

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री राजेश कुमार, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

I.T.A. No.: 3/KOL/2023

Assessment Year: 2017-18

Mahua Bagchi.....Appellant
[PAN: ADXPB 7901 P]

Vs.

ACIT, Circle-61, Kolkata.....Respondent

Appearances by:

Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : July 5th, 2023

Date of pronouncing the order : July 19th, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] for the Assessment Year (in short 'AY') 2017-18.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the order passed by the Assessing Officer (in short ld. 'AO') u/s 154 r.w.s. 143(3) of the Income Tax Act, 1961 (in short the 'Act') wherein the claim of foreign tax relief amounting to Rs. 17,72,470/- was not allowed which was claimed u/s 90/90A of the Act.

3. Brief facts of the case are that the assessee is an employee of Cognizant Technology Solutions India Pvt. Ltd. since 1999 and was transferred to UK in May, 2008 and worked in UK till September, 2020. Thereafter the assessee was again transferred to India. The assessee got benefits from the employer in the form of equity shares granted to her under Employee Stock Option Plan (in short 'ESOP') and restricted stock. These stocks got vested over a period of four years if the assessee worked for the said employer company under ESOP. The profit which goes to the assessee would be determined on the basis of grant price of \$19.66 and the sale price. Accordingly, the tax was deducted in UK amounting to Rs. 17,72,470/- which was claimed by the assessee as foreign tax u/s 90 of the Act. However, Form-67 as required to be filed on or before filing the return of income u/s 139(1) of the Act was not filed. The assessee filed the return of income after the due date and also filed Form-67 with the delay of two and a half years from the date of filing return. The AO CPC passed the order u/s 143(1) of the Act dated 28.03.2019 and the claim was allowed in respect of foreign tax. However, when the assessee filed the form 67 in respect of foreign tax deducted, the AO by passing order u/s 154 of the Act

withdrew the foreign tax credit of Rs. 17,72,470/- on the ground that the assessee has filed Form-67 two and a half years after the due date of filing the return.

4. Ld. CIT(A) also dismissed the appeal of the assessee of the assessee upholding the order of AO on the ground that form 67 was not filed in term of provisions of Rule 128 of Income Tax Rules, 1962 on or before the due date of return of income u/s 139(10) of the Act.

5. After hearing rival contentions and perusing the material on record, we find that the assessee served abroad and some foreign tax to the tune of Rs. 17,72,470/- was deducted in United Kingdom under DTAA between India and UK and provision of Section 90(2) of the Act. We also note that Rule 128 sub-Rule 9 provides that Form-67 should be filed on or before the due date of filing the return of income. However, we note that nowhere it is stated that in case of delayed filing of Form-67 by way of foreign tax credit which is deducted from the assessee in foreign country i.e U.K. would be denied. Accordingly, we are of the considered view that the assessee is entitled to get this foreign tax credit of Rs. 17,72,470/- u/s 90 of the Act. We also note that the claim in respect of foreign tax was allowed in the order passed u/s 143(1) of the dated 28.03.2019 and was withdrawn by the AO by passing order u/s 154 of the Act when the assessee filed form 67 before the AO. In our opinion the credit in respect of foreign tax cannot be denied to the assessee for the technicality of not filing the form 67 within the due date of return u/s 139(1) of the Act. The case of the assessee finds support from the decision of Coordinate Benches in

the case of *Atanu Mukherjee Vs. ITO* in ITA No. 439/KOL/2022 for AY 2020-21 order dated 20.12.2022 and *Sobhan Lal Gangopadhyay Vs. ADIT* in ITA No. 782/KOL/2022 for AY 2020-21 order dated 09.05.2023.

6. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 19th July, 2023.

Sd/-
[Rajpal Yadav]
Vice-President

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 19.07.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Mahua Bagchi, C/o. S.N. Ghosh & Associates, Advocates Sagar Mansion, 2, Garstin Place, 2nd Floor, Suite Nos. 202 & 203, Hare Street, Kolkata-700 001.***
- 2. ACIT, Circle-61, Kolkata.***
- 3. CIT(A)-NFAC, Delhi.***
- 4. CIT-***
- 5. CIT(DR), Kolkata Benches, Kolkata.***

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata