

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

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

ITA No.448/Bang/2023
Assessment Year: 2010-11

M N Dastur & Co. Pvt. Ltd. 7 th Floor, Raheja Towers 26/27, M.G. Road Bangalore 560 001 PAN NO : AABCM2136M	Vs.	Deputy Commissioner of Income- tax Circle-4(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri B.K. Manjunath, A.R.
Respondent by	:	Shri D.K. Mishra, 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 28.4.2023 for the assessment year 2010-11. The assessee has raised following grounds:

- 1. That the order passed by Authorities below 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. The learned CIT-Appeals (NFAC) erred in holding the appeal filed by the appellant as infructuous in nature and dismissing the same.*
- 3. That the learned CIT-Appeals (NFAC) failed to appreciate that the Order Giving Effect to VSVS was a combined order giving effect to VSVS and rectification sought by the appellant.*
- 4. That the learned CIT-Appeals (NFAC) failed to appreciate that the AO had erred in not granting credit for full TDS.*

5. *That the learned CIT-Appeals (NFAC) failed to appreciate that the AO had erred in not granting correct interest u/s 244A of the Act and failed to provide the quantification of interest u/s 244A of the Act.*
6. *The learned CIT-Appeals (NFAC) erred in not granting reasonable and sufficient opportunity to the appellant thus violating the principles of natural justice*
7. *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 and justice be rendered.*

2. Facts of the case are that in the instant case, the assessment order u/s 143(3) r.w.s. 254 of the Income-tax Act, 1961 [‘the Act’ for short] was completed on 26.12.2016 determining income at Rs.7,13,77,121/-. Against the said order assessee preferred appeal before Id. CIT(A). The Id. CIT(A) partly allowed appeal. Subsequently, revenue preferred an appeal before ITAT against the order of Id. CIT(A). Meanwhile, the assessee opted VSV Scheme, 2020 and accordingly, filed application in Form No.1 & 2 on 23.12.2020 under VSV Scheme, 2020.

2.1 The Id. Principal CIT-2 Bangalore issued Form No.3 on 15.1.2021 as per VSV Scheme, 2020. Subsequently, the assessee filed Form No.4 on 17.2.2021. Thereafter, Id. Principal CIT-2, Bangalore issued Form No.5 on 24.2.2021. Considering the same, the Id. AO “**Order giving effect consequent to VSV Scheme, 2020**” was passed on 18.2.2022 determining the refund amount of Rs.1,80,63,633/-. Aggrieved against this, assessee went in appeal before Id. CIT(A).

3. The Id. CIT(A) observed that the assessee has filed appeal against the '**Order giving effect consequent to VSV Scheme 2020**', which is not an appealable order u/s 246A of I.T. Act. In fact, assessee has not submitted copy of order passed u/s 143(3) r.w.s 254 of the Act dated 26.12.2016 in context of which appellate proceeding was pending before Tribunal when

assessee opted for VSV Scheme. Since the assessee has not filed appeal against an order, which is an appealable order u/s 246A of the Act before the CIT(A), he decided it to be infructuous in nature and hence the same was dismissed by him. Against this assessee is in appeal before us.

4. The ld. A.R. submitted before us that the ld. CIT(A) totally misconceived the appeal filed before him and wrongly dismissed the appeal of the assessee as infructuous by observing that the appeal is raising out of **“Order giving effect consequent to VSV Scheme, 2020”** and appeal is not maintainable u/s 246A of the Act. He submitted that there was a huge refund due to the assessee on which assessee is also entitled for interest u/s 244A of the Act.

4.1 The ld. A.R. submitted that the assessee has been contesting the granting of interest u/s 244A of the Act and also amount of refund due to the assessee by way of various letters. While passing the OGE, the AO considered the various applications filed by the assessee and granted short interest due to the assessee u/s 244A of the Act. This has been questioned by assessee by way of appeal before ld. CIT(A). However, he dismissed the appeal as not maintainable and not correcting the mistake crept in passing the OGE at the end of the AO.

5. The ld. D.R. relied on the order of the ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The assessee has furnished the details of computation of refund and interest thereon as follows:

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Total income Assessed as per order dated		
26.12.2016		7,13,77,121
Tax on Business income @ 30% of 3,62,47,173	10874152	
Tax on STCG @ 15% of 3,51,29,948	<u>5269492</u>	
Total Tax thereon		1,61,43,644
Surcharge		16,14,364
Cess		5,32,740
Total tax payable		<u>1,82,90,748</u>
Less:		
Relief	47,59,953	
TDS as per 26AS	<u>19,82,62,447</u>	<u>20,30,22,400</u>
Balance refundable		18,47,31,652
Add:		
Interest u/s 244A		
(01.04.2010 to 30.11.2011 on 11,23,62,055/-)	1,12,36,206	
(01.04.2010 to 31.12.2013 on 7,23,69,597/-)	<u>1,62,83,159</u>	<u>2,75,19,365</u>
Total refund		21,22,51,017
Less: refund granted on		
31.12.2011	12,30,36,450	
31.12.2013	<u>7,69,34,450</u>	<u>19,99,70,900</u>
Refund due as on 31.12.2013		1,22,80,117
Add: Interest u/s 244A		
(01.01.2014 to 18.02.2022 on 1,22,80,117/-)		<u>60,17,257</u>
		1,82,97,374
Adjusted out of refund of AY 2011-12 on		
31.03.2014	41,56,044	
Add: Interest u/s 244A from 01.04.2014 to		
18.02.2022	<u>19,74,121</u>	<u>61,30,165</u>
Total Refund due		<u>2,44,27,539</u>

6.1 These facts are made available to the AO while passing the OGE dated 18.2.2022. These facts are also evident from the facts narrated in earlier para. The assessee has brought to notice of the AO regarding granting of short interest to the assessee vide his letter dated 15.3.2013, filed before the AO on 18.3.2013, which is placed at page 23 of the assessee's paper book, which reads as follows:

K.R. Pradeep

CHARTERED ACCOUNTANT

23

Date: 15-03-2013

The Deputy Commissioner
Of Income tax – Circle – 12(1),
BANGALORE

Sir,

Ref: M/S. M.N.DASTUR & CO PVT LTD
PAN: AABCM2136M / ASST. YEAR : 2010-2011

Sub: Rectification u/s 154 of the Act

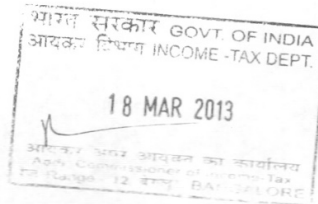
For the above assessment year, in the intimation u/s 143(1), the total income has been determined as Rs. 6,83,82,800/- as against the returned income of Rs. 6,71,90,670/-, thus there is a difference of Rs. 11,92,130/-. Further as per the return of income the refund due to the assessee is Rs. 18,46,25,700/- whereas in the intimation the refund due quantified is Rs. 12,30,36,450/- including interest u/s 244A of Rs. 1,06,74,399/-. It is notice that credit for full taxes paid i.e, TDS has been given only for Rs. 12,46,72,480/- as against the credit claimed of Rs. 19,67,33,524/-, thus credit given is short to the extent of Rs. 7,20,61,044/-.

In the assessment order passed u/s 143(3) of the Act, the total income as per return has been accepted and on account of certain disallowances it has been determined at Rs. 7,95,34,220/-. Further even in the order passed u/s 143(3), the credit for TDS has been given to the extent of Rs. 12,46,72,480/- only as against the claim for Rs. 19,67,33,524/- and no reasons have been given for short credit. As it is a mistake apparent from the record, the assessee requests your honour to kindly give credit for the TDS as claimed in the return in the interests of justice and to issue the resultant refund along with interest u/s 244A at the earliest and oblige.

