

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C(SMC)", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.20/Ko1/2022
Assessment Year: 2016-17**

SMITA DEY 4B, Baishnab Ghata Road, Kolkata - 700047. PAN: AZRPD 4069 L (Appellant)	Vs.	DCIT, CPC, Bengaluru (Respondent)
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Present for:

Appellant by : Shri Anil Kochar, Advocate &
Shri Aryan Kochar, Advocate
Respondent by : Shri Biswanath Das, ACIT

Date of Hearing : 19.05.2022
Date of Pronouncement : 06.06.2022

ORDER

PER SONJOY SARMA, JM:

The present appeal has been preferred by the assessee against the order dated 30.09.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

- "i. That the Ld. CIT(A) erred in confirming the action of Ld. Asstt. Commissioner (CPC) in not allowing tax deducted at source of Rs. 4,52,314/- deducted on salary received as an employee of M/s. Genpact Mobility Services (P) Ltd. and deputed to Switzerland during the work period commencing from 25.05.2015 to 31.08.2015 in the intimation dated 12.11.2016 under section 143(1) of I.T. Act, 1961.*
- ii. That Ld. CIT(A) NFAC has erred in law as well as in fact in not allowing relief u/s 90/91 of IT Act, 1961 for TDS deducted at Rs. 4,52,314/- towards foreign salary income received in Switzerland.*
- iii. That Ld. CIT(A) NFAC has failed to appreciate that the receipt of foreign salary has already been shown under salary income in original return and that as per the*

principal of natural law and justice the same income cannot be subjected to tax twice i.e. in India as well as in Switzerland.

iv. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.”

2. The registry has informed that the present appeal is time barred by 44 days. The ld. counsel for the assessee prayed for condoning the delay by submitting an application placed on record. We after perusing the same find that the delay was due to ill health of the appellant and pandemic situation remained that point of time. Accordingly the delay in filing the appeal, there is sufficient reason and technicality should not be allowed to prevail over substantial justice. In view of this facts and circumstances, we are inclined to condone the delay in filing the appeal and admit the appeal for adjudication.

3. The brief fact of the case is that the assessee filed her original return of income for AY 2016-17 belatedly in ITR-1 on 08.08.2016 u/s 139(4) declaring a total income of Rs. 24,34,210/-. The due date of filing of return u/s 139(1) was on 05.08.2016. The return of the assessee was processed by the CPC u/s 143(1) on 12.11.2016 by raising demand of Rs. 4,99,498/-. This was happened due to non-consideration of relief u/s 89 of the Income Tax Act amounting to Rs. 4,42,314/- as claimed in the original ITR filed in ITR-1. Immediately after the same, assessee filed a revised return u/s 139(5) on 04.01.2017 in ITR-2 in which the relief was correctly mentioned u/s 90. The revised return of the assessee yet to be processed and it is still pending for disposal.

4. Aggrieved by the intimation order passed u/s 143(1) of the Income Tax Act on 12.01.2016, the assessee has preferred the appeal before the Ld. CIT(A) which was subsequently dismissed by National Faceless Appeal Centre on 30.09.2021.

5. Aggrieved by the said order dated 30.09.2021, the assessee is in appeal before us.

6. The ld. AR submitted that original return filed on 08.08.2016 wherein relief in respect of taxes paid outside India amounting to Rs. 4,42,314/- was claimed

inadvertently u/s 89(1) as a result demand of Rs. 4,99,948/- was raised for the relevant assessment year. The assessee had received onsite allowance during her stay at Switzerland on 25th May, 2015 to 31st August, 2015 on which taxes have been withheld. The ld. AR in support of his contention submitted copies of salary slips for the month of June, 2015, July, 2015, August, 2015 and September, 2015. He further submitted that the appellant cannot be denied relief u/s 90 merely because of the clerical mistake made by the assessee at the time of filing the original return in ITR-1 in which relief u/s 90 of the Act was claimed inadvertently u/s 89 of the Act, as there is no provision of claiming relief u/s 90 of the Act in ITR-1 since the original return of income was filed belatedly, the assessee may be given an opportunity to rectify the mistake and claimed the relief u/s 90 in her revised return filed on 04.01.2017. The ld. AR in support of his claim submitting copy of Form No. 16, copy of rectification petition filed u/s 154 of the Act, copy of revised return filed, copy of original return, payout details for the month of June, July & August, 2015, intimation u/s 143(1) of the Act, pay slip from April, 2015 to March, 2016.

7. On the other hand, ld. DR appearing on behalf of the revenue relied on the orders of the National Faceless Appeal Centre.

8. After hearing rival submission and on careful perusal of material available on record. The assessee filed her original return of income in Form ITR-1 wherein the relief u/s 90 of the Act was claimed inadvertently u/s 89 of the Act. Since there is no provision of claiming relief u/s 90 of the Act in ITR-1 and the original return was filed belatedly. After realizing the fact, the assessee filed a revised return u/s 139(5) of the Act on 04.01.2017 in which relief was correctly mentioned u/s 90 of the Act in the relevant schedule of the Income Tax Form in ITR-2 may be considered.

9. We, therefore, under the given facts and circumstances of the case are of the considered view that since the assessee due to inadvertent mistake cannot able to claim relief u/s 90 of the Income Tax Act for the relevant assessment year as the original return was filed in ITR-1 where assessee claimed relief u/s 89 of the Act. Subsequently,

assessee filed her revised return of income on 04.01.2017 claimed relief u/s 90 of the Income Tax Act which has not yet been processed. As such we in the interest of justice set aside the impugned order passed by the ld. CIT(A) and remit it back to the file of ld. AO for deciding the issue raised before us by way of a speaking order. We also direct the assessee remain vigilant in receiving the notices of hearing before the AO and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate the AO for passing the speaking order. Needless to mention that the assessee should be given proper opportunity of being heard.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 06.06.2022.

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

**Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 06.06.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Smita Dey
2. The Respondent: DCIT, CPC, Bengaluru.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata