

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" A BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**And**

**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1826/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2014-2015

Virmati Software and Telecommunication Ltd., No.9, Garden View Corporates, Opp. Auda Garden, Sindhu Bhavan Road, Near Global Hospital, Bodakdev, Ahmedabad-380054.  <b>PAN: AAACV6480G</b>	Vs.	The D.C.I.T., Circle-4(1)(2) Ahmedabad.
--	-----	---

<b>(Applicant)</b>		<b>(Respondent)</b>
--------------------	--	---------------------

Assessee by :	Shri Parin Shah, A.R
Revenue by :	Shri Ravindra, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **24/06/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **20/07/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeal)8, Ahmedabad, dated 23/09/2019 arising in the matter of Assessment Order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The assessee has raised following grounds of appeal:

1. *The Learned CIT(A) has grossly erred in law and on facts of the case in confirming the action of Id. AO in not granting Foreign Tax Credit of Rs.4,22,679/- as claimed by the Appellant u/s 91 of the Act.*

2. *The Ld. CIT(A) has erred in following the order his predecessor for A.Y. 2012-13 and not considering the submission made by the appellant.*

3. *The Ld. CIT(A) ought to have granted deduction of un allowed Foreign Tax Credit of Rs. 4,22,679/- u/s 37 of the IT Act, 1961.*

4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C of the Act.*

*The appellant craves leave to add, amend, alter, edit, delete modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The only issue raised by the assessee is that the learned CIT-A erred in disallowing the claim of the assessee for foreign tax credit of Rs. 4,22,679/- under the provisions of section 91 of the Act.

4. The assessee has shown income of Rs. 60,37,625/- from the foreign parties based in Afghanistan for the software services rendered to them. These foreign parties deducted TDS for Rs. 4,22,679 being 7% of the income received by the assessee. Accordingly, the assessee claimed that it has paid the taxes on the foreign income at the rate of 7% whereas the rate of income tax in India is 30.90% on the income. As per the assessee, it is entitled for the relief under section 91 of the Act, with respect to doubly taxed income for the entire amount of TDS deducted in the foreign country being lower rate of tax in the said country.

4.1 The assessee also submitted that provisions of section 91 of the Act have referred the income and not overseas net profit, net income or proportionate income. Therefore the rate of tax in the foreign country should be worked out after considering the gross receipts and the amount of TDS deducted which comes out at 7% which is lower than the rate of tax in India. Accordingly the assessee claimed the foreign tax credit of Rs. 4,22,679/- under section 91 of the Act.

5. However, the AO disagreed with the contention of the assessee by observing that the tax in the foreign country cannot be applied to the amount of gross receipts. As such, the amount of income which is getting tax twice should be worked out for determining the rate of tax in the foreign country and the same needs to be compared with the rate of tax in India. Accordingly, the AO held that the expenses incurred by the assessee against the gross income from foreign countries needs to be adjusted for determining the rate of tax in the foreign country. But the assessee has not furnished the detailed computation of allowable tax credit of foreign countries. Thus the AO disallowed the same.

6. On appeal learned CIT (A) upheld the finding of the AO

7. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

8. The learned AR for the assessee before us contended that the issue is covered in favour of the assessee in its own case.

9. On the contrary, learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we find that the issue has been dealt by this tribunal in own case of the assessee for immediate previous assessment year i.e. A.Y. 2012-13 in ITA No. 1135/Ahd/2017 where the coordinate bench of this tribunal vide order dated 05-03-2020 decided the issue partly in favour of the assessee by observing as under:

*15. We have heard the rival contentions of both the parties and perused the materials available on record before us. The assessee in the present case has earned income from the foreign country namely Afghanistan on which the TDS was deducted by the foreign parties. The assessee accordingly claimed that it has paid taxes in the foreign country at the rate of 7% which is less than the rate of tax in India. Thus the assessee claimed that it is eligible*

for the tax relief under section 91 of the Act with respect to the entire amount of TDS deducted by the foreign parties. However, the AO disagreed with the contention of the assessee by observing that the rate of tax can be worked out against the net receipts of the income and not based on gross receipts as claimed by the assessee. Accordingly, the AO worked out the proportionate amount of tax with respect to foreign income amounting to Rs. 1,28,928 which is eligible for tax relief under section 91 of the Act. The view taken by the AO was subsequently confirmed by the learned CIT (A).

15.1 The controversy before us arises in the given facts and circumstances whether rate of tax in foreign country needs to be determined after considering the gross receipts or the net receipts/profit embedded in such gross receipts. To our mind the explanation (iii) to section 91 of the Act provides mechanism for determining the rate of tax in the foreign country. It requires that the income tax/super tax actually paid in the foreign country as per the laws prevailing therein and dividing the same by the whole amount of income as assessed in the foreign country. The relevant extract of the clause (iii) to explanation of section 91 of the Act reads as under:

Explanation.—In this section,—

- (i) \*\*\*\*\*
- (ii) \*\*\*\*\*
- (iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country

15.2 From the above, it is revealed that the amount of tax/super tax needs to be divided by the whole amount of income to work out the rate of tax. The word used whole amount of income denotes the income which signifies after the expenses. The word gross receipts have not been used therein. Even under the normal parlance, the income denotes only to the net profit i.e. gross receipts minus the expenses. Thus in our considered view, it is the only profit which should be considered while determining the rate of tax in the foreign country and the same needs to be compared with the rate of tax in India.

15.3 In the case on hand, we also note that the assessee has not given any working about the expenses incurred in the foreign country against the gross receipts. Thus in the absence of sufficient details, the AO had no alternate except to work out the proportionate amount of income eligible for relief under section 91 of the Act. Accordingly we do not find any infirmity in the order of the authorities below.

15.4 However Before parting, we note that there is force in the alternate argument of the learned AR for the assessee claiming for the deduction of the taxes paid in the foreign country as expenditure under section 37(1) of the Act. The amount of tax paid in a foreign country which is not eligible for benefit under section 91 of the Act, is expenditure eligible for deduction under section 37(1) of the Act. It is because such tax was paid in the course of the business and the corresponding business receipts were made to tax in India. In holding so we draw support and guidance from the judgment of Hon'ble Bombay High Court in the case of Reliance Infra Structure Ltd. vs. CIT reported in 390 ITR 271 wherein it was held as under:

Therefore, to the extent the payment of tax in Saudi Arabia on income which has arisen/accrued in India has to be considered in the nature of expenditure incurred or arisen to earn income and not hit by the provisions of Section 40(a)(ii) of the Act. In view of the above we hold that the assessee is eligible for deduction for the amount of foreign tax credit which was not allowed as tax relief under section 91 of the Act. Hence the ground of appeal of the assessee is partly allowed.

10.1 Before us, no material has been placed on record to demonstrate that the decision of Tribunal as discussed above has been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of earlier years nor has placed any contrary binding decision in its support. Thus, respectfully following the order this tribunal in own case of assessee we hold that the foreign tax credit to the extent not allowed under section 91 of the Act will be eligible for deduction under section 37 of the Act as business expense. Thus, the ground of appeal raised by the assessee is hereby partly allowed.

11. In the result the appeal filed by the assessee is **partly allowed**.

**Order pronounced in the Court on 20/07/2022 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
20/07/2022  
*Manish*