Thanking you,

Yours sincerely,

B.K. Manjunath
B.K.MANJUNATH
CHARTERED ACCOUNTANT



6.2 Further, on 30.6.2014, assessee filed one more letter before the AO, which is placed at page 22 of the assessee's paper book, which reads as under:

ole

(22)

K.R. Pradeep
CHARTERED ACCOUNTANT

Date: 30-06-2014

The Deputy Commissioner
Of Income tax – Circle – 12(1),
BANGALORE

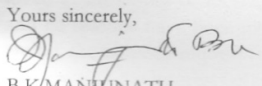
Madam,


Ref: M/S. M.N.DASTUR & CO PVT LTD
PAN: AABCM2136M / ASST. YEAR : 2010-2011

Sub: Order giving effect to CIT (A)

The CIT-A has passed an order disposing the appeal filed by the assessee which was served on 27.11.2013(copy enclosed as Annexure –A). It seen from the assessee's records that till date no order giving effect to has been passed. However, the original demand raised vide order passed u/s 143(3) of the Act of Rs. 41,56,044/- has been adjusted without giving opportunity/ intimation as required u/s 245 of the Act on 21.04.2014 against the refund of AY: 2011-12, as per the refund order advice received from State Bank of India copy enclosed as Annexure – B. The assessee requests your honour to kindly pass consequential order, if not passed till date or to furnish a copy of the order if passed and also to issue the resultant refund along with interest u/s 244A at the earliest and oblige.

Thanking you,

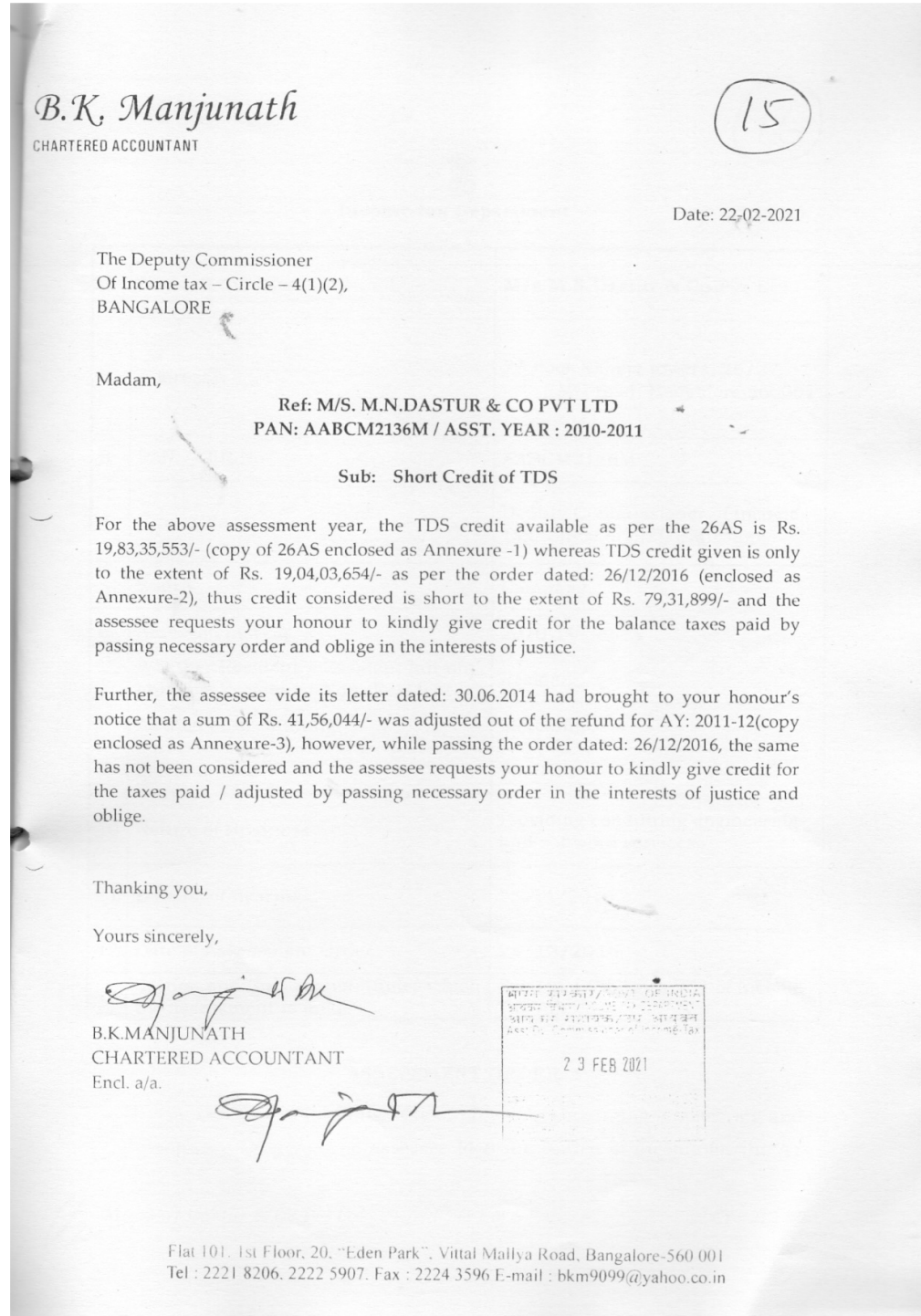
Yours sincerely,

B.K.MANJUNATH
CHARTERED ACCOUNTANT
Encl: As above.



भारत सरकार GOVT. OF INDIA
आयकर विभाग INCOME-TAX DEPT.
30 JUN 2014
आयकर अवर आयुक्त का कार्यालय
Addl. Commissioner of Income-Tax
रेंज Range- 12, बंगलूर BANGALORE

20, "Eden Park", 101, 1st Floor, Vittal Mallya Road, Bangalore - 560 001
Tel : 2221 8206, 2222 5907, Fax : 2224 3596 E-mail : krpradeep@krpradeep.com

6.3 Once again on 22.2.2021, the assessee filed one more letter before the AO, which is placed at page 15 of the assessee's paper book, which reads as under:



6.4 Further, on 8.4.2021, the assessee filed one more letter before the AO, which is placed at page 13 of the assessee's paper book, which reads as under:

B.K. Manjunath
CHARTERED ACCOUNTANT

slc (13)

Date: 08.04.2021

The Deputy Commissioner
Of Income tax – Circle – 4(1)(1),
BANGALORE

Madam,


Ref: M/S. M.N.DASTUR & CO PVT LTD
PAN: AABCM2136M / ASST. YEAR : 2010-2011


Sub: Short Credit of TDS

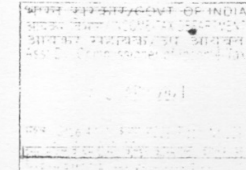
Further to the letter dated: 22.02.2021 filed on 23.02.2021 the assessee is herewith enclosing computation of tax liability on total income, tds, adjustment made out of refunds, interest u/s 244A, refunds granted, etc., for your perusal and necessary action. As per the computation, the assessee has to get refund of Rs. 1,82,92,034/- and request your honour to kindly pass necessary order at the earliest and the assessee will highly obliged to you if the refund is released in this month itself so that it will enable it to tide over financial hardships faced by it.

Thanking you,

Yours sincerely,


B.K.MANJUNATH
CHARTERED ACCOUNTANT
Encl. a/a.





Flat 101, 1st Floor, 20, "Eden Park", Vittal Mallya Road, Bangalore-560 001
Tel : 2221 8206, 2222 5907. Fax : 2224 3596 E-mail : bkm9099@yahoo.co.in

6.5 The AO while passing the OGE dated 18.2.2022, considered all these letters and not granted the TDS appropriately. This is the grievance of the assessee before the ld. CIT(A). However, ld. CIT(A) dismissed the appeal of the assessee as not maintainable on the reason that the appeal was filed against the order giving effect, consequent to availing of VSV Scheme, 2020. In our opinion, the assessee's grievance is not with regard to giving credit under VSV Scheme, 2020. On the other, not giving due credit to the TDS and assessee's entitlement of interest u/s 244A of the Act. This issue has been entertained by AO while passing the OGE, consequent to availing VSV Scheme, 2020. It is the duty of the ld. CIT(A) to correct any errors crept in the order passed by AO in OGE, consequent to availing VSV Scheme, 2020 with regard to computation of refund due to the assessee, which is emanated from the order of the AO. Hence, in the interest of justice, we direct the AO to verify the computation of refund vis-à-vis credit given to various types of taxes and levy the same in accordance with law. Ordered accordingly.

7. 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

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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.**