IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.3209/Bang/2018
Assessment year : 2013-14

Shri. Anil Nagendra, C-1303, Mantri Greens, Sampige Road, Malleshwaram, Bengaluru – 560 003. **PAN : AAGPN 6294 H**	Vs.	Assistant Commissioner of Income Tax, Circle - 5(3)(1), HMT Bhavan, Bengaluru.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT

Date of hearing	:	17.06.2019
Date of Pronouncement	:	23.07.2019

O R D E R

Per Jason P. Boaz, Accountant Member:

This appeal by the assessee is directed against the order of CIT(A)-12, Bengaluru, dated 27.09.2018 for Assessment Year 2013-14.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, in the year under consideration is a salaried employee of Hewlett – Packard Globalsoft Pvt. Ltd. For Assessment Year 2013-14, the assessee filed a return of income on 23.07.2013 and then filed a revised return of income on 27.03.2015 declaring income of Rs.1,34,12,530/- under the heads

salary, income from house property, capital gains and interest income. The assessee had claimed tax relief of Rs.24,71,946/- under section 90 of the Income Tax Act (in short 'the Act') towards taxes paid in Malaysia. The return was processed under section 143(1) of the Act and the case was subsequently taken up for scrutiny for this Assessment Year. In the course of assessment proceedings, the assessee was asked to furnish the proof of payment of foreign taxes for which credit had been claimed in the return of income. In this regard, the assessee produced a copy of the return of income filed in Malaysia as evidence. The Assessing Officer (AO), however, rejected the said evidence filed for the following reasons:-

(i) There was no seal, signature, acknowledgment or any other evidence to prove that the return was actually filed before the Malaysian tax authorities;

(ii) The return form was in the format of the earlier year and no country would force an individual to file the return of income even before the forms are available.

In that view of the matter the AO completed the assessment under section 143(3) of the Act vide order dated 11.03.2016 accepting the returned income; but however did not grant the tax credit of Rs.24,71,946/- claimed by the assessee on the ground that the authenticity of the return of income filed in Malaysia was in doubt and there was no proof of payment of taxes in Malaysia as claimed.

2.2.1 Aggrieved by the order of assessment dated 11.03.2016 for Assessment Year 2013-14, the assessee preferred an appeal before the CIT(A)-12, Bangalore. Before the CIT(A), it was submitted by the assessee that he was on assignment in Malaysia till August 15, 2012. As it was mandatory in Malaysia to file the income-tax return, as the forms for 2012 were not available

at the time of departure from Malaysia, he had used the 2011 tax form for filing the return of income. It was submitted that the tax return filed in Malaysia is authentic and should be accepted.

2.2.2 In the course of proceedings before the CIT(A), the assessee filed additional evidences in the form of copies of final assessment order passed by the Malaysian Tax authorities for 2012 and letter issued by him employer giving details of taxes paid in the case of the assessee. It was submitted that the taxes shown as paid by the assessee in these documents match the claim made in the return of income and therefore these documents may be accepted as evidence of payment of taxes in Malaysia for granting of foreign tax credit claimed. The CIT(A), after obtaining the remand report of the AO in the matter, admitted the additional evidence, which has been extracted in the body of the CIT(A)'s order. In the said letter, the details of the tax payments have been given. The CIT(A) observed that out of MYR of 2,37,396.38/- only MYR 1,20,522/- represents withholding tax and the balance was paid by the employer. The CIT(A) held that the assessee is eligible for credit of foreign taxes equivalent to MSR 1,20,522 only; being the taxes withheld at source. The appeal was accordingly disposed by the CIT(A), vide the impugned order dated 27.09.2018, allowing the assessee partial relief.

3.1 Aggrieved by the order of CIT(A)-12, Bangalore, dated 27.09.2018 for Assessment Year 2009-10, the assessee has preferred this appeal before the Tribunal, wherein he has raised the following grounds:-

1. *That, based on the facts and circumstance of the case. the learned Commissioner of Income Tax Appeals -12 (Learned CIT (A)") has erred in partially disallowing the credit claimed in the return of income filed for the year to the extent of [NR 12,16.981 for taxes paid in Malaysia.*

2. *That the CIT (A) has erred in providing a credit only for the taxes deducted at source without appreciating that credit for overseas taxes paid is available for the actual amount of taxes paid directly or by deduction at source.*
3. *That, the CIT (A) has erred taking cognizance of Article 24 of the India-Malaysia Double Taxation Avoidance Agreement (the tax treaty) which provides for credit for taxes paid in Malaysia whether directly or by deduction at source.*
4. *That, the learned CIT(A) has erred in disallowing the foreign tax credit towards taxes paid by employer on behalf of the assessee without providing opportunity to the assesse in terms of explanation to section 251 (2)of the Income tax Act 1961 to enable the appellant to provide explanation in connection with the matter arised out of appeal proceedings.*

3.2 In these grounds (supra), the assessee contends that the CIT(A) has disallowed a part of the foreign tax credit without assigning any reasons and without affording any opportunity to the assessee to put forward his explanation in the matter. It was submitted by the learned DR that as per the DTAA between India and Malaysia, the assessee is entitled to full tax credit for the amount of tax paid in Malaysia, whether directly or by deduction at source and if the CIT(A) had afforded the assessee an opportunity, the assessee would have explained the correct position to the CIT(A).

3.3 Per contra, the learned DR for Revenue submitted a copy of the India – Malaysia DTAA and pointed out that credit for taxes paid directly or by deduction at source only can be allowed. It is contended that since a part of the taxes were paid by the employer of the assessee in the case on hand, the CIT(A) has rightly disallowed the same.

3.4.1 We have considered the rival contentions and perused the material on record; including the documents placed in the paper book (pages 1 to 464), the relevant Articles of the India – Malaysia DTAA. The assessee had claimed foreign tax credit of MYR 237,396.38 equivalent to Rs.24,71,946/- in the return

of income. This amount of MYR 327,396.38 is shown as taxes paid in the documents filed before the CIT(A), which have been admitted and accepted as evidence by the CIT(A). However, the CIT(A) allowed foreign tax credit for MYR 120,522, being the tax withheld at source, but did not allow the credit for taxes paid directly by the employer; details of which are available in the same documents relied upon by the CIT(A). It is seen that there is absolutely no discussion whatsoever in the impugned order of the CIT(A) as to why the balance amounts of foreign taxes paid should not be given any credit.

3.4.2 The contention of the learned DR for Revenue that the India – Malaysia DTAA allows credit only for taxes paid directly by the employee and not taxes paid by the employer is a mere conjecture neither arising out of the impugned order of the CIT(A) nor out of the plain and simple language of the provisions of India – Malaysia DTAA. In these circumstances, as discussed above, we are of the considered opinion that the CIT(A) ought to have afforded an opportunity to the assessee to show cause as to why the taxes paid by the employer of the assessee should not be given credit and also should have rendered a speaking order for holding that credit is not to be allowed for taxes paid by the employer for the employee / assessee in the case on hand. In our view, failure on the part of the CIT(A) to perform / carry out both these actions (supra), has rendered the impugned order of the CIT(A) to be infirm. In view of the above factual matrix of the case, we deem it appropriate to remand the matter back to the file of the CIT(A) for fresh consideration and adjudication keeping in mind our above observations. Needless to add, the CIT(A) shall afford the assessee adequate opportunity of being heard and put forth submissions in the matter which shall be duly considered before deciding this issue. We hold and direct accordingly.

4. In the result, the assessee's appeals for Assessment Year 2013-14 is treated as allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of July, 2019.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	**(JASON P BOAZ)**
Judicial Member	**Accountant Member**

Bangalore.
Dated: 23rd July, 2019.
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Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.