

**| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, KOLKATA**

**BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&**

**DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 371/Kol/2023  
Assessment Year: 2014-15**

<b>Swapan Bhattacharya</b> 10 <sup>th</sup> Floor Lee Residency 26, Lee Road Kolkata - 700020 <b>[PAN: AEPPB5023L]</b>	<b>Vs</b>	<b>Deputy Commissioner of Income Tax, Circle-61, Kolkata</b>
---	-----------	--

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
-------------------------------	--	---------------------------------

Assessee by :	Shri S.S. Gupta, A/R
Revenue by :	Shri B.K. Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 05/09/2023

घोषणा की तारीख /Date of Pronouncement: 26/09/2023

**आदेश/O R D E R**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned appeal has been filed by the assessee is directed against the order of the National Faceless Appeal Centre (hereinafter 'the Id. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 17/03/2023, for Assessment Year 2014-15.

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

*"1. That the Ld. AO, erred in law as well as in facts in passing the order against and the Ld. CIT (Appeals) erred in law as well as in facts in conforming the same.*

*2. That the Ld. CIT (Appeal) erred in law as well as in facts in not allowing the additional ground raised by the assessee regarding Double Taxation of Qualified Dividend Income earned in foreign countries amounting to Rs. 24,60,710/- (USD 41,461) in as much as in view of the facts and circumstances of the case the said Doubly Taxed Income of qualified dividend earned in foreign countries is liable to be excluded.*

*3. That the Ld. AO, erred in law as well as in facts in not considering the long term capital loss of Rs. 2,95,365/- on sale of Mutual Fund units while completing the assessment u/s 143(3) of The Income Tax Act, 1961 and the Ld. CIT(Appeal) also erred in law as well as in facts in not considering and allowing the additional ground raised by the assessee to this effect in as much as in view of the facts and circumstances of the case the said long term capital loss on sale*

*of Mutual Fund units should be allowed to be carried forward u/s 74 of The Income Tax Act, 1961.*

*4. That the appellant craves leave to add, alter, change and/or modify any of the grounds of appeal at or before hearing of the appeal and claim further relief or reliefs which is necessary for the ends of justice."*

3. First, we take up Ground No. 2 regarding double taxation of qualified dividend income earned in foreign country amounting to Rs.24,60710/- (USD 41,461).

4. We have heard rival contentions and perused the material placed before us. On carefully going through the documents filed by the assessee in the paper book filed on 19/05/2023 which includes the relevant portion of US Income Tax Return for the year 2013 and 2014, we observe that the assessee is employed with M/s. TCG Life Sciences Ltd., and earned income from India as well as from outside India. Since the assessee is a resident in India as per provision u/s 6 of the Act, he was required to include incomes earned from all sources in India as well as in USA. The dispute is regarding the addition for qualified dividend of USD 41,461. We notice that in the computation of income filed by the assessee, under the head income from outside India, the assessee has himself stated to have earned dividend at USD 56,210 and qualified dividend at USD 41,461. Later before the Id. CIT(A) assessee raised additional ground stating that there was an inadvertent mistake in filing the Income tax return and the qualified dividend which was part of the ordinary dividend of USD 56,210 has again been included in the current income. It was stated before the Id. CIT(A) that USD 41,461 is included in the ordinary dividend of USD 56,210. The mistake in filing the computation of income occurred

because in US tax return figure of both ordinary dividend and qualified dividend are to be furnished and since the person who was filing the return of income in India was not well versed with the US Income Tax Return procedure, the qualified dividend was shown as income even when the same was already included in the ordinary dividend of USD 56,210. The assessee failed to any get relief before the Id. CIT(A).

5. Before us, reference has been made to the relevant portion of the US Income Tax Return 2013 and 2014 placed at 23 to 32 of the paper book. On perusal of the US ITR, we notice that the ordinary dividend are disclosed in the outer column, and is part of the total income of the assessee in USA. But under the head of ordinary dividend, there is an inner column, where the assessee has mentioned the figure of qualified dividend. This qualified dividend is basically the part and parcel of ordinary dividend only but for the purpose of tax filing and providing the information, the figure of qualified dividend is mentioned. Since the assessee has to file the Income tax return for FY 2013-14, which is from 01/04/2013 to 31/03/2014, the ordinary dividend earned by the assessee during this period is spread in two US Income Tax return i.e., for 2013 and 2014. There is no dispute about the figure of earning dividend. Therefore, considering the fact that an apparent mistake committed by the assessee which was brought to notice by the lower authorities, they ought to have given due cognizance and ought not to have computed the income by excluding the qualified dividend of USD 41,461, which stands duly offered to tax in the total of ordinary dividend of USD 56,210.

6. Thus, we set aside the finding of the Id. CIT(A) and allow Ground No. 2 raised by the assessee and delete the addition of Rs.24,60,710/-.

7. As regards Ground No. 3, claim of the assessee is that the long term capital gain of Rs.2,95,365/- on sale of mutual funds unit has not been allowed to be carried forward. We notice that this too is an additional ground raised by the assessee but on perusal of the impugned order, we notice that the same has not been adjudicated by the Id. CIT(A). Before us also, assessee has stated that it is eligible for carry forward of long term capital gain on sale of mutual funds u/s 74 of the Act. We notice that the assessee has claimed loss in the computation of income and also claimed the carry forward of the same but it is not emanating from the records that why this claim has not been allowed by the Assessing Officer. We thus, deem it fit to restore this issue to the file of the Assessing Officer and direct to decide the same after considering the submissions of the assessee. Needless to mention that the assessee shall be granted sufficient opportunity of being heard. Accordingly, Ground No. 3 is allowed for statistical purposes.

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

**Order pronounced in the Court on 26<sup>th</sup> September, 2023 at Kolkata.**

Sd/-

(SANJAY GARG)  
JUDICIAL MEMBER

Kolkata, Dated 26/09/2023

*\*S.C. S.P.*

Sd/-

(DR. MANISH BORAD)  
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata