

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

**SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1478/M/2023  
Assessment Year:2019-20  
&  
ITA No.1479/M/2023  
Assessment Year:2020-21**

Shri Tushar James, G-2, Gold Grandis, North Road, Cooke Town, Bangalore-560084 Karnataka <b>PAN: AOEPJI505M</b>	Vs.	The Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi.
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 13. 07. 2023  
Date of Pronouncement : 27. 07. 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Since common question of law and facts have been raised in both the inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant Shri Tushar James (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders even dated 28.02.2023 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the CIT(A)] qua the assessment

years 2019-20 & 2020-21 on identically worded grounds accept the difference in figure of addition/disallowance (grounds of A.Y. 2019-20 are taken for the sake of brevity) inter-alia that:

*“The appellant objects to the order dated 28 February 2023 (impugned order) passed by the National Faceless Appeal Centre (NFAC) under section 250 of the Income Tax Act, 1961 (the Act) on the following grounds. Each of the following grounds of appeal is without prejudice to the other.*

*1. The learned NFAC erred in passing the order dated 28 February 2023 based on surmise and conjecture without appreciating the facts in the matter. Accordingly, such order is bad in law and ought to be quashed.*

### ***2. Non-grant of Foreign tax relief***

*2.1 The learned NFAC has erred in confirming non grant of foreign tax relief amounting to Rs. 50,525 as claimed by the appellant in the revised Return of Income.*

*2.2 The learned NFAC erred in not appreciating fact that the income of Rs. 8,30,123 is doubly taxed and the appellant being resident of India, taxes suffered in Sri Lanka on such doubly taxed income ought to be allowed as credit in terms of Article 23(2) of India-Sri Lanka tax treaty.*

*2.3 The learned NFAC has erred in facts that no Form 67 was filed along with the revised return and consequently denying foreign tax relief to the appellant.*

*2.4 The learned NFAC has erred the not considering the Form 67 and other document submitted along with Form 67 on 21 October 2020 i.e. on or before filing of revised return of income.*

*2.5 Without prejudice, the learned NFAC ought to have appreciated that Rule 128(9) of Income tax Rules, 1962 does not provide for disallowance of foreign tax relief in case of filing Form 67 along with revised return.*

*2.6 The learned NFAC ought to have appreciated Section 90 of the Income Tax Act, 1961 read with Article 23 of India- Sri Lanka Tax treaty, the appellant is entitled to Foreign Tax Relief of Rs.50,525.*

*2.7 The learned NFAC has erred in not following the jurisdiction decision while passing the order.*

### ***3. General***

*Each one of the above grounds of appeal is without prejudice to one another.*

*The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever modify all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”*

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee is an individual having status of a resident and ordinary resident of India (ROR), filed a revised return of income under section 139 of the Income Tax Act, 1961 (for short 'the Act') declaring a revised total income of Rs.8,55,940/- and Rs.12,22,230/- for A.Y. 2019-20 & 2020-21 respectively. Return of income filed by the assessee includes perquisite value of Rs.23,822/- and Rs.4,823/- for A.Y. 2019-20 and 2020 – 21 respectively in respect of Sri Lanka taxes borne by the employer in the income and to claim foreign tax relief on twice taxed income. The assessee claimed the relief of foreign taxes of Rs.50,525/- and Rs.95,606/- and TDS of Rs.82,080/- and Rs.2,00,232/- for A.Y. 2019-20 and 2020 - 21 respectively. Accordingly assessee claimed a refund of Rs.45,570/- and Rs.1,09,500/- in his revised return of income for A.Y. 2019-20 and 2020–21 respectively. Assessee's returns of income were processed under section 143(1) of the Act vide which foreign tax relief of Rs.50,525/- and Rs.95,606/- was not granted by the AO.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeals.

5. Notice of the appeal was given to the assessee through registered post with acknowledgment due (RPAD) as well as email

but assessee has not preferred to appear before the Bench to argue the present appeal, hence the Bench has decided to dispose of the appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. Bare perusal of the impugned order passed by the Ld. CIT(A) particularly para 1 goes to prove that no notice is shown to have been issued to the assessee rather it is recorded that "the case was posted for hearing in response to which the assessee had filed detailed written submissions. The appellant has requested for personal hearing through video conference which was conducted on 24.02.2023 at 3:00 p.m. and the appeal was disposed of on the basis of facts on record, written submissions and contentions of the assessee in appeal memo." When this fact is examined in the light of the fact that none of the submissions stated to have been filed by the assessee has been brought on record rather appeal has been decided on the basis of statement of facts, as are extracted in para 3 of the impugned order, and no submissions or contentions made by the assessee has been brought on record nor dealt with.

8. In para 4.4 and 4.8 it is specifically recorded by Ld. CIT(A) that in order to seek the relief under section 19 of the Act on the basis of DTAA assessee has to file form 67 before the due date of filing of the original return under section 139(1) of the Act which is one of the mandatory conditions for availing Foreign Tax Credit

(FTC). The Ld. CIT(A) has explained the entire law pertaining to the ground raised by the assessee including different notifications/circulars issued by CBDT but nowhere has brought on record as to on which date the assessee has filed form 67 to claim the relief of FTC. No doubt CPC/AO is not empowered to condone the delay in filing form 67 but CIT was certainly empowered to consider this issue.

9. When the aforesaid findings are examined in the light of the ground raised by the assessee it is specially mentioned in ground 2.4 that "assessee has filed form 67 and other documents on 31.03.21 i.e. on or before filing of the revised return of income", but this ground has not been decided by the Ld. CIT(A) as to whether filing of form 67 well before filing revised return of income makes the assessee entitled to get the relief of FTC. From the order it is proved that no notice to the assessee has been given nor he has been given adequate opportunity of being heard rather case has been disposed of by the Ld. CIT(A) on the basis of statement of facts brought on record by the assessee as well as by discussing the bare provision of the Act and rules applicable to the issue in question.

10. In view of what has been discussed above I am of the considered view that to decide the issue once for all the case is required to be remitted back to the Ld. CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee and by considering the form 67 and other documents filed by the assessee before filing of the return.

11. Resultantly both the appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced in the open court on 27.07.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 27.07.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.