

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 3180/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2019-20)

Nishank Dhiren Vora 403/404 Vaibhav Residency Plot No.NDR 22, Opposite ICICI Bank Tilak Nagar, Chembur, Mumbai-400089	बनाम/ Vs.	Assessing Officer Mumbai. 408, Piramal Chambers, Lalbaug, Parel , Mumbai-400012
स्थायीलेखासं ./जीआइआरसं ./PAN No. AGTPV4651R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Bhupendra shah
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Minal Kamble- Sr.DR
सुनवाईकीतारीख/ Date of Hearing	:	31.01.2023
घोषणाकीतारीख / Date of Pronouncement	:	31.01.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 25.11.2022, passed by National Faceless Appeal Centre (NFAC), Delhi for AY 2019-20 u/s 143(1). The assessee has raised the following grounds of appeal:-

- 1. On the facts and in the circumstances of the case and in law, the Assessing Officer, CPC as per the Order passed u/s.143(1) of the Act has failed to provide the Appellant the relief of tax of Rs.1,36,850/- w/s. 90 of the Act claimed in the Return of Income.*
- 2. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeal), NFAC has also erred in confirming the wrong non allowance of relief of Rs 1,36,850/- claimed u/s.90 of the Act relating to Foreign Tax credit.*

2. The briefs facts are that, the Assessee is an individual and has been regularly assessed to tax in India. The Assessee was in employment with “Nelsen (India) Pvt. Ltd. Mumbai. And during the relevant previous year he joined the services of “Nielsen MMRDA (Myanmar)” Company Ltd. and left India in November, 2018. However, his status continued to be ‘resident’ and consequently his global income was liable to be taxed in India.

3. The Assessee in the return of income had shown salary from Myanmar Company at Rs.15,79,744/- and salary from Indian Company at Rs. 13,52,670/-. In the computation of Income Assessee has claimed double taxation relief u/s 90 of Act, to the

tune of Rs.1,36,850/-. However, in the intimation u/s 143(1), the double taxation relief of Rs. 1,36,850/- was not given an Assessee and was require to pay tax of Rs. 1,36,850/- and interest of Rs. 42,229/-. It is an undisputed fact that as per Article 23 of DTAA with Myanmar, Assessee was entitled to double taxation relief in accordance with section 90 of Act. The Assessee also was filed rectification application u/s 154 along with the form No.67 to the CPC, which was part of the record, however, again CPC without any reason has not rectified the same or given relief.

4. The Ld. CIT (A), has dismissed the Assessee's Appeal on the ground that the appeal has been filed against intimation u/s 143(1), dated 08.03.2021 from disallowance or relief claimed u/s 90. However, CPC Bangalore has passed order u/s 154 confirming the said disallowance and therefore, intimation u/s 14(1) has been merged with order section u/s 154 and therefore, appeal is not maintainable, as Assessee should have preferred appeal against rectification order u/s 154.

5. After hearing both the parties, we find that first of all is not dispute that Assessee has shown salary income earned from

Myanmar in the return of income filed in India. He has also paid taxes on such salary income in Myanmar and has claimed double taxation relief in terms of Article 23 DTAA, which is allowable u/s 90 of the Act. This is also clear from the Form No. 67 filed by the Assessee along with the return of income. Without any reason, no relief has been given u/s 90 in the intimation u/s 143(1). But once this matter was brought to the notice of CPC in rectification application u/s 154, the CPC in the same mechanical manner and without any reason, has denied any relief and demand has been created.

6. Now, the Ld. CIT (A) without even examining the issue, has out rightly dismissed the appeal on a technical ground holding that appeal should have been filed against order u/s 154 passed by CPC Bangalore. We are unable to appreciate the view taken by the Ld. CIT (A), (NFAC). Once the Assessee has challenged the non grant of relief which is otherwise allowable under the Act and is leading to double taxation in the intimation issued 143(1), which was an error, then assessee has filed rectification application u/s 154 before the CPC, but we find that CPC Bangalore without any reason has simply reiterated the same computation without even considering

the relief sought as per law, which was made under the original intimation u/s 143(1). Neither any show cause has been issued before rejecting the application nor have any reasons been given. The Assessee is of course is aggrieved by the adjustments made in intimation u/s 143(1), and assessee can either directly come in first appeal or file rectification application u/s 154 before the AO. If assessee's grievance is not addressed, he can file appeal independently against intimation u/s 143(1), which is permissible under law and Ld. CIT (A) cannot dismiss the appeal on the ground that has been filed against wrong section, at least some show cause notice should have been issued to the assessee as to why the appeal is not maintainable or appeal is not in time. Such a mechanical dismissal by the Ld. CIT (A) cannot be upheld, especially when there is blatant injustice to the assessee by the CPC system.

7. First of all, the Assessee is aggrieved by the disallowance of relief claimed u/s 90 made in intimation 143(1) and once the Assessee has filed an appeal against intimation 143(1), Ld. CIT (A) was bound to decide the issue. Rectification filed u/s 154 was separate proceedings and even otherwise also no reason has been given in the order u/s 154 by the CPC. Now for such a small relief,

which otherwise Assessee is entitled under the Act, has to undergo so much of appellate proceedings, which is allowable on the face of the record and none of the authorities, that is, twice CPC Bangalore and then Ld. CIT (A) (NFAC) have even bothered to see the records, leading to undue hardship to the tax payer. If the Assessee is aggrieved by the original intimation of order and has filed the appeal and also filed rectification u/s 154 with the belief that matter would be resolved at the stage of CPC only, Ld. CIT (A) should not have simply dismissed the appeal on technical ground of non maintainability which otherwise also not correct view.

8. Accordingly, we direct the Assessing Officer to allow the double taxation relief of Rs.1,36,850/- and consequently, the demand for payment of tax is deleted.

9. **In the Result, appeal of the Assessee is allowed.**

Orders pronounced in the open court on 31st January, 2023.

Sd/-
(S Rifaur Rahman)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 31.01.2023

Mrs. Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**