

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2023/Del/2022
Asstt. Year: 2014-15

ACIT, Circle 1(3)(I) Int. Tax, New Delhi.	Vs.	FCS Computer Systems S Pte Ltd. 1204 DLF Tower-A Jasola Non Hierar, New Delhi-110 025 PAN AAACF7319J
(Appellant)		(Respondent)

Assessee by:	None
Department by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing:	19.07.2023
Date of pronouncement:	18.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order of the Ld. Commissioner of Income Tax, (Appeals), Delhi-42 (**"CIT(A)"**) dated 17.06.2022 pertaining to Assessment Year (**"AY"**) 2014-15.

2. The Revenue has raised the following grounds of appeal:

- “1. *The Ld. CIT(A) has erred in holding that the expense made by the assessee amounting to Rs. 2,25,29,243/- is to be allowed as expense of the assessee.*
2. *The Ld. CIT(A) has erred in not adjudicating upon the justification of expenditure of Rs. 2,25,29,243/- w.r.t. head office expenses u/s 37(1) vis-a-vis the receipts of the assessee.*

3. *The Ld. CIT(A) has erred in holding that the rectification made by the AO is not based on correct appreciation of facts, whereas, the AO, while appreciating the fact that the remittance of Rs.2,25,29,243/- is an expense of the assessee, has added back the amount of Rs.2,25,29,243/- to the income of the assessee for the relevant assessment year.”*

3. It is a case of rectificatory order under section 154 of the Income Tax Act, 1961 (**the “Act”**) of an assessment framed upon the assessee company under section 143(3)/144C(3) of the Act dated 06.12.2016 for the AY 2014-15. The impugned order is passed due to an audit objection resulting in an addition of Rs. 2,25,29,243/- to the income of the assessee.

4. The assessee appealed before the Ld. CIT(A) who held that the audit objection was based on incorrect appreciation of facts and vacated the impugned order under section 154 of the Act by observing and recording the following findings:-

“8.1 It has been explained that the addition is based on wrong appreciation of facts and that this amount does not represent the income of the appellant but its expense.

8.2 It is observed that the appellant (FCS-India) is a Branch office/PE in India of the Singapore based company, M/s FCS Computer Systems S Pte. Ltd. Being a branch office of a foreign parent company, PAN of the branch and a parent company is same, The appellant procures software, services from its Head Office M/s FCS Computer Systems (S) Pte. Ltd. and sells the same to its Indian clients. The appellant made the remittance of Rs. 2, 25, 29,243/- to its head office against the procurement of software, services and reimbursement of expenses. Withholding had been done on the remittance and withholding tax had been deposited in the same PAN AAACF7319J. Thus, the withholding tax deducted on payment to the parent company, is reflected in the Form 26AS of the appellant branch, which gives an impression that this is an income of the branch, but the same in fact is an income of the parent company at Singapore and an expense of the appellant. Accordingly, the remittance of this software, services and expenses "by" the appellant had been incorrectly assumed as remittance "to" the appellant, and added u/s 154 as undeclared receipts.

8.3 The appellant has submitted a summary of head office expenses aggregating to Rs. 2,25,29,243/- which is reproduced above. A perusal of Form 26AS shows that the TDS had been deducted and deposited on the remittance of Rs.2,25,29,243/- from FCS- India (Indian PE) to the Head office.

It is observed that a complete reconciliation in this regard had been submitted to the AO by the appellant on 08.07.2016 which showed that the impugned amounts were expenditure of the appellant/Indian PE and not its receipts. The same was accepted by the AO at the time of assessment.

8.4 It is clear that amount in question was not remitted "to" the appellant but remitted by it as part of its expense."

5. Dissatisfied, the Revenue is in appeal before the Tribunal and all the grounds relate thereto.

6. The case was fixed for hearing on 10.01.2023, 24.05.2023 and finally on 19.07.2023 but none attended for the assessee, though Ld. DR was present on all the dates of hearing. We, therefore proceeded to decide the appeal of the Revenue without the presence of an authorised representative for the assessee.

7. We heard the Ld. DR who relied on the order of the Ld. AO.

8. We considered the submission of the Ld. DR and perused the records. The rectificatory order is silent on facts. However, the facts found by the Ld. CIT(A) as stated by him in para 3 of his appellate order are reproduced herein under:-

"3. Facts in brief as culled out from record are that the appellant is a Branch of a Singapore company engaged in sale of software and hardware products and rendering service relating to maintenance of software. It filed return of income declaring Nil income. The case was taken up for scrutiny. The assessment was finalized u/s 143(3) of the Act determining the total income of Rs. 54,91,720/- after making addition of Rs.50,09,429/- by treating the payment made by the appellant to its head office for purchase of software as royalty and disallowance of Rs.4,82,290/- being cost mark up on call centre charges. The appellant went for appeal against the additions made. The Ld. CIT(A)-42, Delhi in his order dated 11.09.2017 deleted both the additions and allowed the appeal. Thereafter, the AO issued a notice u/s 154 on 22.04.2021 stating that justification of head office expense of Rs. 2,25,29,243/- has not been taken on record which shows that receipts to the tune of Rs. 2,25,29,243/4 have not been declared by the appellant. As no reply was filed by the appellant, the AO made the rectification vide order date 06.07.2021 by adding Rs. 2,25,29,243/- to the total income."

9. It is thus obvious that the assessment was made under section 143(3) r.w.s. 144C(3) on 06.12.2016 of the Act determining the total income of the assessee at Rs. 54,91,720/- after making addition and disallowance against the income declared at nil. The rectificatory order under section 154 of the Act has been passed to bring to tax the alleged undeclared income of Rs. 2,25,29,243/- pointed out by the Audit. By no stretch of imagination the impugned rectificatory order can be said to be with a view to rectifying 'any mistake apparent from the record' which is a condition precedent for taking resort to the provisions of section 154 of the Act. Further, the notice for rectification was issued on 22.04.2021 and reply was sought by 23.04.2021 which clearly violates the requirement of giving reasonable opportunity to the assessee of being heard enshrined in sub-section (3) of section 154 of the Act.

10. On perusal of the order of the Ld. CIT(A), we find that he has given a clear finding that the sum of Rs. 2,25,29,243/- represents the allowable expense of the assessee and not its alleged 'undeclared income'. This finding of the Ld. CIT(A) remained uncontroverted before us. We concur with the findings of the Ld. CIT(A). Further, the issue of allowability of the said expense was the subject matter of consideration in quantum appeal and therefore the Ld. CIT(A) has rightly not considered it in rectificatory proceeding. For the reasons set out above we do not find any substance in the appeal of the Revenue which we reject.

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

Order pronounced in the open court on 18th September, 2023.

**sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 18/09/2023
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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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