

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.635/DEL/2023
Assessment Year 2020-21

Knowledge Infrastructure Systems Pvt. Ltd. G-02, Salcon Aurum Complex, 4, Commercial Centre Jasola, New Delhi.	Vs.	DCIT Circle-13(1) Delhi
TAN/PAN: AACCK4380L		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, CA Shri Satyjeet Goel, CA		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	01	08	2023
Date of pronouncement:	01	08	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 30.01.2023 arising from the intimation order dated 20.12.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2020-21.

2. As per the grounds of appeal, the assessee has challenged the adjustment of Rs.448,56,87,589/- on account of 'contingent liabilities' mainly in the nature of corporate guarantee (issued to

the bank on behalf of the subsidiary), letter of credit and disputed indirect tax matter etc. resulting in tax demand of Rs.195,53,40,510/-.

3. When the matter was called for hearing, the Id. counsel for the assessee submitted at the outset that the aforesaid adjustment is on account of 'contingent liabilities' stated to be debited to Profit & Loss account as per row No.21(g) of the Tax Audit Report e-filed by the assessee. The Id. counsel thus pointed out that the Tax Auditor committed inadvertent error in reporting the 'contingent liabilities' to have been debited in the P&L account which is factually incorrect. The Id. counsel referred to the 'audited financial statement' for F.Y. 2019-20 (A.Y. 2020-21) which was also simultaneously uploaded to demonstrate that impugned 'contingent liabilities' were reported as separate items forming part of the 'Notes to Accounts' wherein it has been clearly reported that such liabilities are of contingent nature which has not been provided for, in the audited financial account. The Id. counsel also referred to the profit and loss account to assert that the liabilities were contingent in nature and therefore neither has been provided in the P&L account nor could have been provided and the CPC carried out the adjustment on account of inadvertently wrong reporting in the Tax Audit Report.

3.1 The Id. counsel thereafter submitted that while framing the intimation under Section 143(1) dated 20.12.2021, no opportunity has been given to the assessee for making adjustment towards such staggering amount in departure with

the statutory mandate of law as per Section 143(1) of the Act. On receipt of intimation dated 21.12.2021, the assessee realized the mistake and approached the Tax Auditor and obtained a revised Tax Audit Report which was uploaded in the e-portal of the Income Tax Department on 23.12.2021. The revised Tax Audit Report thus depicts the correct position that contingent liabilities have not been claimed as expenses for determining taxable income.

3.2 The ld. counsel thereafter submits that the assessee moved a petition dated 24.12.2021 for rectification of such apparent mistake under Section 154 of the Act before the CPC Bengaluru. However, the order under Section 154 passed thereon by the Assessing Officer is not available in the site of the Department. The assessee has persuaded the matter and filed an RTI Application dated 03.07.2023 seeking the rectification order in pursuance of the rectification application. In response, as per the order dated 03.07.2023 disposing off the aforesaid RTI application filed under RTI Act, 2005, the designated PIO has clearly stated that rectification under Section 154 dated 24.12.2021 has been processed with no demand and no refund. However, no formal rectification order is available on ITBA portal and thus not provided to assessee under RTI.

3.3 In this backdrop, the ld. counsel for the assessee submits that he is handicapped by the present situation where the rectification order under Section 154 is not available but at the same time it is apparent that the demand arising from such adjustment stands cancelled. The ld. counsel thus seeks suitable

remedy from the Tribunal in the present appeal.

4. The Id. CIT-DR for the Revenue on the other hand submits that no fault can be found with the impugned intimation drawn under Section 143(1) which is in consonance with the Tax Audit Report filed and placed before the Revenue Authorities by the assessee himself. The Id. CIT-DR referred to the Tax Audit Report dated 05.11.2020 furnished by the Assessee under Section 44AB of the Act and adverted our attention to row No.21(g) of the Report to contend that such report states that such liability has been actually debited in the P&L account. Consequently, it was not the concern of the Revenue to look into the audited financial statement and the Revenue is entitled to base adjustments under Section 143(1) having regard to what was reported in the statutory Tax Audit Report filed before Tax Authorities. It was submitted that no fault can be found with the action of system driven CPC.

5. We have carefully considered the rival submissions and perused the material placed on record. The correctness of upward adjustment on account of 'contingent liabilities' on the basis of Tax Audit Report for the purposes of drawing intimation under Section 143(1) is in controversy. It is the case of the assessee that the 'contingent liabilities' disallowed as expenditure by the CPC under Section 143(1) were never provided for in the Profit & Loss Account and was never claimed as expenditure for the purposes of determining the taxable income returned by the assessee. The adjustment has been carried out by revenue solely on the basis of 'Tax Audit

Report' where the Tax Auditor has committed inadvertent error and wrongly reported the contingent liabilities as expenses actually debited to P&L account which is untrue and inconsistent with the audited financial statement. It is thus the case of the assessee that an expenditure cannot be disallowed where it has not been claimed at the first instance while determining the taxable income. On realization of apparent human error, the Tax Audit Report has been suitably revised and a note to this effect has been given in statutory report in Form 3CA, an integral part of the Tax Audit Report under Section 44AB of the Act.

6. Coupled with this, a rectification application under Section 154 was promptly filed before the concerned authority, i.e., CPC Bengaluru and as per the information made available under the RTI Act, 2005, it is clearly asserted that the rectification has been suitably carried out and the demand raised on behalf of such adjustment has been cancelled. Notwithstanding, it is further overwhelming case of the assessee that no opportunity has been given to the assessee while carrying out the adjustment resulting in violation of express proviso to Section 143(1) and also the sacrosanct principles of natural justice.

7. The assessment under Section 143(1) as it stands at the relevant time enables the CPC arm of department to make certain adjustments in the returned income as enumerated in clause (a) to sub-section (1) thereof, subject however to an opportunity to the assessee before embarking on such adjustments.

8. While we appreciate the defense on behalf of the Revenue in its perspective that the intimation has been drawn on the basis of Tax Audit Report made available by Assessee, we are also simultaneously have to bear in mind the fact that the expenditure not claimed at the first instance cannot be disallowed while determining the taxable income. Besides, the rectification order under Section 154 is also not available before us and therefore, we are not in a position to ascertain the exact outcome of the rectification application. However, we find that the statement made on behalf of the assessee to assail the adjustments are quite convincing.

9. It is common knowledge that exercise of power to rectify an error apparent from record is conferred upon the revenue in aid of enforcement of a right. Denial of opportunity expressly enacted under Section 143(1) is clearly against the norms of propriety. We cannot countenance the action of revenue where the assessee has been subjected vexatious litigation by robbing the assessee of its right of opportunity to defend its stance.

10. In the factual backdrop, we thus consider it expedient to remit the matter back to the file of the Assessing Officer for taking into account the submissions made on behalf of the assessee. Where it is found as a matter of fact that the contingent liability in question do not form part of the P&L account and has not been taken into account while determining the income chargeable to tax, it will be incumbent upon Assessing Officer to reverse the disallowance carried out in the intimation under Section 143(1) in question. Needless to say, a

reasonable opportunity shall be given to the assessee while determining the issue. It shall be open to the assessee to adduce documents and explanations before the Assessing Officer in support of its contentions. Hence, in terms of such observations, the intimation for Assessment Year 2020-21 is set aside and issue towards disallowance of contingent liabilities is restored back to the file of the Assessing Officer for fresh determination in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order dictated and pronounced in the open Court on 01/08/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /08/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**