IN THE INCOME TAX APPELLATE TRIBUNAL, GUWAHATI BENCH, GUWAHATI
VIRTUAL HEARING AT KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 18/GTY/2023
Assessment Year: 2018-19

PACPL BIPL JV 8th Floor, Unit II, Sethi Trust Building, G.S. Road, Bhangagarh, Guwahati, Assam-781005. **PAN: AADAP 9047 J**	Vs.	ADIT, CPC, Bengaluru (Jurisdictional A.O. – ITO, Ward-3(3), Guwahati.
(Appellant)		(Respondent)

Present for:
Appellant by : Shri Uttam Kumar Borthakur, Advocate
Respondent by : Shri N.T. Sherpa, JCIT

Date of Hearing : 26.06.2023
Date of Pronouncement : 22.09.2023

O R D E R

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 05.01.2023 passed by the ld. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"i. For that, on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) [CIT(A) for short hereafter] has erred in law and in fact in not adjudicating upon Ground no. 1 of appeal before him by holding it to be general in nature though the determination of total income at Rs. 39846190/- under section 143(1), instead of returned income of NIL and seeking carry forward of current business of (-) Rs. 14640/-, was contrary to the relevant materials, namely, the facts and materials showing that the appellant was not an assessee- in- default within the meaning of first proviso to section 201, as read with second proviso to Clause (ia) of sub-section (a) of section 40 of the Income Tax Act, 1961(Act for short hereafter)

ii. For that, on the facts and in the circumstances of the case, the learned CIT(A) had erred in law and in fact in sustaining the addition or disallowance of Rs.39860794 under section 40(a)(la), as the same is Contrary to the provisions of law as applicable to the facts of the case and also in violation of

the statutory principles of natural justice under section 143(1)(a). As such, the impugned addition is liable to be deleted in full.

iii. For that, on the facts and circumstances, the learned CIT (A) has erred in law and in fact in sustaining the addition of Rs.39860794 by inter-alia holding that even during the course of Scrutiny assessment proceedings the appellant failed to produce evidence before the AO to prove that the payee had shown the relevant receipts in the income tax return filed u/s 139 and paid the due taxes, in spite of the fact that in the said assessment order under section 143(3) the concerned learned AO was silent about the relevant evidences furnished before him, and the said authority passed a totally non-speaking order while adding back Rs.39860794. The learned CIT(A) has thereby caused manifest error of justice by pre-judging an issue in another appeal pending before him without taking up and disposing of both the appeals together in the interest of justice, as the subject matter of both the appeals prima-facie were the same and/or similar. The finding of the learned CIT(A) being not tenable in the eyes of law the addition Sustained by him is liable to be deleted.

iv. For that, on the facts and circumstances, the learned CIT (A) has erred in law and in fact in sustaining the addition/ disallowance of Rs.39860794 and thereby causing further miscarriage of justice by not considering, in spite of his wide powers under section 250, which is conterminus with the learned AO, the copy of the prescribed certificate from the Accountant in Form 26A that was physically submitted before the learned AO during assessment proceedings under section 143(3) in terms of first proviso to section 201, as it could not be uploaded online earlier by the appellant and the concerned accountant due to certain technical glitch for reasons beyond the control of the appellant. The addition/disallowance is liable to be deleted in full.

v. For that the appellant begs leave of putting forward additional ground/grounds in addition to modification/substitution of the above ground of appeal before or at the time of hearing."

2. Brief facts of the case are that the assessee filed its return of income by declaring income at Nil and also seeking carry forward business loss of (-) Rs. 14,604/- for the A.Y. 2018-19. The assessee while filing its return of income uploaded contract account along with tax audit report by showing amount of Rs. 23,09,04,594/- was debited as sub-contract expenses and out of the aforesaid amount, the assessee consider that TDS required to be deducted for an amount of Rs. 19,66,52,948/-. However, doing

so the assessee deducted tax at source of Rs. 12,75,673/- on payment of Rs. 6,37,83,635/- but did not deduct tax on remaining amount of Rs. 13,28,69,313/-. Consequent to that, the ld. AO issued notice u/s 143(1)(a) of the Act by stating that the ld. AO proposing to disallow 30% amounting to Rs. 3,98,60,794/- u/s 40(a)(ia) of the Act. The ld. AO also stated in the notice that the appellant claimed loss of Rs. 14,604/- wrongly. While doing so, in response to notices were issued from the AO to assessee could not responded to or take appropriate steps in this regard. Consequently, the AO made adjustment of Rs. 3,98,60,794/- and Rs. 14,604/- u/s 143(1)(a)(ii) and 143(1)(a)(iv) of the Act.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed by observing as follows:

> *"I have perused the intimation u/s 154, grounds of appeal raised and submission filed by the Appellant. I find that while processing the return income, the AO CPC disallowed 30% of subcontractors payments u/s 40(a)(ia) for failure to make TDS as per the information available in Audit report. I also find that before making such adjustment, the AO CPC had given the opportunity to the Appellant to explain the default. However, Appellant did not respond to the intimation/notice given by the AO CPO.*
>
> *The Appellant has submitted that they failed to respond to the intimation given by the AO CPC. The Appellant submitted that the payee had considered the receipts in the return of income filed u/s 139 and paid the due taxes and they tried to upload Form 26A but due to technical glitch, they could not upload the Form 26A. Further the Appellant has submitted that they had submitted the Form 26A manually to AO during scrutiny assessment proceedings but the same is not considered.*
> *From the above facts I find that the admittedly the Appellant has committed the default within the meaning of section 40(a)(ia) and the Appellant failed to respond the intimation/notice given by the AO CPC before making such adjustment. Therefore there is no fault on the part of AO, CPC in disallowing 30% expenditure while processing the return of income.*
>
> *Further I find that even during the course of scrutiny assessment proceedings, the Appellant failed to produce evidence before the AO to prove*

that the payee has shown the relevant receipts in the income tax return filed u/s 139 and paid the due taxes, therefore during the course of scrutiny assessment proceedings, the AO has made addition of Rs.3,98,60,794/- u/s 40(a)(ia) for failure to deduct TDS u/s 194C of the Act. The Appellant has claimed that they have filed appeal against the assessment order. I find that the appeal of the Appellant filed against scrutiny assessment order is pending before this office. Further, the Appellant has not produced the evidence to show that the payee has disclosed the relevant receipts in the return of income filed u/s 139 and paid the due taxes thereon. The Appellant can still produce the additional evidence during appellate proceedings pending against order u/s 143(3) before the undersigned, however as far as the processing is concerned, the Appellant has failed to respond the notice issued by AO before making adjustment and therefore, the disallowance made by the AO CPC is justified on the basis of information available in the return and audit report, the disallowance is confirmed. Thus the grounds of appeal no. 3 to 5 are dismissed.

8. Ground No. 6:
In this ground the appellant beg to leave of putting additional ground in addition to modification and substitution of above grounds of appeal.

8.1 Submission:
The appellant vide submission dated 10.05.2021 submitted that there being no additional grounds, the ground no. 6 may kindly be treated as not pressed for.

8.2 Decision:
I have considered the submission of the appellant. Since the appellant did not want to press this ground, the same is dismissed being not pressed.

9. In the result, the appeal is dismissed."

4. Aggrieved by the above order, assessee is in appeal before the Tribunal. The main grievance of the assessee before the Tribunal is that the claim of assessee was not allowed by CPC by determining total income of Rs. 3,98,46,190/- u/s 143(1) in compliance of assessee's return of income at Nil and disallow carry forward of current loss (-) of Rs. 14,604/- was contrary to the fact of the case. On this aspect, the ld. AR submitted that in respect of Rs. 13,28,69,313/- payment was made towards payee contractee by the assessee and the contractee has furnished the said income in his return of income u/s 139 and accounted the

said sum while computation of his income. In such situation, return filed by the payee after making payment of the due tax on such income as made by the assessee. Therefore, the disallowance made by CPC cannot be sustained and the impugned order passed by ld. CIT(A) liable to be set aside. In this regard, he brought to our notice towards the fact that Form No. 26A under provision to section 201 of the Act was also filed before the ld. AO during the assessment proceeding carried out u/s 143(3) of the Act in relation to A.Y. 2018-19. He further contended that the provision of the section 201 with effect from 01/07/2012 had provided that any person, who failed to deduct tax under Chapter XVII would not be deemed to be an assessee-in- default under section 201 if the payee had furnished a return of income under section 139, taken the sum for computing income in such return of income and paid the tax due on the returned income and the person furnished a certificate to this effect from a Chartered Accountant under Rule 31ACB of the Income Tax Rules, 1962 in Form no. 26A. As it was evident from the related provisions of section 201(1) and Rule 31ACB that such Form 26A and certificate could be furnished at any time before the assessment is made, the appellant tried its level best to upload the Form 26A and the certificate (Annexure thereof), but those could not be uploaded online due to some technical glitch. The appellant had made requests in www.tdscpc,gov.in, as tabulated below: -

Request Type	*Request Number*	*Financial Year*	*Form Type*	*Transaction Type*	*Status*	*Remarks*
09.06.2020	*18894*	*2017-18*	*24Q & 26Q*	*Form 26A for short and non deduction request*	*Rejected*	*Short deduction/collection PANs not available*
10.06.2020	*18904*	*2017-18*	*24Q & 26Q*	*Form 26A non deduction request*	*Rejected*	
22.09.2020	*20308*	*2017-18*	*24Q & 26Q*	*Form 26A non deduction request u/s*	*Rejected*	

				201(1)		
16.04.2021	*24625*	*2017-18*	*24Q & 26Q*	*Form 26A non deduction request u/s 201(1)*	*Rejected*	

5. However, the assessee despite the above failure to upload the Form 26A and the Annexure thereof, the appellant had furnished a copy of the physically signed of Form 26A and a copy of the certificate from the PACPL'S auditors during the assessment proceeding under section 143(3) of the Act for the same assessment year under reference i.e., A.Y. 2018-19. Those were furnished before learned A0 at the time of conducting the said assessment proceeding u/s 143(3) of the Act on 01/02/2021) against Document Reference no. 100000403531244 as full response' at serial no. 3 being 'Certificate u/s 201(1) and at serial no. 4 being 'Form 26A by showing screen shot in his paper book.

6.(a) The ld. AR further contended that it is evident from the records that the appellant had arranged to get the physical certificate along with Form 26A in respect of PACPL and also done its best to get such certificate uploaded online. Assessee had made sufficient compliance by furnishing the copy of physical/hardcopy of the certificate during the assessment proceeding under section 143(3) for the year under reference under section 201(1) and the Form 26A that certified that (1) the paid PACPL Rs.132869313 without tax deduction, (2) the PACPL furnished its return for A.Y. 2018-19 under section 139 on 30/10/2018 vide acknowledgement no. 360923021301018 disclosing taxable income of Rs.63858754 and tax paid thereon of Rs.21113619 and (3) the PACPL had duly incorporated the amount of Rs.132869313, on which TDS had not been deducted

by the appellant, within the Gross Receipt of Rs.1314012142 disclosed by it under the head of income from business and profession while furnishing its return.

(b) He further stated that in spite of the above fact-situation, the learned AO passing the assessment order in the scrutiny assessment under section 143(3) for the same assessment year 2018-19 also strangely ignored these material facts and remained silent in his non-speaking order dated 19/03/2021 where the said authority sustained the addition in the impugned intimation u/s 143(1) dated 09/02/2020.

7. On the other hand, ld. DR supports the decision rendered by the ld. CIT(A) and objected to the prayer made by the ld. AR of the assessee.

8. We after hearing the rival submission of the parties and perusal of the material available on record. We find that in the paper book filed by the assessee at page no. 111 where it is clearly evident that Form No. 26A certificate has been furnished by the assessee by obtaining from the payee's CA while framing the assessment order u/s 143(3) of the Act on 19.03.2021. Although, the above findings given by the AO in the assessment order dated 19.03.2021 is not in question before this Tribunal for adjudication. However, the documents produced by the assessee before the bench are in relation to the present case also. Therefore, it is quite clear that payee had furnished a return of income u/s 139 of the Act by taking into consideration a sum of Rs. 13,21,69,313/- as his income received from the assessee and paid all due taxes thereon. However, while passing the impugned order, ld. CIT(A) never taking into consideration about the

submission made by the assessee before him and ld. CIT(A) simply dismissing the appeal filed by the assessee. Hence, we have no hesitation in setting aside the matter to the file of ld. CIT(A) with the direction to examine the whole issue afresh after taking into consideration various documents filed by the assessee in order to prove its case. We further direct the ld. CIT(A) if it is necessary call a remand report from the ld. AO in respect of documents filed by the assessee. In terms of the direction given in foregoing paragraph, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 22.09.2023

Sd/-	**Sd/-**
(MANISH BORAD)	**(SONJOY SARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Kolkata, Dated: 22.09.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: PACPL BIPL JV
2. The Respondent: ADIT, CPC, Bengaluru (Jurisdictional AO – ITO, Ward-3(3), Guwahati.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata