u/s 143(1) dated 15.07.2019 by CPC for Assessment Year 2018-19. The assessee has raised following grounds of appeal:

1. *The order of the learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre is based on hypothetical presumptions, illegal, bad in law, unjustified and is beyond the facts and circumstances of the case.*

2. *The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has erred in ignoring/overlooking the order passed u/s 143(3) dated 18th February 2021 for same AY 18-19, passed by Learned Addl. Commissioner National*

Faceless Assessment Centre, Delhi, wherein he has assessed the Taxable income of the assessee for the same year at Rs.40,45,453 and has deleted the additions made by the learned Deputy Commissioner of Income Tax, CPC Bangalore, his order passed U/s. 143(1). Since well before the consideration of appeal filed against the order passed u/s 143(1), The order u/s 143(3) was available on the portal as well submitted by the assessee to the Honorable Commissioner of Income Tax(Appeals) National Faceless Appeal Centre, thus by overlooking this order grave mistake is repeated by honorable Commissioner of Income Tax(Appeals) National Faceless Appeal Centre. Therefore, the order u/s 143(3) needs to be quashed.

It is further submitted that the appeal against the order passed by Additional/Joint/Deputy/ Assistant commissioner of Income Tax U/s. 143 (3) is also under consideration of honorable Commissioner of Income Tax(Appeals) National Faceless Appeal Centre vide acknowledgement No. 672966220121021 Dated 12th October 2021. Therefore, the order u/s 143(1) needs to be quashed.

3.The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has erred in NOT considering the extended due date 31st October, 2018 for filling of return of income and reports of audit pertaining to A.Y. 18-19 from 15th October, 2018 to 31st October, 2018 as specified in Notification No. F No. 225/358/2018/ITA.II dated 8th October, 2018 and mentioned in the order" during the course of appellate proceedings the taxpayer was tasked to produce proof for having paid the TDS to the government within the time line stipulated. The taxpayer furnished copy of challans as under: Challan 1 date: 31/10/2018 amount:12,90,954/- challan 2 date: 31/10/2018 amount: 35000/-. As far as tax deduction u/s 192B is concerned the TDS amount of Rs. 12,90,954/- is seen paid on 31/10/2018 which is not within the stipulated time line"

4.The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has erred in confirming the additions aggregating to Rs. 42,10,786/- which is inclusive of Rs.12,90,954/- w's 43B(twice), Rs. 9,79,937/- u/s 40(a)(ia) and Rs.6,94,320/- w's 40(a)(ia) of the Income Tax Act, 1961 and assessed the total income to Rs.67,56,989/-. Which proves that The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has passed the order without verifying the details of the additions made.

5.The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has erred in confirming the additions of

Rs.12,90,594/- Under section 43B of the Income Tax Act, 1961, whereas the assessee has deducted as well as deposited the TDS amounting to Rs. 12,90,594/- on 31st October 2018 i.e. payment after signing of balance sheet and Audit report dated 30th October, 2018, but this payment was made before the due date of return filling i.e. 31st October 2018. The Audit report and balance sheet was signed on 30th October 2018, therefore there is a difference in 3CD report and ITR of the assessee.

6.The learned Commissioner of Income Tax(Appeals) National Faceless Appeal Centre has erred in confirming disallowance of 30% amounting to Rs. 9,79,937/- out of total expenditure Rs.31,35,073/- u/s 40(a)(ia) of the Income Tax Act, 1961, for this assessee has deposited TDS amounting to Rs.35,000/- u/s 194C of the Income Tax Act, 1961 on payment of Rs.30,10,073/- after signing of Balance sheet and Audit report dated 30th October, 2018, but this payment was made before the due date of return filling i.e. 31st October 2018.

7.The learned Commissioner of Income Disallowance of Rs. 6,94,320 Tax(Appeals) National Faceless Appeal Centre has erred in confirming the disallowance of Rs. 6,94,320/-U/s 40(a)(ia) of the Income Tax Act, 1961, (being TDS has been deducted but has not been paid on or before the due date specified U/s 139(1)) whereas while filing income tax return for A. Y. 2018- 19 assessee has already disallowed amounting to Rs. 1,33,125/- U/s 43B on account of TDS not paid within the due date.

2. We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. The assessee filed its return of income on 15.03.2019 declaring total income of Rs.25,46,203/-. The e-return was processed by CPC, Bangalore u/s 143(1) on 15.07.2019 whereby the adjustment to the tune of Rs.42,10,787/- was made. The most of the adjustment were made by the CPC on account of non-deduction of tax or non-depositing of TDS deducted by the assessee.

3. Aggrieved by the adjustment made by the CPC the assessee filed appeal before the Ld. CIT(A) and contended that in the majority of cases the TDS was paid on the due date of filing the return of income i.e. 31.10.2018. The Ld. CIT(A) dismissed the appeal of the assessee and confirmed the adjustment made by the CPC u/s 143(1) of the Income Tax Act. The Ld. CIT has given reason that the payment made on 31.10.2018 is not within

the statutory time limit. It appears that the ld. CIT(A) has taken statutory time limit for depositing the TDS as per the provision of chapter XVII instead of considering the disallowance u/s 43B and u/s 40(a)(ia) which provides the payment on or before due date of filing u/s 139(1) of Income Tax Act. It was brought to the notice of the bench that the case of the assessee was subsequently, selected for scrutiny and Ld. AO has already passed scrutiny assessment order u/s 143(3) on 24.02.2021 by National Faceless Assessment Centre. A copy of the assessment order has been filed by the Ld. AR of the assessee. Considering the facts that the case of the assessee was subsequently taken up for scrutiny assessment and subsequent assessment order u/s 143(3) has been passed on 24.02.2021, we find that the order of processing u/s 143(1) stands merged with the scrutiny assessment order passed u/s 143(3) and therefore, the appeal proceedings against the processing and adjustment made by the CPC, becomes infructuous. Accordingly, in the facts and circumstances of the case when the scrutiny assessment has already been passed on 24.02.2021, the impugned order of Ld. CIT(A) would not survive and liable to be set aside. Accordingly, we set aside the impugned order passed by the Ld. CIT(A). Since the assessee has already challenged the assessment order to the extent of some additions made, therefore, we refrain from expressing any view on the merit of the issues.

4. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 11.04.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 11.04.2023

Patel/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore