

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.92 & 89/Lkw/2023  
Assessment Year:2011-12 & 2013-14

M/s VIL Limited, B-5/21, Vishal Khand, Gomti Nagar, Lucknow. PAN:AABCV2697Q (Appellant)	Vs.	Dy.C.I.T.-6, Lucknow.  (Respondent)
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Appellant by	None (Adjournment Application)
Respondent by	Shri Gayasuddin, CIT (D.R.) and Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

**ORDER**

**PER BENCH:**

(A) These two appeals have been filed by the assessee against the impugned appellate orders dated 18/11/2022 for assessment year 2011-12 and dated 06/02/2023 for assessment year 2013-14 of learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. For the sake of convenience and brevity, these two appeals are hereby disposed of through this consolidated order. The grounds of appeal are as under:

**I.T.A. No.92/Lkw/2023 (A.Y. 2011-12)**

- "1. Because the learned Ld. Commissioner of Income Tax (Appeals)-3, Lucknow has grossly erred in rejecting the appellants claim of credit of TDS amounting to Rs.15294858 Rs.7494271 Rs.149535 and Rs. 985313 deducted by PWD

*Azamgarh Lucknow and Sultanpur respectively on the ground that the claimed TDS is not reflected in 26AS of the assessee.*

- 2. Because the Ld. Commissioner of Income Tax (Appeals)-3, Lucknow while rejecting the above claim of the appellant to allow credit of TDS has not sight of Instruction Circular issued by Central Board of Direct Taxes directing the assessing officer to allow credit of TDS certificate furnished by the assessee as evidence against any mismatched amount after proper verification Reliance is placed on CBDTs Instructions No 5/2013 dated 08. 07. 2013.*
- 3. Because the Ld. Commissioner of Income Tax (Appeals)-3, Lucknow while rejecting the appellant claim for credit of rupees 19294858 towards TDS has not doubted the genuineness correctness of the above claim of TDS and has simply rejected the same on the ground that the same is not reflecting in 26AS of the appellant.*
- 4. Because the order dated 31/03/2016 is against the essence of order dated 06/05/2014 passed by the Hon'ble Allahabad High Court in the case of Rakesh Kumar Gupta Versus Union of India and another .The Hon'ble High Court while deciding the above petition on mismatch between the TDS claimed and 26AS of the assessee has been pleased to direct the assessing officer to refund the amount of TDS claimed The Hon'ble High Court also imposed cost of Rupees 25000 on the assessing officer to be paid to the petitioner in that case.*
- 5. Because the Hon'ble Delhi High court in on its own motion Vs CIT Delhi reported in 352 ITR Pg 273 has issued mandamus regarding credit of TDS to the assessee when the tax has been deposited with the revenue by the deductor.*
- 6. Because the Hon'ble Delhi High Court while issuing the above mandamus has directed that when an assessee approaches the Assessing Officer with requisite details and particulars the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made credit of the same should be given to the assessee These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position.*

7. *Because pursuant to the above order passed by the Hon'ble Delhi High Court CBDT issued Instruction No 5 of 2013 dated 08/07/2013 directing that where the assessee approaches the assessing officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatch amount the assessing officer would verify whether or not the deduct or had made payment of the TDS in the government account and in the event the payment had been made credit of the same would be given to the assessee.*
8. *Because by rejecting the claim of TDS the appellant has been put to unnecessary hardship who urgently requires additional finances in the form of claimed refund to meet out its business and taxation obligations for the smooth running of business.*
9. *Because the delay in allowing credit of TDS a mount and consequential refund to the appellant on account of mismatch that is not attributable to the appellant entitles the appellant for payment of refund and also interest thereon.*
10. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee the assessee company underwent CIRP Proceeding and the Hon'ble NCLT has approved resolution plan vide order Dt. 24.12.2020 in CP(IB)NO. 1581(PB) OF 2018.*
11. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee as the Ld. Commissioner of Income Tax (Appeals)-3, Lucknow has not considered the application regarding condonation of delay filed by the assessee and has not adjudicated the appeal on merits.*
12. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee without providing the assessee with a due and proper opportunity of hearing and therefore the impugned order deserves to be set-aside being bad in law.*
13. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee purely on the basis of conjectures and surmises and hence bad in law and liable to be set-aside and quashed."*

- "1. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal on the ground eligibility of depreciation @100% on shuttering material as per the provision of law.*
2. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee without considering the circular of CBDT No. 37 of 2016 where disallowances u/s 32 is linked with deduction under chapter VIA consequential effect is required to be directed.*
3. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee the assessee company underwent CIRP Proceeding and the Hon'ble NCLT has approved resolution plan vide order Dt. 24.12.2020 in CP(IB)NO. 1581(PB) OF 2018.*
4. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee without providing the assessee with a due and proper opportunity of hearing and therefore the impugned order deserves to be set-aside being bad in law.*
5. *Because, the Ld. CIT (A) has grossly erred in rejecting the appeal of the assessee purely on the basis of conjectures and surmises and hence bad in law and liable to be set-aside and quashed."*

(A.1) During the course of appellate proceedings in ITAT, hearings were fixed from time to time since 29/05/2023. However, repeatedly adjournments were sought from the assessee's side. Another request was filed for adjournment of hearing fixed on 09/09/2024 on the ground that the assessee company was in the process of engaging counsel to represent the matter before the Bench of the ITAT. The letter seeking adjournment is purportedly signed by authorized signatory; but the name or designation of the authorized signatory is not mentioned. Further, on perusal of records, it is found that there is nothing to show that the assessee company had authorized this person to sign on behalf of the assessee regarding appellate proceedings in ITAT. As sufficient time has elapsed since the appeals first came up for hearing before ITAT on 29/05/2023, and as repeatedly

adjournments have been sought from the assessee's side, and also as the assessee company is stated to be still in the process of engaging counsel to represent the matter in ITAT, we are of the view that the assessee is not sincere in prosecuting these appeals. Therefore, the request for adjournment of hearing fixed on 09/09/2024 was rejected and the matter was heard ex-parte qua the appellant assessee.

(B) On perusal of records, we find that the assessee's appeal vide I.T.A. No.92/Lkw/2023 has been filed beyond time limit prescribed u/s 253(3) of the IT Act. As per noting of the registry of ITAT, this appeal is time barred by 59 days. Further on perusal of records, we find that the assessee has not filed any petition for condonation of delay in filing of the appeal. In view of the foregoing, this appeal is being dismissed for barred by limitation.

(C) The ground No. 4 of appeal in the grounds of appeal filed by the assessee for assessment year 2013-14 is regarding due and proper opportunity of hearing during appellate proceedings in the office of the learned CIT(A). On perusal of the impugned appellate order dated 06/02/2023 of the learned CIT(A) for assessment year 2013-14, we find that the last date of hearing fixed by the learned CIT(A) was on 21/06/2021, vide notice dated 15/06/2021. However, the impugned appellate order has been passed by the learned CIT(A) on 06/02/2023 after substantial lapse of time running into several months. The intervening period between 21/06/2021 and 06/02/2023 could have been used by the learned CIT(A) for providing another opportunity of being heard to the assessee; but the learned CIT(A) failed to do so. Considering substantial lapse of time between the last date of hearing and the date on which the impugned order was passed, we are of the view that the learned CIT(A) failed to provide further reasonable opportunity to the assessee. If the appellate order was to be passed by learned CIT(A) after such a long interval of time

since last date of hearing; it would have been just and proper to provide further/reasonable opportunity to the assessee. Therefore, we set aside the impugned appellate order dated 06/02/2023 of the learned CIT(A) and we restore the issues in dispute to the file of the learned CIT(A) with the direction to pass de novo appellate order after providing reasonable opportunity of being heard to the assessee. All the grounds of appeal in the assessee's appeal for assessment year 2013-14 vide I.T.A. No.89/Lkw/2023 are treated as disposed of in accordance with these directions.

(D) In the result, the assessee's appeal for assessment year 2011-12 vide I.T.A. No.92/Lkw/2023 is dismissed and assessee's appeal vide I.T.A. No.89/Lkw/2023 for assessment year 2013-14 is partly allowed for statistical purposes.

(Order pronounced in the open court on 12/09/2024)

Sd/.  
**(SUDHANSHU SRIVASTAVA)**  
**Judicial Member**

Sd/.  
**(ANADEE NATH MISSHRA)**  
**Accountant Member**

Dated:12/09/2024  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar