

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.153/Bang/2023 : Asst.Year 2018-2019

M/s.EY Global Delivery Services India LLP (earlier known as EY Global Delivery Services India Private Limited), RMZ Infinity Tower C, 3 rd Floor, Old Madras Road, K.R.Puram Bengaluru – 560 016. PAN : AAGFE8006N.	v.	The Deputy Commissioner of Income-tax, Circle 5(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Chavali Narayan, CA
Respondent by : Ms.Matta Padma, Addl.CIT-DR

Date of Hearing : 24.04.2023	Date of Pronouncement : 24.04.2023
-------------------------------------	---

ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 04.01.2023 passed u/s 250 of the I.T.Act. The relevant assessment year is 2018-2019.

2. The grounds raised read as follows:-

“Ground 1: General Ground

1.1 The Ld. CITA has erred on facts and in law in dismissing the appeal filed against the order dated 16 April 2021 u/s 143(3) on the alleged ground that the said order has merged with the order dated 09 June 2022, u/s 154 and while doing so has failed to appreciate that on doctrine of merger, the order merges only to the extent it has been dealt with in the order u/s 154.

Ground 2: Non-adjudication of Ground on incorrect levy of Interest u/s 234C of the Act

2.1 The Ld. CIT(A) erred in not adjudicating Ground 5 of the appeal filed by the Appellant relating to incorrect levy of interest u/s 234C of Rs. 60,815 which issue has not been dealt with in the order u/s 154.

2.2 The Ld. CIT(A) failed to appreciate the fact that pursuant to the order dated 09 June 2022 passed u/s 154 of the Act, whereby the credit for Tax deducted at source has been granted to the Appellant, the interest u/s 234C will no longer be applicable.

2.3 The Ld. CIT(A) failed to appreciate the fact that in the Order dated 09 June 2022 passed u/s 154 of the Act, the learned Assessing officer ('Ld. AO') has not considered and adjudicated upon the incorrect levy of interest u/s 234C of the Act.

Ground 3: Non-adjudication of Ground on Non-grant of Interest u/s 244A of the Act

3.1 The Ld. CIT(A) failed to consider the written submissions made by the Appellant.

3.2 The Ld. CIT(A) erred in not adjudicating Ground 6 of the Appeal filed by the Appellant relating to non- grant of interest u/s 244A of the Act which issue has not been dealt in the order u/s 154.

3.3 The Ld. CIT(A) failed to appreciate the fact that in the Order dated 09 June 2022 passed u/s 154 of the Act, the Ld. AO has not considered and adjudicated upon the grant of interest u/s 244A of the Act.

Ground 4: Non-grant of eligible credit for Tax Deducted at Source

4.1 The Ld. CIT(A) failed to adjudicate upon Ground 4 of the Appeal filed by the Appellant relating to TDS credit to the extent of Rs.2,53, 123 that was not granted.

4.2 The Ld. CIT(A) failed to appreciate the fact that in the Order dated 09 June 2022 passed u/s 154 of the Act, the Ld. AO has not granted TDS credit of Rs. 2,53,123 to the Appellant.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at the time of, hearing of the appeal.”

3. At the very outset, we noticed that the CIT(A) has dismissed the appeal *in limine* by stating that the assessment order passed u/s 143(3) of the I.T.Act dated 16.04.2021 has been rectified u/s 154 of the I.T.Act vide order dated 09.06.2022. Therefore, the CIT(A) held that the said assessment order has lost its individual identity and the cause of action for instituting the instant appeal (the appeal arising from the assessment order passed u/s 143(3) of the I.T.Act dated 16.04.2022) no longer subsist with passing of the subsequent order u/s 154 of the I.T.Act. The relevant finding of the CIT(A) reads as follows:-

“6.0 As per evidence on record, it is found that the order u/s 143(3) dated 16.04.2021 was rectified and an order u/s 154 r.w.s. 143(3) dated 09.06.2022 had been passed. In such a circumstance, the assessment order u/s 143(3) loses its separate and individual identity and merges with the subsequent order u/s 154. The instant appeal is directed against the order u/s 143(3). The cause of action for instituting the instant appeal no longer subsists with the passing of the subsequent order u/s 154.

7.0 In the facts and under the circumstances of the instant case, the appeal filed by the assessee / appellant is hereby disposed of as “DISMISSED”.”

4. Aggrieved, the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the subject matter of proceedings u/s 154 of the I.T.Act is only

with reference to non-granting of TDS credit to the extent claimed. It was stated that as regards the issue of incorrect credit of interest u/s 234C of the I.T.Act and non-granting of interest u/s 244A of the I.T.Act were never the subject matter of rectification application u/s 154 of the I.T.Act. Therefore, it was contended by the learned AR that the CIT(A) has erred in dismissing the appeal *in limine* without considering the grounds on merits. As regards the ground with regard to the incorrect levy of interest u/s 234C of the I.T.Act, the learned AR submitted that the interest is to be levied on the income disclosed in the return and not on the assessed income. In this context, the learned AR relied on the order of the Delhi Bench of the Tribunal in the case of Sumitomo Corporation v. DCIT (Intl.Taxation) reported in 2021 (6) TMI 331 – ITAT Delhi. As regards the claim of TDS credit, the learned AR submitted that there would have been updation of form 26AS and the total TDS credit ought to have been allowed.

5. The learned Departmental Representative, on the other hand, supported the order of the CIT(A).

6. We have heard rival submissions and perused the material on record. We have perused the rectification order dated 09.06.2022 referred at para 6 of the impugned order of the CIT(A). On perusal of the rectification order, we noticed that the only issue raised in the rectification application is the non-granting of correct TDS credit claimed in the return of income. The A.O. while passing the rectification order u/s 154

r.w.s. 143(3) of the I.T.Act dated 09.06.2022, had enhanced the TDS credit, however, did not grant TDS credit to the extent of Rs.2,53,123 (Rs.2,99,84,276 – 2,97,31,153). Therefore, the issue raised in ground 4 and its sub-grounds had already merged with rectification order dated 09.06.2022. If at all the assessee is aggrieved for non-granting of TDS credit to the extent of Rs.2,53,123, it is for the assessee to file a fresh rectification application, if so advised. With the above observations, we reject ground No.4 and its sub-grounds.

7. As regards issues raised in grounds No.2 and 3, we find that the above were not subject matter of rectification application u/s 154 of the I.T.Act. The assessee in its grounds of appeal before the CIT(A) had raised ground relating to issues of incorrect levy of interest u/s 234C of the I.T.Act and non-granting of interest u/s 244A of the I.T.Act. Therefore, the CIT(A) was not justified in dismissing the issue raised in grounds 2 and 3, by observing that the same has been merged with the order passed u/s 154 r.w.s. 143(3) of the I.T.Act. Hence, grounds 2 and 3 are restored to the files of the CIT(A). The CIT(A) is directed to decide the issues raised in grounds 2 & 3 (before the Tribunal), after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

8. Ground No.1 is general in nature, and no specific adjudication is called for, hence, the same is rejected.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 24th day of April, 2023.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 24th April, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore