

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.449/Bang/2023
Assessment Year: 2021-22

PI Opportunities Fund-I (Trustee-Hasham Premji Private Limited) Sarjapur Road Doddakannelli Bangalore 560 035 PAN NO : AABTP6697D	Vs.	ADIT CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri B.K. Manjunath, A.R.
Respondent by	:	Shri Veera Raghavan, D.R.

Date of Hearing	:	25.07.2023
Date of Pronouncement	:	25.07.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 17.4.2023 for the assessment year 2021-22. The assessee has raised following grounds:

1. *“That the order of the CIT — Appeals-(NFAC) in so far as it is against the appellant is against the law, facts, circumstances, natural justice, without jurisdiction, bad in law and all other known principles of law.*
2. *That the Ld. CIT(Appeals)-NFAC, having taken on record that the Appellant is an Investment Fund as defined under Explanation 1 to Section 115UB of the Act and read with section 10(23FBA) of the Act that the income earned by the appellant is taxable in the hands of its unit holders, erred in issuing an incorrect direction to the Learned AO-CPC to verify if income is offered to tax by the appellant and thereafter to allow credit for TDS.*
3. *That the direction given by the Learned CIT(Appeals)- NFAC being contrary to facts and law, unsustainable requires to be cancelled.*
4. *That the Learned CIT(Appeals)-NFAC erred in not providing reasonable, adequate and sufficient opportunity to the appellant to*

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explain its case thus the order passed by him is in violation of principles of natural justice requires to be cancelled.

5. *That the Ld. CIT(A)-NFAC erred in not allowing the entire claim of TDS of Rs. 1,34,77,532/- of the Appellant instead of only Rs. 6,86,320/- allowed by the Ld. AO-CPC.*
6. *For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed for and justice be rendered.”*

2. The facts of the case are that PI Opportunities Fund I ('the Assessee'), is a Category II Alternative Investment Fund (AIF) registered under Securities Exchange Board of India ('SEBI') (Alternative Investment Funds) Regulations, 2012. Hence, it is an Investment Fund, as defined under Explanation 1. to the Section 115UB of the Income-tax Act, 1961 ['the Act' for short]. The income earned by the Assessee is governed by the provisions of section 115UB of the Act, read with section 10(23F BA) of the Act. By virtue of these provisions, the income earned by the Assessee is taxable in the hands of its unit holders. CBDT Notification No 51 of 2015 dated 25-06-2015 u/s 197A of the Act relieves the deductor from deducting taxes at source from any income paid to an Investment Fund other than income in the nature of profits or gains from business or profession. Despite the above notification, during the year under appeal, tax was deducted at source u/s 194 of the Act on the dividend income paid to Assessee in respect of its investment in the equity shares of certain companies. The following companies deducted taxes on the dividends paid to the Assessee:

S.No.	Name of the Investee company	Amount of dividend	TDS
1	Infosys Ltd.	1,49,81,759	11,23,631.93
2	HDFC Bank Ltd.	13,68,666	1,02,649.95
3	National Stock Exchange of India Ltd.	16,33,50,000	1,22,51,250.00
	Total		1,34,77,531.88

2.1 Apart from the above, during the year under appeal, taxes of Rs. 6,10,764.25 were collected at source u/s 206C(1H) of the Act from the Assessee on purchase of unlisted shares. The Assessee filed its return of income electronically on 28-12-2021 declaring Nil income, claiming an exemption u/s 10(23FBA) of the Act, and the refund of the above taxes deducted/ collected at source amounting to Rs. 1,40,88,296/-.

3. On 06-09-2022, the Assessee received an intimation u/s 143(1) of the Act vide DIN No. CPC/2122/A5/298649187 processing the return of income and granting a refund of Rs. 14,13,810/- (including interest U/s. 244A amounting to Rs. 1,16,730/-), which amount included tax collected at source to the extent of Rs. 6,10,764/- and tax deducted at source of an adhoc amount only Rs. 6,86,320/-. Without any reconciliation with the entries in Form 26AS, the Ld AO-CPC has denied credit of TDS to the extent of Rs. 1,27,91,212/-. The Assessee on 02-01-2023 filed an online rectification application with the Ld. AO-CPC requesting the grant of TDS credit available to the Assessee as per the Form 26AS. However, the said rectification application stands summarily rejected in rectification order u/s 154 of the Act on 02-01-2023 and thus confirming the intimation u/s 143(1) of the Act. Aggrieved by the order of rectification order passed by the

Ld. AO u/s 154 of the Act, assessee filed this appeal with a prayer to grant relief.

4. Against this assessee went in appeal before NFAC. The ld. NFAC/CIT(A) observed that the assessee has claimed TDS credit of Rs.1 ,34,77,532/- as per Form 26AS during filling ITR for the year under consideration, whereas the AO has given TDS credit of Rs.6.86,320/- only. Therefore, NFAC directed the AO to verify the claim of the assessee from original return and if the corresponding income is offered by the assessee during the year and TDS is duly deducted and reflected then the same has to be allowed. If the claim found incorrect, then the addition made by the AO will be upheld. Accordingly, the appeal of the assessee was statistically allowed by the NFAC. Against this assessee is in appeal before us.

5. We have heard the rival submissions and perused the materials available on record. The contention of the ld. A.R. is that assessee is not liable for payment of tax as the assessee is an investment fund company defined under explanation (1) to section 115UB r.w.s. 10(23FBA) of the Act and the income earned by the assessee is taxable in the hands of its unit holders. Further, it was brought to our notice that AO is required to give an opportunity of hearing to the assessee under first proviso to section 143(1) of the Act before making any adjustments and it is precluded to make adjustments unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode and thereafter, AO/CPC shall consider the response received by the assessee, if any to be considered before making any adjustments. Before us, the ld. A.R. made a submission that AO/CPC has not adhered to this first proviso to section 143(1) of the Act and also, he exceeded the

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jurisdiction as per provisions of section 143(1) of the Act. In view of this, in our opinion, it is appropriate to remit this issue to the file of AO/CPC to give an opportunity as provided in the first proviso to section 143(1) of the Act before making disputed adjustments before us. Accordingly, orders of lower authorities vacated and the issue is remitted to the file of AO/CPC for fresh consideration.

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

Order pronounced in the open court on 25th July, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 25th July, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.