

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'C' NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 2169/DEL/2022 (A.Y. 2010-11)

<p>Jignesh Panchal A-44 (Basement) Amar Colony Lajpat Nagar, New Delhi PAN No. AEMPP6645L (APPELLANT)</p>	Vs.	<p>DCIT Circle-1 Aaykar Bhawan, A-2D Secto24- Noida, Uttar Pradesh (RESPONDENT)</p>
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Assessee by :	SH. M. P. Rastogi, Adv
Department by:	Sh. Anuj Garg, Sr. DR

Date of Hearing	14.06.2023
Date of Pronouncement	28.06.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 19/11/2011 passed by the National Faceless Appeals Centre ('NFAC' for short) for assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:-

“1. That once the appellant adduced the evidence that TDS has been deducted by the employer monthly with reference to monthly salary slips, the authorities below ought not to have disregarded the claim of TDS by the employer merely on account of some mismatch in Form No. 26AS and consequently the denial of credit of TDS in the hands of the appellant is arbitrary, unjust and at any rate very excessive.

2. That the assessee denies his liability to pay interest u/s 234B/234C of the Act in respect of the amount of tax deducted by employer out of salary income.

3. That the above grounds of appeal independent and without prejudice to another.”

3. Brief facts of the case are that, the assessee filed return of income u/s 143(1) of the Act, wherein the credit of TDS for deduction of tax on salary by employer Textl Exports Pvt. Ltd. was not allowed. Subsequently, the assessee filed a rectification application and the same was rejected by the Assessing Officer on the ground that the issue involved in the rectification is beyond the purview of Section 154 of the Act vide order dated 03/09/2020. Aggrieved by the order dated 03/09/2020 passed u/s 154 of the Act, the assessee preferred an Appeal before the CIT(A), the ld. CIT(A) vide order dated 19/11/2021 remanded the matter to the file of A.O with following observations:-

“It is a fact that the employer of the appellant had deposited TDS amount but the mis-match arises prima-facie due to TDS deposit under wrong major head. The screen shots of challan status on TIN

Website clearly shows that the TDS was deposited under corporation tax (0020) instead of income tax (0021) Hence, the appellant is directed to furnish original Form No. 16 with the AQ and then the A.O. shall verify the TDS deposit amounts by Texl Exports P. Ltd, in respect of the deduction of tax on payment of salary to the appellant in question in consultation with AO-TDS of the employer. Moreover, if the verification process affirms the veracity of TDS deposited on salary by the employer and if the said TDS amount challan exist as Unconsumed, than the AO is directed to give credit of the same to the appellant. In light of the facts of the case, the grounds of appeal are allowed for statistical purpose.”

4. Aggrieved by the order of the CIT(A), the assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the assessee has adduced evidence to prove that the TDS has been deducted by the employer monthwise with reference to monthly salary slip, therefore, the authorities below ought not to have disregarded the claim of TDS by the employer merely on account of mis-match in the Form No. 26AS and consequently should not have denied the credit of TDS in the hands of the assessee, which is illegal, unjust and excessive. Thus submitted that, the grounds of Appeal of the assessee deserves to be allowed.

6. Per contra, the Ld. Departmental Representative submitted that the CIT(A) after verifying the material on record appreciating the fact, found that there is prima facie mis-match arises due to TDS deposit under wrong major head, therefore, the assessee has been directed to furnish original Form No. 16 with the A.O. and directed the A.O. to verify the TDS deposit amount by Texl Exports Pvt. Ltd. in respect of the deduction of tax on payment of salary to the assessee, therefore, the assessee cannot have any grievance in the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is found from the record and findings of the CIT(A) that the deductor has deducted the tax at source and deposited the same which is appearing in the challan status in TIN Website but the same is not appearing in 26AS of the assessee. It is the case of the assessee is that these TDS deposits belongs to him on the basis of manual form No. 16 issued by the employer, therefore, because these TDS amounts do not reflect in 26As of the assessee. Since there is a mis-match of amount deposited by Texl Export Pvt. Ltd. and TDS reflected in 26As of the assessee, the CIT(A) has remanded the matter to the file of A.O. for de-novo verification. We find no reason to interfere with the direction of the CIT(A) to the A.O. for the de-novo verification, accordingly, find no merit in the grounds of Appeal of the assessee. Further we deem it fit to direct the A.O. to comply with the directions of CIT(A) and pass order in accordance with law

within six months from the date of the receipt of this order. Thus, the Grounds of Appeal of the assessee are dismissed.

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

Order pronounced in the open court on : **28/06/2023**.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 28/06/2023

R.N, Sr. PS

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI