

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.817/Mum/2022
(Assessment Year : 2019-20)**

Shri Samir Subhas Mogul 201, Glenridge 16 Ridge Road Malabar Hill Mumbai – 400 006	Vs.	Income Tax Officer 16(3)(1) Aayakar Bhavan M.K.Road Mumbai - 400020
PAN/GIR No.AADPM9175F		
(Appellant)	..	(Respondent)

Assessee by	Shri Jitendra Patel
Revenue by	Shri Rajiv Singh
Date of Hearing	25/07/2022
Date of Pronouncement	25/07/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.817/Mum/2022 for A.Y.2019-20 arises out of the order by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) in appeal No. NFAC/2018-19/10013393 dated 25/03/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 17/03/2021 by the Id. Asst. Director of Income Tax, CPC, Bangaluru (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal:-

1. The learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal as infructuous failing to appreciate that the Intimation issued under section 143(1) of the Income-tax Act, 1961 and the rectification order passed under section 154 of the Income-tax Act, 1961 are independent of each other and the redresal by way of rectification application and appeal are mutually exclusive.

2. The learned Commissioner of Income Tax (Appeals) erred in not appreciating that relief claimed in appeal against Intimation under section 143(1) of the Income-tax Act, 1961 viz., grant of foreign tax credit has not been allowed in the order under section 154 of the Income-tax Act, 1961 and hence appeal against Intimation under section 143(1) of the Income-tax Act, 1961 required adjudication.

3. The learned Commissioner of Income Tax (Appeals) erred in not granting credit for Rs.31,097 claimed by the appellant as foreign tax relief under section 90 of the Income-tax Act, 1961 in his Return of Income.

4. The appellant craves leave to add, alter, amplify, modify and vary the above grounds of appeal.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2019-20 on 21/03/2020 declaring total income of Rs.11,38,920/-. This return was duly processed u/s.143(1) of the Act and intimation was issued to the assessee considering the total income at Rs.11,38,920/-. In the said intimation, the CPC Bangalore did not grant foreign tax credit u/s. 90 / 90A of the Act in the sum of Rs.31,097/- and correspondingly, reduced the refund due to the assessee. The assessee filed an appeal against the intimation u/s.143(1) before the Id. CIT(A). The assessee also filed rectification petition before the CPC which was disposed of vide order u/s.154 dated 24/05/2021. We find that the NFAC, Delhi had observed that the case was initially processed u/s.143(1) vide order dated 17/03/2021 and subsequently, the same was rectified u/s.154

of the Act on 24/05/2021. Since the order u/s.154 of the Act has been passed by the Id. AO, the intimation u/s.143(1) of the Act got subsumed and merged in the order u/s.154 of the Act. Accordingly, the NFAC dismissed the appeal of the assessee as 'infructuous'.

3.1. We are not in agreement with the order of the NFAC, Delhi in the instant case as admittedly the assessee has claimed foreign tax credit of Rs.31,097/- in accordance with provisions of Section 90 / 90A of the Act. The credit for the same was denied to the assessee in the intimation u/s.143(1) of the Act without any reason. The Id. CIT(A) atleast ought to have looked into the same and decide the issue which was not done in the instant case. Ultimately, we find that this is a matter requiring factual verification and accordingly, we deem it fit and appropriate to set aside this issue to the file of the Id. AO to grant foreign tax credit after due verification in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 25/07/2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/07/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai