IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH : BANGALORE

BEFORE SHRI. GEORGE GEORGE K, JUDICIAL MEMBER
AND

B. R. BASKARAN, ACCOUNTANT MEMBER

ITA No.1836 & 1837/Bang/2019
Assessment Year : 2011 – 12 & 2012-13

Infosys BPM Ltd., Plot No.26/3, 26/4 & 26/6, Hosur Road, Electronic City, Bengaluru-560 100. **PAN – AACCP 4478 N**	**Vs.**	The Asst. Commissioner of Income Tax, TDS Circle-2(1), Bengaluru.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Sudheendra, C.A
Respondent by	:	Shri Sundar Rajan, Addl. CIT (DR)

Date of Hearing	:	08-09-2020
Date of Pronouncement	:	11-09-2020

ORDER

PER GEORGE GEORGE K, JUDICIAL MEMBER

1. These appeals at instance of assessee are directed two orders of CIT(A), both dated 25-6-2019. The relevant asst. Years are 2011-12 and 2012-13.

2. Identical issues are raised in these appeals, hence they were heard together and a consolidated order is passed.

3. Identical grounds are raised in these appeals except for variance of figures, hence ground pertaining to asst. Year 2011-12 is reproduced.

1. General Ground

1.1. The learned Assistant Commissioner of Income Tax, Centralized Processing Cell - TDS, Ghaziabad ('AO') has erred in passing the intimation under section 154 read with section 200A of the Income Tax Act, 1961 ('the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals)-3 ('CIT(A)') has erred in confirming the said order. The said order being bad in law is liable to be quashed.

2. Grounds relating to demand raised under 154 read with section 200A

2.1. The learned AO has erred in determining Rs. 1,24,130 as the amount payable on account of short deduction of tax at source and interest on the same in respect of payments of salary, without considering the facts of the case and law applicable.
2.2. The learned AO has erred in not appreciating that the flat rate of tax at 20% on gross payment cannot be automatically applied in the case of deduction of tax at source under section 192 of the Act.
2.3. In any case and without prejudice, the exercise undertaken by the AO by adopting the rate of 20% under section 206AA and consequently raising the demand of tax in an intimation issued under section 200A is beyond the scope of the section 200A and hence bad in law and liable to be quashed.
2.4. The learned CIT(A) has erred in dismissing the appeal on the ground that the demand of Rs.

1,24,130/- has not been raised vide order under section 154 but vide order under section 200A of the Act.

2.5. The learned CIT(A) has erred in concluding that the applicability of provisions of section 206AA while processing the return under section 200A could not be examined in an appeal against intimation under section 154 as the impugned demand was raised only in the order under section 200A.

2.6. The learned CIT(A) has erred in not appreciating the fact that once an order of rectification is passed under section 154, the original order passed under section 200A itself is modified and what remains thereafter is, not the order of rectification, but the order under section 200A as rectified.

2.7. The learned CIT(A) has erred in not appreciating that even though demand was raised in intimation passed under section 200A, the same demand continued in the Intimation passed under 154 and hence the appellant had a legal right in filing an appeal against the said intimation.

2.8. The learned CIT(A) has erred in not appreciating that there is no restriction or prohibition in challenging the Intimation passed under section 154 without challenging the intimation passed under section 200A.

2.9. In any case and without prejudice, determination of short deduction of TDS without finding whether payee also has failed to pay the tax directly amounts to double recovery of tax, which is unsustainable and not permissible as per Explanation to section 191.

2.10. Assuming without admitting that the determination of short deduction of TDS is correct, the same cannot be recovered from the deductor since as per section 191 where income tax has not been deducted in accordance with the provisions of Chapter XVII B, income tax shall be payable by the assessee i.e., payee directly.

2.11. On facts and circumstances of the case and law applicable, short deduction of TDS amounting to Rs. 67,184 should be deleted.

Levy of Interest on short deduction

2.12 The learned CIT(A) erred in confirming the levy of interest on short deduction amounting to Rs. 56,950. On facts and circumstances of the case and law applicable, interest on short deduction is not leviable. The appellant denies its liability to pay interest on short deduction.

3. Prayer

3.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) and the intimation under section 154 read with section 200A passed by the AU be quashed Or in the alternative

a) Amount determined as tax short deducted of Rs.67,184 be deleted.
b) Interest levied under section 201(1A) amounting to Rs. 56,950 be deleted.
The appellant prays accordingly."

4. Brief facts of case are follows :-

Assessee is a company, engaged in business process management service. For asst. Years 2011-12 & 2012-13, assessee had paid salaries to certain employees and deducted tax at source (TDS) thereon at the rates in force as per sec.192 of the IT Act. The eTDS statement/return for quarters were filed as per section 200(3) of IT Act for asst. Year 2011-12 & 2012-13. Subsequently correction statements were filed to rectify the defaults existing in the statements. Thereafter, statements filed by assessee were processed by TRACES and intimation u/s 154 r.w.s 200A of

IT Act was received by assessee for asst. Year 2011-12 & 2012-13.

5. In the intimation for asst. Year 2011-12, the short tax deduction at source with respect to Form 24Q for 4th quarter of the Financial Year 2010-11 has been quantified at Rs.67,184/-. Interest on such short deduction of tax at source has been quantified at Rs.56,950/-. Thus, the net sum payable has been determined at Rs.1,24,130/- [i.e 67,184 + 56,950]. Similarly for asst. Years 2012-13, short tax deduction at source with respect to Form 24Q for 4th quarter of the Financial Year 2011-12 has been quantified at Rs.73,929/-. Interest on such short deduction of tax at source has been quantified at Rs.53,874/-. Thus, the net sum payable has been determined at Rs.1,27,800/- [i.e 73,929 53,874]. The assessee had downloaded and analysed the justification report of TRACES to ascertain the reasons for short TDS as mentioned u/s 200A of IT Act. In the intimation passed u/s 200A, TDS has been computed at flat rate of 20% as per sec. 206AA of the IT Act on entire salary on account of invalid PAN furnished by employees of the assessee. In other words, TDS is computed on entire taxable income of the employees without reducing the basic exemption limit available to individual assessee. However, the assessee had deducted tax at source at the rates in force on the total taxable income after reducing the basic exemption limits and paid such TDS. According to the assessee, the difference between tax deductible at source computed at 20% and the actual amount of tax deducted at

source has resulted in short deduction of tax at source as per intimation passed u/s 200A for asst. Year 2011-12 & 2012-13.

6. Aggrieved by intimation passed u/s 154 r.w.s 200A of IT Act for asst. Year 2011-12 & 2012-13, assessee preferred appeals before the 1st Appellate authority. Before the 1st Appellate authority, the assessee relied on the order of ITAT Vishakapatnam Bench [ITA No.115 to 117 (Vysag)/2015 dated 22-1-2016 for proportion that rate of tax on gross payment cannot be automatically applied in the case of deduction of TDS u/s 192 of the IT Act. Further it was contended that sec. 206AA is inapplicable to persons whose income is below taxable limit.

7. The CIT(A) however rejected the appeal of assessee without going into the merits. The CIT(A) was of view that assessee ought to have filed appeals against intimation u/s 200A of IT Act instead of intimation u/s 154 r.w.s 200A of the IT Act. The relevant finding of the CIT(A) read as follows:-

> *4.2 The submissions of the appellant have duly been considered. A perusal of the records as well as submissions of the appellant clearly shows that demand of Rs.1,24,130/- related to short deduction of tax and consequent interest in relation to the above referred two employees was raised by the AO while passing order under Section 200A of the Act and not through the order under Section 154 of the Act. Since no such demand of Rs 1,24,130/- has been raised in the order under Section 154 of the Act, so the relevant order*

which was required to be challenged in appeal for such demand was the order under Section 200A of the Act and not the order under Section 154 of the Act. Vide order under Section 154 of the Act the AO has only looked into the corrections filed by the appellant in its correction statement and no fresh demand related to short deduction of tax or consequential interest has been raised by the AO. This is not the claim of the appellant that in the correction statement it had corrected the PAN of the two employees and the same had not been accepted by the AO. Even during appellate proceedings the appellant has admitted that valid PANs of those two employees were not available with it. The appellant has contended that the demand as per provisions of Section 206AA could not have been raised by the AU while processing the return under Section 200A of the Act. However this argument is devoid of any merit as this issue could have been examined in an appeal against the order under Section 200A of the Act as the demand was raised vide that order and not vide the order under Section 154 of the Act passed by the AO in relation to the correction statement. Further it is also not the case of the appellant that the rectification order of denying the correction of a mistake apparent from record was passed by the AU in response to a rectification application filed by it wherein it had contested that raising such demand was a mistake apparent from record. So that aspect is also not required to be looked into. Since the demand of Rs 1,24,130/- has not been raised vide order under Section 154 of the Act, so the grounds of appeal of the appellant are dismissed."

8. Aggrieved by the orders of CIT(A) for asst. Year 2011-12 & 2-12-13, the assessee has filed these appeals before the ITAT. The ld AR relied on the grounds raised and prayed that Tribunal may remand the issue to CIT(A) with direction to

consider the assessee's case on merits. The ld DR strongly relied on orders of IT authorities.

9. We have heard rival submissions advanced by both sides and perused the material on record. We are in view that the CIT(A) has erred in dismissing the appeal solely for the reason that demand has been raised vide intimation u/s 200A of IT Act and assessee ought to have filed appeals against the same. Once an order of rectification is passed u/s 154 of IT Act, the original order passed u/s 200A itself is modified and what remain thereafter is, not the order of rectification, but the orders u/s 200A of the Act as rectified. Therefore though demand was raised in intimation passed u/s 200A of the IT Act, the same demand continued in the intimation passed u/s 154 of IT Act. Hence, we are of the view that assessee has a legal right in filing an appeal against the said intimation. Moreover, there is no restriction/prohibition in challenging the intimation passed u/s 154 of the IT Act without challenging the intimation passed u/s 200A of the IT Act. For the aforesaid reasons, we set aside the CIT(A) orders for 2011-12 & 2012-13 and remand the case to him. The CIT(A) is directed to pass orders on merits/grounds raised before him for asst. Years 2011-12 & 2-12-13. It is ordered accordingly.

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

Order pronounced in the open court on 11th Sept., 2020.

Sd/-	Sd/-
(B. R. BASKARAN)	**(GEORGE GEORGE K)**
Accountant Member	**Judicial Member**

Bangalore,
Dated, the 11th Sept., 2020.
Vms

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income-Tax Appellate Tribunal, Bangalore.

		Date	**Initial**	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	Yes		Sr.PS