

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM, & SHRI NARINDER KUMAR, JM.

आयकर अपील सं./ITA. No. 534/JPR/2024
निर्धारण वर्ष / Assessment Year : 2019-2020

Current Infraprojects Private Limited A-27, Vaishali Marg (West), Panchyawala, Jaipur.	बनाम Vs.	The ACIT, DCIT, Circle-7, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAFCC5295H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Vikash Rajvanshi, C.A.
राजस्व की ओरसे / Revenue by: Shri A.S Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 25/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

The assessee-company is before this Appellate Tribunal while challenging order dated 22.02.2024, passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), whereby its appeal challenging intimation, u/s 143(1) of the Act and dated 24.12.2020, has been dismissed.

2. As per intimation u/s 143(1) of the Act, dated 24.12.2020, restriction of TDS based on Rule 37BA of the Income Tax Rules was computed as under:-

Computation of restriction of TDS based on the Rule 37BA

Sl. No.	Particulars	Amount
1.	Total receipts offered to tax under various heads (including receipts under schedule EI) in the return	51,04,38,875
2.	Total receipts as per Form 26AS from various deductors (amounts appearing against TCS and 194N are not receipts, hence omitted)	58,16,24,657
3.	Credit of TDS claimed in the return	1,16,89,928
4.	TDS credit allowable as per Rule 37BA= $1/2 \times 3$	1,02,59,183

3. While dismissing the appeal against the abovesaid intimation, Learned CIT(A) confirmed denial of credit of TDS Rule 37BA, in terms of the intimation, while observing that the assessee was required to declare the corresponding income or claim of TDS *in the corresponding years*, when the income is declared as per Rule 37BA, and as per TDS schedule.

Learned CIT(A) also did not find any merit in the contention raised on behalf of the assessee that major payments, in the nature of advance payments, are received few days before the final bill is raised.

Hence, this appeal.

4. Arguments heard. File perused.

Contentions

5. Ld. AR for the assessee-appellant has pointed out that the assessee had resorted to CPGRAM and filed rectification application u/s 154 of the Act, whereupon order dated 18.01.2023 was passed u/s 143(1)/154 of the Act, finding merit in the contention of the assessee, as put forth in the rectification application, and as a result, credit of TDS of Rs. 14,49,047/- was given.

Ld. AR for the assessee has further pointed out that subsequently vide letter dated 23.01.2023, the same Assessing Officer, ITO, Ward-7(1), Jaipur, informed the assessee that its rectification application u/s 154 of the Act could not be accepted, as decided on merits, and that credit of difference TDS of Rs. 14,30,745/- could not be given for the assessment year 2019-20.

The contention raised is that vide this communique dated 23.01.2023 the credit difference TDS of Rs. 14,30,745/- for the assessment year 2019-20 was denied to the assessee, without affording any opportunity to the appellant of being heard.

6. When provisions of section 154 of the Act have been read together in Court, learned DR for the department has submitted that there is nothing in

the correspondence dated 23.1.2023 to suggest that the assessee was heard or given an opportunity of being heard, before its issuance.

7. At this stage, relevant portion of section 154 of the Act needs to be reproduced for ready reference. Same reads as under:-

“154. Rectification of mistake.

- [(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,-

(a) amend any order passed by it under the provisions of this Act;]

(b)[amend any intimation or deemed intimation under sub-section (1) of section 143.][Substituted by Act [27 of 1999](#), Section 65, for Clause (b) (w.e.f. 1.6.1999).]

(c) amend any intimation under sub-section (1) of Section 200A;]

(d)[amend any intimation under sub-section (1) of section 206CB.][Inserted by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.]

[(1-A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.][Inserted by Act 31 of 1964, Section 7 (w.e.f. 6.10.1964).]

(2)Subject to the other provisions of this section, the authority concerned-

(a)may make an amendment under sub-section (1) of its own motion, and

(b)shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [* *][Certain words omitted by Act 21 of 1998, Section 65 (w.e.f. 1.10.1998).][Commissioner (Appeals)][Inserted by Act 29 of 1977, Section 29 (w.e.f. 10.7.1978).], by the [Assessing Officer][Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).] also.*

[* *][Proviso omitted by Act 32 of 1994, Section 38 (w.e.f. 1.6.1994).]*

(3)An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4)Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5)Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).] shall make any refund which may be due to such assessee.

(6)Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).] shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7)Save as otherwise provided in section 155 or sub-section (4) of section 186, no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed] [Substituted by Act 67 of 1984, Section 29, for " from the date of the order sought to be amended" (w.e.f. 1.10.1984).].

(8)[Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,-

*(a)making the amendment; or
(b)refusing to allow the claim.]”*

8. As noticed above, for the purpose of rectification of any mistake apparent from the record, income tax authorities referred to in section 116 may amend any intimation or any order, as specified under section 154 of the Act.

Sub-section(3) of section 154 of the Act provides that a notice has to be given by the concerned income tax authorities to the assessee or the deductor or the collector in case of amendment, which has the effect reducing a refund etc.

9. Sub-section (4) of section 154 of the Act provides that where an amendment is made under this section, order shall be passed in writing by the income tax authorities concerned.

10. At page 39 of the paper book, submitted on behalf of the assessee, before this Appellate Tribunal, is available copy of order dated 18.01.2023. Said order was passed u/s 143(1)/154 of the Act. When reproduced for ready reference, same reads as under:

“ In this case order u/s 143(1) of the I.T. Act, 1961 was passed on 24.12.2020 at total income of Rs. 2,44,77,770/- after give TDS credit of Rs. 1,02,40,881/-. Thereafter, the assessee filed an CPGRAM grievance for rectification application u/s 154 of

the I.T. Act, 1961 which was received in this office on 11.01.2023, perusal of the record revealed that while passing the order u/s 143(1) of the I.T. Act, 1961 credit of TDS amounting of Rs. 14,49,047/- was not given. And now the same has been given credit of TDS Rs. 14,49,047/-.

As the contention of the assessee is found correct, therefore, after considering the facts of the case and the material available on record as well as online, the above mistake is hereby rectified accordingly.

Issued revised ITNA-150.”

11. Admittedly, the above said order came to be passed on rectification application 154 of the Act moved by the assessee by way of CPGRAM grievance that was received in the department on 11.01.2023. While passing said order, the concerned ITO considered the facts of the case and the material available on record as well as those submitted online, and found merit in the contention of the assessee. Consequently, while rectifying the mistake which had crept in the intimation u/s 143(1) of the Act, the competent authority granted credit of TDS Rs. 14,49,047/-to the assessee.

12. Surprisingly, 5 days thereafter i.e. after passing of the aforesaid order 18.1.2023, the same ITO communicated letter dated 23.01.2023 informing

the assessee that the grievance filed by the assessee for rectification u/s 154 of the Act could not be accepted.

At the same time, the concerned ITO informed the assessee that it could file an appeal against the order u/s 143(1) of the Act.

13. Learned AR for the assessee has stated at Bar that no opportunity of being heard was granted by the concerned Assessing Officer –ITO before the letter dated 23.1.2023 was issued communicating rejection of rectification application, even though in the first instance the Assessing Officer-ITO had allowed the rectification application moved u/s 154 of the Act thereby rectifying mistake in the intimation u/s 143(1) of the Act.

The abovesaid submission of Learned AR for the assessee, when considered very carefully, goes to show that this is a case of violation of principle of natural justice in not having provided any opportunity of being heard to the assessee, particularly when five days back, vide order dated 18.01.2023 same Income Tax Officer had allowed credit of TDS of Rs. 14,49,047/-, thereby accepting the claim of the assessee.

14. Let's look at the matter from a different angle.

15. Feeling aggrieved by the intimation u/s 143(1) of the Act, the assessee had challenged the same by filing appeal before CIT(A) on 08.12.2022.

Therein, by way of written submissions furnished before CIT(A), on behalf of the assessee-appellant, on ground No. 1 of appeal before Learned CIT(A), the assessee specifically alleged that the department had rectified mistake u/s 154/143(1) of the Act by giving TDS credit of Rs. 1,16,89,928/- (Page No. 33 to 34 of the paper book therein) along with computation sheet (Page No. 35 to 39 of the paper book therein).

Therein, on behalf of the assessee, it was also specifically mentioned that order u/s 154 of the Act was passed on 18.01.2023, whereby balance TDS credit of Rs. 14,49,047/- was also allowed and mistake was rectified (page No. 32 of the paper book therein).

In the written submission on ground No.1 of the appeal before Learned CIT(A), the assessee also referred to the subsequent letter dated 23.01.2023 hereby TDS credit of Rs. 14,30,745/- was denied.

In the given situation, we want to observe that the moment order dated 18.1.2023 was passed under section 154 of the Act, thereby granting the credit of TDS, Learned AR for the assessee-appellant should have specifically pointed out to Ld. CIT(A) said order, and withdrawn the appeal, same having become infructuous. But, Learned AR for the appellant did not opt to come forth with a prayer for withdrawal of the appeal.

As regards the role to be played by Ld. CIT(A), in the given situation, when the factum of rectification of mistake vide order dated 18.01.2023, passed u/s 154 of the Act was brought to the notice of Learned CIT(A), as regards redressal of the grievance raised by the assessee by way of CPGRAM, Learned CIT(A) should have taken notice thereof and the consequence that the appeal pending before him, challenging intimation u/s 143(1) of the Act dated 24.12.2020, had become infructuous. Thus, Ld. CIT(A) was required to pass appropriate orders in the appeal before him.

However, the fact remains that Learned CIT(A) opted to proceed with the appeal, heard the appellant and dismissed the same, on merits.

16. As regards the role played by the Assessing Officer, in the given situation, it remains unexplained as to how, firstly, having granted credit of TDS of Rs. 14,30,745/- on 18.01.2023, he issued to the assessee only after 5 days thereafter, the communique dated 23.01.2023 informing that its rectification u/s 154 of the Act could not be accepted.

17. On going through letter dated 23.01.2023, we find that the same ITO-Assessing Officer observed therein that the grievance was decided on merits.

Admittedly, this letter dated 23.01.2023 is not accompanied by any separate order. In the course of arguments, Ld. AR for the assessee has

not submitted that any separate order, once again deciding rectification u/s 154 of the Act, was passed or communicated to the assessee.

However, in the letter under reference, there is no mention that any fresh order was passed after having taken up the rectification application once again, even though vide order dated 18.1.2023 rectification application moved by the assessee under section 154 of the Act, stood allowed.

There is nothing in the letter dated 23.01.2023 to suggest that the assessee was given any opportunity of being heard for taking up of its rectification application u/s 154 of the Act once again, and before rejecting the same by way of any decision on merits.

In the given situation, issuance of notice to the assessee was one of the essential requirements of section 154(3) of the Act to be complied with by the authority. At the cost of repetition, we mention that as submitted before us by Learned AR, no notice came to be issued by the ITO to the assessee for the purpose of any proceedings or before passing of any order or prior to the communique dated 23.1.2023 came to be issued.

18. For the foregoing reasons and findings, we find that once the department had allowed credit of TDS amounting of Rs. 14,49,047/- vide order dated 18.01.2023 passed u/s 143(1) r.w.s. 154 of the Act realizing its

mistake made in the Intimation, and the appeal filed by the assessee before Learned CIT(A) had become infructuous, neither there was any reason for issuance of letter dated 23.01.2023 by the same Assessing Officer, intimating the assessee that its grievance u/s 154 of the Act could not be accepted, and that the assessee could file the appeal against the order u/s 143(1) of the Act, particularly when the assessee had already filed an appeal on receipt of the Intimation, and same had become infructuous with the passing of the order dated 18.01.2023.

Result

19. As a sequel, this appeal is allowed and the impugned order passed by Learned CIT(A) is hereby set aside. We hereby direct the Assessing Officer to give effect to this judgment, and his own order dated 18.1.2023 whereby the mistake made in the Intimation issued initially was rectified and the assessee was given credit of TDS Rs. 14,49,047/-.

Order pronounced in the open court on 29 /07/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 29/07/2024
*Santosh

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Current Infraprojects Pvt. Ltd., Jaipur.

2. प्रत्यर्थी / The Respondent- ACIT, DCIT, circle-7, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 534/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar