

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “A”, BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.2265/Bang/2019 : Asst.Year 2013-2014

M/s.Avvas Infotech Pvt. Ltd. C/o.B V C & Co., CAs No.371, 1 <sup>st</sup> Floor, 8 <sup>th</sup> Main, Sadashivanagar Bengaluru – 560 080. <b>PAN : AAGCA3068H.</b>	v.	The Dy.Commissioner of Income-tax, Circle 1(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.B.T.Shetty, CA  
Respondent by : Sri.S.Sundar Rajan, JCIT-DR

<b>Date of Hearing : 22.10.2020</b>	<b>Date of Pronouncement : 22.10.2020</b>
-------------------------------------	---

**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)’s order dated 06.12.2018. The relevant assessment year is 2013-2014.

2. The ground raised read as follow:-

“1. The order of the learned Commissioner (Appeals), is not justified in law and on facts and circumstances of the case.

2. Not allowing the TDS credit of Rs.23,87,640/- claimed in the petition filed under section 154 of the Income Tax Act, 1961.

2.1 The lower authorities have failed to appreciate the fact that the Appellant has already declared the income relating the TDS credit of Rs.23,87,640/-.

2.2 The lower authorities ought to have appreciated that the appellant filed the return duly claiming TDS of Rs.1,50,92,165/- based on the 26AS dated 30.09.2013 instead of Rs.1,74,79,805/- as the two companies has uploaded their TDS return after filing of IT return of assessee company.

*2.3 The learned assessing officer and learned Commissioner of income tax Appeals – 1 erred in appreciating the facts of the case and details and documents submitted.*

*For the above grounds and for such other grounds which may be allowed by the Honorable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed.”*

3. Brief facts of the case are as follow:

The assessee is a company engaged in the business of IT enabled services. For the assessment year 2013-2014, return of income was filed on 01.10.2013 declaring total income of Rs.3,23,82,340. The assessment was completed u/s 143(3) of the I.T.Act assessing the total income at Rs.3,26,87,120 by making disallowance of travelling expenses of Rs.3,04,778.

4. In connection with the above assessment, the assessee had not claimed TDS credit of Rs.23,87,640, which was not available in Form No.AS26 at the time of filing of the return of income on 01.10.2013. According to the learned AR, on later date, two clients remitted TDS and filed TDS return after 30<sup>th</sup> September 2013 and credits were available in Form No.AS26. The details of the two clients are as follows:-

- (i) Vedavaag Systems Ltd. TAN No.HYDS03265D – TDS of Rs.19,60,588/-.
- (ii) Vision Plus Security Control Pvt. Ltd. – TAN No.DELV10699D – TDS of Rs.4,27,052/-.

5. The assessee filed an application u/s 154 of the I.T.Act dated 19.07.2016 requesting the A.O. to give credit for above TDS and refund of the same. The Assessing Officer rejected the petition u/s 154 of the I.T.Act vide order dated 24.08.2016 by observing as under:-

*“Your petition under reference for rectification has been examined in detail. It is seen that the TDS mentioned by you was not claimed in the return of income filed on 01.10.2013 for the A.Y. 2013-14. Hence your application u/s 154 is hereby rejected.”*

6. Aggrieved by the order rejecting the assessee's application for rectification u/s 154 of the I.T.Act, the assessee filed an appeal to the first appellate authority. Since the assessee did not appear before the first appellate authority, *ex parte* order was passed by relying on the order of the Delhi Benches of the Tribunal in the case of CIT v. Multiplan India Ltd. reported in 38 ITD 320 (Del.).

7. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book enclosing *inter alia* therein Form No.AS 26, TDS details made by the assessee's clients, copy of the financial statement for the relevant assessment year, etc. The learned Counsel for the assessee submitted that the Assessing Officer on receipt of application u/s 154 of the I.T.Act, had issued a letter dated 24.08.2016 directing the assessee to demonstrate with proof whether assessee had offered income corresponding to the TDS claimed for which it is seeking refund of TDS (The Assessing Officer had directed the assessee to submit the details within one week from the date of letter). However, order u/s 154 of the I.T.Act was passed on 24.08.2016 (on the same date the assessee was requested to furnish the details). Therefore, it was submitted that the assessee was not given proper opportunity to explain his case

before rejecting its application u/s 154 of the I.T.Act. The learned Counsel stated that due to financial difficulty and business slowdown, the employees and the senior financial officer had left the organization. It was stated that hearing notice was not received from CIT(A)'s office, hence, there was no representation before the CIT(A).

8. The learned Departmental Representative supported the orders of the Income Tax Authorities.

9. We have heard the rival submissions and perused the material on record. It is the case of the assessee that it had not received the notice of hearing issued from the first appellate authority's office. Therefore, the appeal was decided *ex parte*. In the interest of justice and equity, we are of the view that one more opportunity should be provided to the assessee to explain its case whether it has accounted and declared the income in respect of TDS, which it is claiming refund. For the above said reasons, the case is restored to the file of the A.O. The assessee shall co-operate with the A.O. and shall furnish the necessary details called for. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 22<sup>nd</sup> day of October, 2020.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 22<sup>nd</sup> October, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Bengaluru.
4. The Pr.CIT-1, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore