

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.30/Del/2023

निर्धारणवर्ष/Assessment Year: 2009-10

Syed Athar Abbas, E-14 and 12 Sector-8, Noida, Gautam Budh Nagar, Uttar Pradesh.	बनाम Vs.	ACIT Circle-4(2) Delhi.
PAN No. AAKPA4230A		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri R.K. Gaur, CA
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	11.07.2023
उद्घोषणाकीतारीख/Pronouncement on	27.07.2023

आदेश /ORDER

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)- National Faceless Appeal Centre(NFAC), Delhi dated 04.11.2022 for the AY 2009-10. Assessee raised the following grounds: -

1. *“On the facts and circumstances of the case and in law the CIT(Appeals) has rejected the appeal on the grounds that the assessment order was not attached as the same was never received by the appellant.*
2. *On the facts and circumstances of the case and in law the CIT(A) has rejected the appeal without verifying the assessment record.*

3. On the facts and circumstances of the case and in law the CIT(A) has not considered the allowability of tax deducted at source to Rs.316980/- as against Rs.387104/- allowed in the computation sheet.

4. The order of the Ld.AO(NFAC) is bad in law and against the tenets of natural justice and liable to be quashed.

5. The appellant craved to add, alter or delete any ground of appeal any time before the completion of hearing.”

2. The Ld. Counsel for the assessee, at the outset, submits that appeal of the assessee was dismissed by the Ld.CIT(A) for not attaching the intimation passed u/s 143(1) along with appeal. The Ld. Counsel submits that the only dispute in appeal is with regard to non-granting of TDS. Ld. Counsel submits that the assessee has claimed TDS of Rs.3,87,104/- which was not allowed while processing the return u/s 143(1) of the Act. The Ld. Counsel submits that direction may be given to the Assessing Officer to grant credit for TDS which was not allowed at the stage of processing the return u/s 143(1) of the Act.

3. Ld. DR submits that in this case the copy of intimation passed u/s 143(1) was in the year 2010 and it is unbelievable that the intimation was not served on the assessee. Ld. DR submits that it is

also the findings of the Ld.CIT(A) that there will be a huge delay in filing the appeal before Ld.CIT(Appeals) also as the intimation is dated 24.08.2010 as mentioned in the Ld.CIT(Appeals) order and this is also one of the reasons for dismissal of the appeal of assessee by the Ld.CIT(A).

4. In reply the Ld. Counsel for the assessee submits that the intimation said to have been passed u/s 143(1) was never served on the assessee and assessee came to know only when the notice u/s 221(1) of the Act was issued by the Department pressing for the demand. Ld. Counsel further submits that in fact the assessee requested the Assessing Officer to provide copy of intimation vide letters dated 20.12.2022, 03.02.2023, 21.03.2023 but the Assessing Officer could not provide any copy of intimation. Ld. Counsel submits that even in Income tax portal the intimation said to have been passed u/s 143(1) is not appearing and only the computation sheet filed by the assessee is appearing. Ld. Counsel submits that in fact the assessee also approached the grievance cell of CBDT stating the reasons why the demand of Rs.1,80,340/- is outstanding for the current assessment year i.e. because of not granting credit for TDS and requested for issuing copy of 143(1) of the Act so as to take corrective measures.

5. Heard rival submissions, perused the orders of the authorities below. The fact that the intimation is not appearing in the Income tax portal itself was not denied by the Ld. DR. It is also noticed that several letters were written to the Assessing Officer for supply of copy of intimation which the AO failed to do so even till today. It is also observed that the assessee filed a grievance petition explaining the reasons for the demand outstanding and also requested to provide a copy of intimation which is still pending. Taking the totality of facts and circumstances into consideration, I am of the opinion that the demand arose in this case only for non granting of credit for TDS by the Revenue. Simply because copy of intimation passed u/s 143(1) of the Act was not served on the assessee, Assessee could not be deprived of filing an appeal. Copy of Form 26AS clearly reflects that the total TDS deposited was Rs.3,87,104/-. Therefore, the assessee could not be put to hardship for the reason of not granting credit for TDS. Thus, the Assessing Officer is directed to grant credit for TDS claimed by the assessee as reflected in AS-26 and pass appropriate order after providing adequate opportunity of being heard to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27/07/2023

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 27.07.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi