

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
MS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 4838 & 4839/Del/2024**

(Assessment Year: 2021-22)

<b>EM Technologies India Pvt. Ltd,</b>	Vs. DCIT,
CS-11, UM Floor, Ansal Plaza,	Circle-7(1),
Vaishali, Ghaziabad	Delhi
(Appellant)	(Respondent)
<b>PAN:AABCE5091R</b>	

Assessee by :	Shri A. K. Srivastava, CA
Revenue by:	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	17/02/2025
Date of pronouncement	17/02/2025

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA Nos. 4838 & 4839/Del/2024 for AY 2021-22, arise out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2024-25/1067769419(1) dated 20.08.2024 against the order of assessment passed u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.12.2022 by the Assessing CPC, Bengaluru (hereinafter referred to as 'ld. AO').
2. Both the appeals filed by the assessee are challenging the identical issue of adoption of lower rate of tax. Hence they are taken up together and disposed of by this common order for the sake of convenience.
3. The assessee has raised the following grounds of appeal:-

*"1. That the Learned Commissioner of Income Tax (Appeals) (NFAC) failed to understand and appreciate, the facts of the case and the grounds of appeal taken before him, against the Intimation u/s 143(1) and rejection of application for rectification of Intimation issued by the CPC.*

*2. That the Appellant having taken specific ground that the rate of tax applicable in its case was 25%, in accordance with the rate prescribed by the Finance Act, the Learned Commissioner of Income Tax (Appeals) erred in upholding the order by CPC, who had taxed the income @30%, despite the fact that Balance Sheets from F.Y. 2017-18 onwards were filed during the appellate proceedings.*

*3. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in treating the appeal as infructuous, on ground that another appeal bearing number NFAC/2020-21/10250268, having similar grounds has been disposed vide DIN & Order No. ITBA/NFAC/S/250/2024- 25/1067756974(1) dated 20.08.2024.*

*4. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in not disposing off all grounds of appeal taken before him.*

*5. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in not directing the CPC to allow credit for TDS claimed by the Appellant on the basis of Form 26AS.*

*6. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in not appreciating that the two appeals were different appeals and ought to have been disposed of on merits of each appeal.*

*7. That the grounds of appeal taken herein are independent of each other."*

4. The assessee has raised the following grounds of appeal:-

*"1. That the Learned Commissioner of Income Tax (Appeals) (NFAC) failed to understand and appreciate, the facts of the case and the grounds of appeal taken before him, against the Intimation u/s 143(1) and rejection of application for rectification of Intimation issued by the CPC,*

*2. That the Appellant having taken specific ground that the rate of tax applicable in its case was 25%, in accordance with the rate prescribed by the relevant Finance Act, the Learned Commissioner of Income Tax (Appeals) erred in upholding the order by CPC, who had taxed the income*

*@30%, despite the fact that Balance Sheets from F.Y. 2017-18 onwards were filed during the appellate proceedings.*

*3. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in holding that the assessee's application for rectification was considered and duly disposed off.*

*4. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) failed to appreciate that the rectification order u/s 154 of the Income-tax Act, 1961 dated 10.04.2023 was a suo moto rectification only to give further effect to credit for TDS.*

*5. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) misdirected himself in holding that the Appellant having not complied with Rule 21AE and filing of Form No. 10-IC, the Appellants' claim for lower rate of tax was rightly denied by CPC, and in doing so erred in not directing that the tax be charged at the applicable rate as per Finance Act.*

*6. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in not directing the CPC to allow credit for TDS claimed by the Appellant on the basis of Form 26AS.*

*7. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) (NFAC) erred in not disposing off all grounds of appeal taken before him.*

*8. That the grounds of appeal taken herein are independent of each other."*

5. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee for the assessment year 2021-22 while filing the return opted for adoption of lower rate of tax under the new tax regime. However, the new tax regime warrants the assessee to file Form 10 IC before the Learned AO within the prescribed time. This filing of Form No. 10 IC was not done by the assessee for the year under consideration. The assessee pleaded ignorance of law as the year under consideration was the first year of opting for lower rate of tax by the assessee under the new regime. The

learned CPC while processing the return of income under section 143(1) of the Act directly proceeded to determine the tax liability of the assessee by calculating tax on the income at the rate of 30 percent for the year under consideration. The assessee pleaded that if the plea of the assessee for adoption of lower rate of tax is rejected, even then the learned AO is not authorized to levy tax at a rate which is beyond the prescribed rate in the Finance Act applicable for the year under consideration. For the Assessment Year 2021-22, the Finance Act has prescribed the tax rate applicable for all companies having turnover less than Rs 400 crores at the rate of 25 percent. Admittedly the turnover of the assessee for the year under consideration is only Rs 20.32 crores. Hence as per the Finance Act, the learned CPC ought to have levied tax only at the rate of 25 percent. Merely because Form 10 IC was never filed by the assessee for the year under consideration, the revenue is not justified by levying a higher tax rate of 30 percent which is beyond the tax rate prescribed in the Finance Act applicable for the year under consideration. This plea made by the assessee was not appreciated even by the learned NFAC.

6. We have gone through the Finance Act applicable for the year under consideration wherein it has been specifically mentioned that for companies having turnover of less than Rs 400 crores, the applicable tax rate would be 25 percent only. Since the assessee's turnover is less than Rs 400 crores for the year under consideration, the assessee should be taxed only at the rate of 25 percent and any excess tax levied by the revenue in this regard deserve to be refunded.

7. With regard to non-granting of TDS credit, we only direct the learned AO to grant TDS credit as per law after due verification of the relevant documents.

8. Accordingly, the grounds raised by the assessee are allowed for statistical purposes in ITA No. 4838/Del/2024.

9. Since the relief is already granted to the assessee in ITA No. 4838/Del/2024, the other appeal filed by the assessee in ITA No. 4839/Del/2024 is hereby dismissed as infructuous.

10. In the result, the appeal of the assessee in ITA No. 4838/Del/ 2024 is allowed for statistical purposes and appeal of the assessee in ITA No. 4839/Del/2024 is dismissed as infructuous.

Order pronounced in the open court on 17/02/2025.

-Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 17/02/2025  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi