

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.609/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2018-19)

Shri Govindarajan Roopkumar 41, Tiruvalluar Street, Chelliamman Nagar, Ambattur, Chennai – 600 058.	बनाम/ Vs.	ADIT, CPC, Bengaluru.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AJHPR-1842-B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri V. Balaji (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri Ravindra T. Mishra (JCIT)-Ld. DR
सुनवाई की तारीख/Date of Hearing	:	19-07-2022
घोषणा की तारीख /Date of Pronouncement	:	19-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 28-10-2021 in the matter of an intimation issued by Centralized Processing Center (CPC), Bengaluru u/s. 143(1) of the Act. The grounds taken by the assessee read as under:

Ground No. 1: Non grant of Foreign Tax Credit ('FTC') of Rs. 12,03,837

On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the action of the Ld. Assessing Officer, CPC (Ld. AO) of making the adjustment in the Intimation under Section 143(1) of the Act of not allowing Foreign Tax Credit ('FTC') of Rs. 12,03,837 allowable as per Section 90 of the Income-tax Act, 1961 ('Act') read with Article 22(3) of the India- South Africa Double Taxation Avoidance Agreement ('DTAA'),

It is prayed that the Ld Assessing Officer be directed to grant the FTC of Rs. 12,03,837.

Ground No. 2: Non-grant of FTC is not a permissible adjustment under Section 143(1) of the Act

On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have held that the non-grant of FTC of Rs. 12,03,837 is not a permissible adjustment under Section 143(1) of the Act.

It is prayed that the Ld. Assessing Officer be directed to allow the FTC of Rs. 12,03,837.

The Appellant craves leave to add, amend, alter, substitute, withdraw all or any of the above Grounds of Appeal anytime either before or during the hearing of the Appeal.

The Ld. AR, drawing attention to the factual matrix, relied on the decision of SMC bench of Bangalore Tribunal in **Ms. Brinda Rama Krishna V/s ITO (ITA No.454/Bang/2021 order dated 17.11.2021)**.

The Ld. Sr. DR submitted that tax credit could not be allowed since the same was not paid by the assessee. The Ld. Sr. DR also submitted that the assessee did not file mandatory Form 67 as required in this regard. Having heard rival submissions, the appeal is disposed-off as under.

2. The material facts are that in an intimation issued u/s 143(1) against revised return filed by the assessee on 30.03.2019, the income of the assessee was determined at Rs.56.40 Lacs and a demand of Rs.6.80 Lacs was created against the assessee. The same stem from the fact that the assessee claimed Relief u/s 90 / 90A for Rs.12.03 Lacs which was denied by CPC. The same represent foreign tax credit (FTC) as claimed by the assessee u/s 90 r.w. Article 22(a) of the India-

South Africa Double Taxation Avoidance [DTAA]. Aggrieved, the assessee preferred further appeal against the same.

3. During appellate proceedings, it transpired that the assessee was employed with Shell India Markets Pvt. Ltd. [SIMPL]. The assessee went on a short-term international assignment to South Africa from 03-10-2017 to 14-04-2018. Thus the assessee was Resident and Ordinarily Resident (ROR) and continued to be on the payroll of SIMPL. M/s SIMPL issued Form-16 for the entire period which include salary for services rendered in India as well as services rendered outside India. Since assessee was ROR in India, its global income was taxable in India. For service rendered in South-Africa, tax was paid in South Africa, the credit of which was claimed by the assessee u/s 90 and in terms of applicable DTAA. The total income was computed by assessee as under:

Particulars	Amount (Rs.)
Salary for period 01 April 2017 to 02 October 2017 derived (accrued) in India and received in India	} 42,32,843
Salary for period 03 October 2017 to 31 March 2018 derived (accrued) in South Africa but received in India	
Perquisite as per Form 16	5,16,567
Perquisite outside India (i.e., taxes paid in SA)	12,03,837
Gross Salary as per computation	59,53,247
Less: Professional Tax	(2,190)
Taxable salary as per ROI	59,51,057
Loss from house property	(1,65,602)
Income from other sources	13,921
Gross Total Income	57,93,376
Less: Chapter VIA deduction	(1,58,575)
Taxable Income (Rounded off) as per ROI	56,40,800

Though, the same income was computed by CPC, the credit of FTC was denied to the assessee.

4. After considering assessee's submissions, the Ld. CIT(A) adjudicated the issue as under: -

5.1. Brief facts of the case are that the appellant was under employment in South Africa during the period from 03.10.2017 to 31.03.2018. He was a resident and ordinarily resident in India during the period and had received salary income both in India as well in South Africa during this period. The income received in South Africa was also subject to tax in South Africa. As the appellant was ROR during the relevant year, his global income was taxable in India. In his return, appellant claimed foreign tax credit in respect of the tax paid in South Africa, on the income earned in South Africa in terms of Section 90/90A of the IT. Act and Indo- South Africa DTAA, as such income has also been included in the Global income taxed in India. CPC in the Intimation u/s 143(1) of the IT. Act did not allow the Foreign Tax Credit claimed by the appellant. Aggrieved, the appellant filed the present appeal. Hence, the only relevant issue for adjudication is claim of Foreign Tax Credit in respect of tax paid by the appellant in South Africa on the income earned in that country.

5.2. The written submission filed by the appellant was carefully considered. It is pertinent to note that in the Form 16 issued by the Indian employer of the appellant, no amount was shown payable or refundable. The foreign employer has paid tax on behalf of the appellant. Though the appellant had filed an original return initially, subsequently on 29.03.2019, he filed a Form 67 for claiming Foreign Tax Credit. He also filed revised Income Tax Return. The Foreign Tax Paid by his employer was added by him as his perquisite. In this revised return, the income was revised upwards and the Foreign Tax Credit was also claimed with resultant claim of refund. CPC has not allowed the Foreign Tax Credit or Refund. Rather, it has created demand, on account of the increase in the income in the revised return.

5.3. The claim of the appellant was duly considered in the light of the documents submitted and the same is not found correct. Firstly, the foreign tax has not been paid by the appellant, but by his foreign employer. Hence, the appellant is not eligible for claiming the credit of the tax paid by his employer, by way of treating the same as perquisite. Further, the Form 67 was required to be filed before the due date of filing of Income Tax Return u/s 139 (1) of the IT. Act. In this case the same has been filed belatedly. Hence, the claim for Foreign Tax Credit is not allowed.

5.4. However, it appears that the appellant has filed such claim for foreign tax credit as well as the revised return due to misconception. While giving effect to this order, the Assessing Officer should re-compute the correct income on the basis of original return as well as computation of income filed, charge correct amount of tax and give credit for prepaid taxes.

6. In effect, the appeal is Partly Allowed.

The Ld. CIT(A) denied the credit on the ground that the tax was not paid by the assessee and secondly Form 67 was filed belatedly. Aggrieved, the assessee is in further appeal before us.

5. We find that the CPC has accepted the revised income of Rs.56.40 Lacs as filed by the assessee. The only dispute is with respect to FTC. The Ld. CIT(A) has noted that FTC has not been paid by the assessee but by his employer and therefore, no credit of the same could be granted to the assessee. However, we find that FTC has been offered by the assessee as perquisites in the gross total income and taxes have been paid thereon. Once this income has been offered to tax, the corresponding credit of the same would be available to the assessee. It could be seen in another perspective. Even if it is assumed that the assessee has not paid these taxes (as pleaded by Ld. Sr. DR) then it could be viewed as excess salary received by the assessee which was not received but retained by the foreign employer for payment of foreign taxes. Therefore, once the payment has been included by the assessee in the income and taxes have been paid thereon, then this credit would certainly be available to the assessee. We order so.

6. So far as filing of Form 67 is concerned, the same has been held to be mere directory requirement by SMC bench of Bangalore Tribunal in the cited decision as under: -

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard.

This decision has been followed by co-ordinate bench of Bangalore Tribunal in **M/s 42 Hertz Software India Pvt. Ltd. V/s ACIT (ITA No.29/Bang/2021 order dated 07.03.2022)**. We also concur with the same.

7. It is the finding of Ld. CIT(A) that the assessee has already filed Form No.67 although belatedly. Therefore, we direct Ld. CIT(A) to verify the form and allow tax credit to the assessee, if found in order. Ground No.1 stand allowed which make Ground No.2 infructuous.

8. The appeal stand partly allowed in terms of our above order.

Order pronounced on 19th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 19-07-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF