

ITA No. 645/KOL/2023
Assessment Year: 2013-2014
&
ITA No. 377/KOL/2023
Assessment Year : 2019-2020
L & T Finance Limited

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 645/KOL/2023
Assessment Year: 2013-2014**

***L & T Finance Limited,.....Appellant
[Successor of L&T Infrastructure
Finance Company Limited, now merged],
15th Floor, PS Srijan Tech Park,
Plot No. 52, Block-DN, Sector-V,
Salt Lake City, Kolkata-700091
[PAN: AABCL2283L]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-5(1), Kolkata,
Aayakar Bhawan,
P-7, Chwringhee Square,
Kolkata-700069***

&

**I.T.A. No. 377/KOL/2023
Assessment Year: 2019-2020**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-5(1), Kolkata,
Aayakar Bhawan, 8th Floor,
P-7, Chwringhee Square,
Kolkata-700069***

-Vs-

***L & T Finance Limited,.....Respondent
[Successor of L&T Infrastructure
Finance Company Limited, now merged],
15th Floor, PS Srijan Tech Park,***

**Plot No. 52, Block-DN, Sector-V,
Salt Lake City, Kolkata-700091
[PAN: AABCL2283L]**

Appearances by:

*Shri Soumen Adak, CA. & Shri Prashant Jaiswal, CA,
appeared on behalf of the assessee*

Sri S. Datta, CIT, D.R., appeared on behalf of the Revenue

Date of concluding the hearing : August 10, 2023

Date of pronouncing the order : August 22, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

First we take **ITA 645/KOL/2023**. The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 3rd May, 2023 passed for A.Y. 2013-14.

2. The assessee has taken four grounds of appeal, which contain sub-grounds also. However, in the first ground of appeal, it has pleaded that ld. CIT(Appeals) had grossly erred in dismissing the appeal of the assessee on the ground that there was a delay in filing appeal and no petition for condonation of delay had been filed in this respect.

3. Brief facts of the case are that the assessee has filed its return of income electronically on 30.11.2013 declaring total income of Rs.455,28,30,140/-. The case of the assessee was selected for scrutiny assessment and an assessment order was passed on 31.03.2016. The ld. Assessing Officer has made two additions to the income of the assessee. The assessee has earned dividend income of Rs.16,28,88,980/-. The ld. Assessing Officer was of the view that expenditure attributable to earning of exempt income under section 14A deserves to be disallowed. The assessee *suo motu* disallowed 2.06 crores and the ld. Assessing Officer has further made disallowance of Rs.44,95,18,337/-. Similarly he made disallowance of reimbursement of ESOP.

4. In the present appeal, we are not taking up the facts in detail because we are not dealing these issues on merits. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld. CIT(Appeals). It has filed a manual appeal before the ld. CIT(Appeals) on 03.05.2016. The ld. CIT(Appeals) without adjudicating the appeal on merit has dismissed it on the ground that the assessee has filed the appeal electronically on 14.06.2016 and, therefore, this appeal becomes time barred. According to the ld. CIT(Appeals),

the assessee has not filed any petition for condonation of delay, hence has dismissed the appeal as per section 249(3) read with section 250.

5. Before us, Id. Counsel for the assessee drew our attention towards CBDT Circular No. 20/2016 dated 26.05.2016. In this Circular, the CBDT has provided that mandatory filing of appeal before the Id. CIT(Appeals) electronically would be made applicable from 15.06.2016. In other words, prior to 15.06.2016 if any appeal has been filed manually, then, as per Rule 45 of the Income Tax Rules that appeal could be treated as a valid appeal. The Id. 1st Appellate Authority has failed to appreciate this procedure and has erred in construing that appeal of the assessee as time barred.

6. The Id. D.R., on the other hand, was unable to controvert this contention of the Id. Counsel for the assessee.

7. We have duly considered the rival contentions and gone through the record carefully. The CBDT Circular brought to our notice reads as under:-

Circular No. 20/2016

*F.No.279/Misc/M-54/2016/ITJ
Government of India
Ministry of Finance*

*Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated: 26th May, 2016

Subject: E-filing of appeals: Extension of time limit - req.

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

(2) The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15.05.2016 can be filed up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

(3) In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15.06.2016. Such e-appeals would also be treated as appeals filed within time.

*Sd/-
(Sadhana Panwar)
DCIT(OSD) (ITJ),
CBDT, New Delhi”*

8. If this Circular is being applied on the facts of the present appeal, then, it would reveal that appeal of the assessee is within the limitation. The assessment order is dated 31.03.2016. It was served upon the assessee on 04.04.2016. It has filed a manual appeal on 03.05.2016 within thirty days from the date of receipt of the assessment order. The time limit to file manual appeal has been extended upto 14.06.2016. In the above situation, the appeal of the assessee cannot be termed as barred by limitation. Therefore, the order of the ld. CIT(Appeals) is not sustainable. It is set aside.

9. At the time of hearing, ld. Counsel for the assessee had tried to persuade us that in order to avoid multiplicity of litigation, both these issues be adjudicated on merits also because the first issue is covered in favour of the assessee. However, we desist ourselves from going into the merits of the other issues because there is no finding at the end of the ld. 1st Appellate Authority. Therefore, without commenting upon the merits of the issues, we remit all these issues for adjudication on merit by the ld. 1st Appellate Authority. It is further observed that the ld. 1st Appellate Authority has unnecessarily dismissed the appeal by treating it as time barred. The appeal at the level of ld. CIT(Appeals) remained pending for more than seven years.

Considering the assessment year involved herein as 2013-14, we direct the ld. CIT(Appeals) to dispose of this appeal preferably within four months from the receipt of this order.

10. Now we take **ITA No. 377/KOL/2023**.

The present appeal is directed at the end of the Revenue against the order of ld. Commissioner of Income Tax (Appeals) dated 07.06.2022 passed for A.Y. 2019-20.

11. The Registry has pointed out that the present appeal is time barred by 256 days. The ld. Assessing Officer has filed an application for condonation of delay. He also annexed an affidavit dated 18.04.2023. The ld. Assessing Officer has contended that due to huge workload relating to time barring assessment, this matter skipped from his mind and, therefore, could not be sent for approval etc. within time. The ld. Counsel for the assessee has no serious objection if delay is being condoned and appeal is decided on merit.

12. On due consideration of the facts and circumstances available on record, we find that the ld. Assessing Officer has given a chronology of events exhibiting the circumstances for making this appeal time barred.

Keeping in mind the above facts, we condone the delay and proceed to decide the appeal on merit.

13. The Revenue has taken three grounds of appeal, out of that Ground No. 3 is a general ground, which does not call for recording of any specific finding.

14. The rest of the two grounds read as under:-

(1) Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in not appreciating the fact of the case and deleted the addition of Rs.4,07,84,021/- made by the AO u/s 43B of the Act.

(2) That the CIT(A) has erred in deleting the addition of deferred tax credit of Rs.31,34,76,202/- u/s 115JB of the I.T. Act, 1961.

15. The impugned order of the Id. CIT(Appeals) is running into 18 pages, which has been passed against an order of the Id. Assessing Officer passed under section 154 of the Income Tax Act. This order under section 154 is an intimation based on processing the return in the Computer System. Therefore, advertent to the details, we deem it appropriate to take note of the submissions filed before the Id. CIT(Appeals) as well as the finding of the Id. CIT(Appeals) on both the issues:-

“Ground No. 1:-

Disallowance of gratuity u/s 43B (Rs. 4,07,84,021/-)

A. Brief Facts

1. In Clause 26(i)(B)(b) of the tax audit report filed on 25-10-2019 for the relevant assessment year, gratuity of Rs.4,07,84,021/- was reported as not paid on or before the due date of furnishing the return of income. However, pursuant to filing of tax audit report, the liability for gratuity was paid by the appellant before filing the return of income on 31-10-2019. Accordingly, the appellant claimed deduction of the aforesaid amount of gratuity u/s 43B on payment basis while filing the return of income.

B. Adjustment made in Order u/s 154

1. In the order u/s 154, Ld. ADIT disallowed gratuity u/s 43B based on the tax audit report even though the same was paid before the due date of filing of the return of income.

C. Submissions:

1.0. At the outset, relevant provisions of Sec. 43B is reproduced as under-

“43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of -

(a).....

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

.....

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return”

On perusal of the above, it can be noted that in terms of 1st proviso to sec. 43B, any amount paid towards contribution to gratuity fund on or before the due date of filing of return of income is allowable as deduction u/s 43B.

1.1. In the instant case, tax audit report was filed on 25-10-2019. The same is evident from acknowledgement for filing tax audit report which is enclosed as Annexure - 2 (Refer Page No. 1 and 455). At the time of filing the tax audit report, gratuity liability was unpaid. However, pursuant to filing of tax audit report, an amount of Rs. 4,07,84,021/- was paid towards gratuity on 31st October, 2019.. which was before the due date of filing the return of income u/s 139(1), i.e., 31-10-2019. Copy of challans evidencing payment of gratuity of Rs. 4,07,84,021/- is enclosed as Annexure - 3 Accordingly, in the return of income filed on 31-10-2019, the appellant did not disallow the aforesaid amount u/s 43B.

1.2 In view of the aforesaid, gratuity liability paid on or before due date of filing return of income is allowed u/s 43B and deduction of such gratuity is rightly claimed as deduction.

D. Prayer

1.0. In view of the aforesaid submissions, the appellant humbly requests your goodself to give necessary directions to the Ld. ADIT to allow deduction in respect of the aforesaid payment made during the year as claimed by the appellant in the return of income.

5.2 Finding

The tax audit report was filed on 25.10.2019 which reported gratuity of Rs. 40784021/- has not paid on or before the due date of return. The assessee has filed return u/s 139(1) on the due date 31.10.2020. The gratuity amount of Rs. 4,07,84,021/- was paid on 31.10.2020. Thus as per the provision 43B the gratuity paid on or before the due date u/s 139(1) is allowable. The AO is directed to verify the payments and allow u/s 43B. The Ground of appeal is thus allowed”.

“No adjustment of deferred tax credit while computing Book Profit u/s 115JB (Rs. 31,34,76,202/-

A. Brief Facts

In the Statement of Profit and Loss for the relevant previous year, the appellant has shown provision for current tax at Rs.4,88,46,95,600/- and has credited Rs. 31,34,76,202/- towards deferred tax. Relevant extract of the financial statement is enclosed herewith as Annexure - 5 (Refer Page No. 15). Accordingly, in the computation of Book Profit u/s 115JB in the Return of Income, the net tax expense of Rs. 4,57,12,19,398/- [Rs. 4,88,46,95,600/- less Rs.31,34,76,202/-.] has been added back.

B. Adjustment made in Order u/s 154

In the order u/s 154, the Ld. ADIT has added back Rs.4,88,46,95,600/-without making any adjustment in terms of clause (viii) of Explanation 1 to Sec. 115JB for deferred tax credited to statement of profit and loss.

C. Submission

At the outset, relevant provision of Sec. 115JB is reproduced herein below for reference-

“Explanation 1- For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by—

(a) To (k).....

if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and as reduced by,—

(i).....

*.....
(viii) the amount of deferred tax, if any such amount is credited to the statement of profit and loss.*

.....”

[Emphasis Added]. On perusal of the aforesaid provision, it can be noted that Explanation 1 explains the word 'book profit' as net profit as shown in the statement of profit and loss for the relevant previous year as increased by item nos. (a) to (i) of the Explanation 1, if they are debited to the statement of profit and loss and as reduced by item nos. (i) to (viii) of the Explanation 1 if they are credited to the statement of profit and loss. The figure arrived at after the above exercise would be the book profit of the appellant for the relevant previous year .

1.1. In this regard, it is humbly submitted that as per the format prescribed in Schedule MAT of ITR- 6- 'Computation of Minimum Alternate Tax payable under section 115JB', the appellant had to show provision for current tax amounting to Rs. 4,88,46,95,600/- as an addition and deferred tax credit amounting to Rs.31,34,76,202/- as deduction for the purpose of computation of Book Profit u/s 115JB. However in the instant case, the appellant, while computing book profit u/s 115JB has added back net figure of provision of current tax and deferred tax i.e. Rs. 4,57,12,19,398/- [Rs. 4,88,46,95,600/- less Rs. 31,34,76,202/-]. However, it is pertinent to note that adding back of gross amount of provision of income tax and claiming deferred tax credit separately or adding back of net figure of income tax is just a presentational variance. The same has no impact on determination of book profit and tax liability.

1.2. Accordingly, if the provision for current tax amounting to Rs.4,88,46,95,600/- is added back in the impugned order u/s 154, then in terms of clause (viii) of Explanation 1 to Sec. 115JB, the amount of deferred tax credited to Statement of Profit and Loss amounting to Rs. 31,34,76,202/- should be reduced for the purpose of computing Book Profit u/s 115JB.

D. Prayer

1.0. In view of the above mentioned submission, it is humbly submitted that necessary direction may please be given to Ld. ADIT to compute book profit u/s 115JB in accordance with relevant provisions of the Act and allow deduction of deferred tax credit amounting to Rs. 31,34,76,202/- as per clause (viii) of Explanation 1 to Sec. 115JB in appreciation of the facts of the case."

7.2 Findings:

I have considered the written submission of the appellant. As per the provision of section 115JB(2) for computation of book profit certain adjustments are to be made which are given under Explanation 1. These are positive and negative adjustments. Under negative adjustments the amount of deferred tax is any such amount is credited to the statement of profit & loss shall be reduced from the net profit. It is observed that the appellant has added back net figure of provision of current tax and deferred tax (4884695600-313476202=4571219398). The AO has added back the total amount 4884695600/- under order u/s 154. The amount deferred tax is clearly allowable in terms of clause (viii) of Explanation 1 to section 115JB. The AO is directed to verify the facts and allow the claim of the assessee. The ground of appeal no. 3 is thus allowed for statistical purposes.

8. Ground No. 4

The appellant submitted as under:

Short grant of TDS Credit (Rs. 86,09,86,261/-)

A. Brief Facts & Submission

1.0. During the previous year relevant to the assessment year under consideration, the appellant claimed TDS credit of Rs.2,49,06,53,535/- in the return of income filed in ITR- 6. However, in the order u/s 154, the Ld. ADIT has granted TDS credit of only Rs. 1,62,96,67,274/-.

1.1.It is submitted that pursuant to the approval of the scheme of arrangement and amalgamation ('Scheme') by the Hon'ble High Court of Calcutta vide order dated 28-11-2016 and National Company Law Tribunal ('NCLT') of Mumbai vide order dated 24-01-2017, erstwhile L&T Finance Limited (PAN: AAACL8668G) and L&T FinCorp Limited (PAN: AAACI4598Q) (together referred to as 'amalgamating companies') amalgamated with Family Credit Limited (PAN: AACCA1963B) ('amalgamated company') with effect from 01-04-2016, being the Appointed date. Subsequently, the amalgamated company was renamed as L&T Finance Limited. A copy of Scheme of amalgamation is enclosed as Annexure - 6

1.2.In this regard, it is humbly submitted that pursuant to scheme becoming effective, the amalgamating companies ceased to exist. However, few clients continue to deduct TDS in the PAN of amalgamating companies instead of the PAN of the appellant. At

this juncture, it is pertinent to note that the income on which TDS has been deducted is offered by the appellant in its return of income. Hence, TDS appearing in the Form No. 26AS of the amalgamating companies should be claimed by the appellant. It cannot be doubted that since income is offered to tax by the appellant, the claim of TDS must be granted to appellant itself.

1.3. In this regard, reference is also made to the relevant provisions of Rule 37BA of the Income Tax Rules, 1962 read with Sec. 199 of the Act, the relevant extract of which reads as under:

“(1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

(2)(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:”

(Emphasis added)

On perusal of above Rule 37BA(2)(i), it could be noted that the credit of TDS shall be given to the assessee in whose hands the corresponding income has been assessed to tax.

1.4. Towards this, reference is made to the recent decision of Hon'ble Hyderabad Tribunal in the case of CES Limited -vs.- DCIT [ITA No. 2088/Hyd/2018 dated 21-11-2019] wherein it has been clearly laid down that when the income of the amalgamating company has been assessed in the hands of the amalgamated company, the credit for advance tax paid and TDS of the amalgamating company should be given to the amalgamated company. Similar view has also been taken by Hon'ble Delhi Tribunal in the case of Modipon Ltd. -vs.- DCIT (1995) 54 ITD 433 (Del-Trib)

1.5. In view of the above, TDS of amalgamating companies should be allowed to the appellant. Accordingly, the appellant has claimed TDS of Rs. 2,49,06,53,535/- in the return of income which

includes TDS appearing in Form No. 26AS of amalgamating companies. In this regards, Form No. 26AS of the amalgamating companies is collectively enclosed as Annexure - 7.

1.6.Reference in this regard, is drawn towards clause C-9 of Part C of the scheme, which reads as under:-

"All taxes (including but not limited to advance tax, tax deducted at source, minimum alternate tax credits, securities transaction tax, input credit, CENVAT, entry tax, taxes withheld/paid in a foreign country, value added tax, sales tax, service tax or goods and service tax, as applicable, excise duty, cess, wealth tax, fringe benefit tax and tax collected at source, etc.) payable by or refundable to or being the entitlement of the Transferor Companies, including all or any refunds or claims shall be treated as the tax liability or refunds/credits/claims, as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, exemptions, rebates, credits, remissions, reductions and/or any other benefit, as would have been available to the Transferor Companies, shall pursuant to the Scheme becoming effective, be available to the Transferee Company. Benefit of tax losses including brought forward business loss, unabsorbed depreciation etc. up to the Appointed Date in relation to the Scheme, shall be available to the Transferee Company w.e.f. from Appointed Date as may be available in terms of the provisions of Income Tax Act, 1961."

On perusal of the aforesaid relevant excerpt of the Scheme, it can be noted that benefit of tax deducted at source, tax collected at source etc. of the amalgamating companies i.e. L&T Fincorp Limited (PAN: AAACI4598Q) and erstwhile L&T Finance Limited (PAN: AAACL8668G) shall be available to the amalgamated company. As a result, in the return of income filed post approval of the scheme of amalgamation, the appellant has claimed TDS credit of both the amalgamating company (i.e. erstwhile L&T Finance Limited and L&T FinCorp Limited) amounting to Rs. 237,408,913/- and Rs. 150,982,080/- respectively along with TDS credit appearing in Form No. 26AS of the appellant which aggregates to Rs. 2,49,06,53,535/- has been claimed by the appellant in return of income.

B. Prayer

1.0.In view of the above mentioned discussion, it is humbly submitted that necessary direction may please be given to Ld. ADIT to grant full credit of TDS to the appellant based on amount shown

in Form No. 26AS of both erstwhile L&T Finance Limited & L&T FinCorp Limited and the appellant earlier known as Family Credit Limited) in the interest of justice.”

8.2.Findings:

I have considered the written submission of the appellant. The amalgamation scheme has been approved by Hon'ble High Court on 28.11.2016. The amalgamated company Family Credit Limited was renamed as L&T Finance Limited (assessee company). The provisions of Rule 37BA(2)(i) r.w.s. section 199 of the Income Tax Act allows the credit of TDS in the hands of the person in whose hands the corresponding income has been assessed to tax. The amalgamating companies ceased to exist. The appellant claims that the income of the amalgamating companies on which TDS was deducted has been offered by the appellant in the return. The AO is directed to verify the claim of the appellant and accordingly allow the claim of the appellant. The ground of appeal no 4 is thus allowed for the statistical purposes”.

16. With the assistance of Id. Representatives, we have gone through the record carefully. As far as the first issue is concerned, the assessee has claimed a deduction of Rs.4,07,84,021/-. It is an amount, which was claimed on account of actual payment of Gratuity. This amount was shown in the Audit Report at Serial No. 26(i)(B)(b) as not paid. This Audit Report was filed on 25.10.2019. According to the assessee, it has filed the return under section 139(1) on 31.10.2020 within due date and between the period of preparation of audit report and its submission, vis-a-vis filing of the return. The assessee has actually paid this amount. The Id. Assessing Officer has not gone through these details rather the Computer Software picked up the fact from the audit report and

made the disallowance. When the assessee brought it to the notice of the Department in an application moved under section 154 for rectification of the order, it was again not rectified. The ld. CIT(Appeals) factually verified it and allowed it.

17. The ld. CIT(DR) contended that it is not discernable whether ld. CIT(Appeals) has factually verified the actual payment of Gratuity. Therefore, he requested that this issue be remitted back to the ld. Assessing Officer for verification of this fact.

18. We have duly considered the submissions of the assessee as well as the contention of ld. CIT(DR). It is pertinent to note that Section 43B contemplates that notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of –

(a).....

(b) any sum payable by the assessee as an employer by way of contribution to any Provident Fund or Superannuation Fund or Gratuity Fund or any other Fund for the welfare of employee.

Thus this provision provides that a deduction to the assessee could be allowed if it has actually made the

payment in the Gratuity Fund. According to the assessee, it has actually made the payment to Gratuity Fund after the preparation of audit report but before the filing of the return. The ld. 1st Appellate Authority has accepted this stand of the assessee. It is pertinent to note that as far as the contention of the ld. CIT(DR) is concerned, it was the duty of the Revenue to get this fact verified and submit details before the Tribunal demonstrating that the finding of fact recorded by the ld. CIT(Appeals) is factually incorrect. Merely on the asking of the ld. CIT(DR), it is not justifiable at the end of the Tribunal to remit the issue back to the file of ld. Assessing Officer for verification by disbelieving the finding of fact recorded by a higher Appellate Authority. Apart from the above, the assessee has filed an application before the ld. Assessing Officer under section 154 for rectification of the error committed by him, but again instead of considering the application on merit, it was re-processed in a computer. On the strength of all such details, how an order of the ld. CIT could be set aside for a fresh round of litigation. Thus principally, we do not find any error in the order of the ld. CIT(Appeals) and this ground of the Revenue is rejected. However, we make an observation that in case on re-verification at the end of the ld. Assessing Officer, it is found that this amount has actually not been paid by the assessee before the

due date of filing of the return, then Revenue will be at liberty to file an application for re-call of this order on this issue. With the above observation, this ground of appeal is rejected.

19. In Ground No. 2, the grievance of the Revenue is that the ld. CIT(Appeals) has erred in deleting the addition of deferred tax credit of Rs.31,34,76,202/-.

20. The facts are being discussed elaborately in a lucid manner in the impugned order of ld. CIT(Appeals), which we have already extracted (supra). The issue is that an erstwhile Company paid the taxes and it was entitled for MAT Credit that the Company was amalgamated with the assessee. Its earlier name was Family Credit Limited, which has been renamed as L&T Finance Limited. Thus after the merger of the earlier Company, who was entitled for MAT Credit, the new Company has claimed the credit of amalgamated company. This has been disallowed to the assessee by the ld. Assessing Officer and ld. CIT(Appeals) has held that as per Rule 37BA(2)(i) read with Section 199 of the Income Tax Act, the successor Company is entitled for TDS credit because the income has been assessed to tax in the hands of the successor Company. The ld. CIT(Appeals) has not committed any

error and accordingly this ground of appeal is also rejected.

21. In the result, the appeal of the Revenue is dismissed.

22. To sum up, the appeal of the assessee is allowed for statistical purposes, whereas the appeal of the Revenue is dismissed.

Order pronounced in the open Court on August 22, 2023.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President(KZ)

Kolkata, the 22nd day of August, 2023

- Copies to :
- (1) L & T Finance Limited,
[Successor of L&T Infrastructure
Finance Company Limited, now merged],
15th Floor, PS Srijan Tech Park,
Plot No. 52, Block-DN, Sector-V,
Salt Lake City, Kolkata-700091
 - (2) Assistant Commissioner of Income Tax,
Circle-5(1), Kolkata,
Aayakar Bhawan,
P-7, Chwringhee Square, Kolkata-700069.
 - (3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi
 - (4) Commissioner of Income Tax ,

ITA No. 645/KOL/2023
Assessment Year: 2013-2014
&
ITA No. 377/KOL/2023
Assessment Year : 2019-2020
L & T Finance Limited

(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.