

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY,
JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1078/Bang/2023
Assessment Year : 2014-15

Mahesh Ram Vittal, C/o Mr. P. Santanam, Apt. D2 Anugraha, 85 P.T Rajan Salai, KK Nagar, Chennai – 600 078. PAN – AEOPV 6455 Q	Vs.	The Asst. Commissioner of Income Tax, Circle – 5(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh Chaugule, C.A
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	27.02.2024
Date of Pronouncement	:	28.02.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi on 18/10/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1057194997(1) for the assessment year 2014-15 on the following grounds:

“The below mentioned grounds of appeal are independent of and without prejudice to one another.

1. On the facts and circumstances of the case, the learned has erred in issuing order under 154 even when there was no mistake apparent from record in the assessment order issued under section 143(3) of the Act. Consequently, the order under section 154 deserves to be quashed and set aside.

2. On the facts and circumstances of the case and in law, learned AO / CIT(A) have erred in concluding that the appellant is an ultimate tax resident of India for the period from October 1, 2013 to March 31, 2014 and taxing the salary income earned in USA for the said period in India. Learned AO and CIT(A) have further erred by applying provisions of the Act and denying the beneficial provisions of Article 4(2) of India — USA Treaty.

3. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in concluding that appellant has not offered global income for tax in India, however, the appellant has duly offered the same for tax in India as per the provisions of the Act or India — USA treaty.

4. On the facts and circumstances of the case and in law, the learned CIT(A) /AO have erred in not granting foreign tax credit of taxes paid in USA on interest and dividend income as per Article 25 of India — USA treaty for the period of April 1, 2013 to September 30, 2013 when appellant qualified as ultimate tax resident for India for the said period.

5. On the facts and circumstances of the case and in law, the learned CIT(A)/AO have erred in not granting beneficial tax rate of 15% as provided in India — USA treaty on the interest income earned by the appellant in India for the period of October 1, 2013 to March 31, 2014 when it is claimed that he is ultimate tax resident of USA for that period.

6. On the facts and circumstances of the case and in law, the learned CIT(A) has violated the provisions of section 251 of the Act, by directing the learned AO to decide the issues in appeal.

7. On the facts and circumstances of the case and in law, Learned AO/CIT(A) has erred in levying interest under sections 234A, 234B and 234C of the Act..

The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary, either at or before the appeal hearing.”

2. The brief facts of the case are that the assessee filed original return of income for the assessment year 2014-15 beyond the specified due date but within the extended period allowed as per sec. 139(4) of the Act on 29/12/2014 declaring total income of Rs.1,83,74,890/-. The return was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny and statutory notices were issued to the assessee. The assessee filed detailed document as required and which was considered by the AO and in the returned income, the assessee has shown 'income from salary', 'income house property' and 'income from other sources' and returned income was accepted.

3. Later on, the AO noticed that the assessee had declared income of Rs.1,83,74,890/- and claimed foreign tax relief of Rs.4,15,267/-. As per the return filed, the residential status of the assessee is resident. The AO observed that the assessee has received salary from M/s Goldman Sachs Asset Management (India) Pvt. Ltd., from 01/04/2013 to 29/09/2013 amounting to Rs.1,45,94,515/- and it was further seen from the Annexure - 1 from the computation of income submitted by the assessee during the assessment proceedings the assessee has received a salary from Oct 2013 to March 2014 from M/s J.P. Morgan, USA amounting to

Rs.1,26,57,547/-, which has been reduced in accordance with Article 16 of the Indo USA Double Taxation Avoidance Agreement [Treaty] r.w.s 90 of the Act. The assessee offered income only from the salary received in India and as per the submission dated 13/10/2016, the AO noted that the assessee himself stated that he is resident/ ordinary resident of India in the financial year 2013-14 relevant to asst. year 2014-15 but he has not offered the salary received from M/s J.P. Morgan , USA amounting to Rs.1,26,57,547/-. Accordingly, as per sec. 5(1)(c) of the Act, the global income is taxable in India subject to the relief u/s 90 of the Act on the tax paid outside India for the income earned outside India. Hence, global income received by the assessee is to be taxed in India. The assessee has also claimed foreign tax credit of Rs.3,81,675/- in terms of Article 25 of the Indo US DTAA and failed to offer the salary income received in USA, therefore, there is a mistake apparent on the face of the record and the AO examined the issue and clarified that the income of USA is not doubly taxed but only brought under the purview of scope of total income and allowed foreign tax credit. Hence, the income does not amount to double taxation on the same income. In view of the above, it is mistake apparent from record within the meaning of sec. 154 of the Act and it should be rectified.

4. Accordingly, the assessee was issued notice on 01/11/2017 and the assessee furnished reply dated 22/11/2017 giving reference of the Hon'ble Supreme Court order in the case of TS Balaram, ITO Vs. Volkart Brother [1971] 82 ITR 50 (SC) and the Hon'ble High Court in the case of CIT Vs. Lakshmi Prasad Lahkar [1996] 220 ITR 100 Gauhati. The assessee explained that the sec. 154 of the Act cannot be invoked on debatable issue. The submission of the assessee were examined by the AO and the AO referred to sec. 5(1) (c) of the Act and noted that the assessee is liable to offer global income received in the assessment year 2014-15 and the assessee also claimed foreign tax credit of Rs.4,15,267/- without offering any income. Accordingly, he rectified the order and brought to tax and the salary received from J.P. Morgan, USA amounting to Rs.1,26,57,547/- and foreign tax credit of Rs.4,15,267/- was allowed and the AO modified the order passed u/s 143(3) of the Act and the tax due was computed of Rs.74,72,730/-.

5. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A).

6. Before the CIT(A), the assessee filed detailed documents. The CIT(A) directed the AO as under:-

4.1“The A.O. is directed to go through the claim of the appellant that he is asking for the tax credit of the income which was offered in India but taxes were paid in USA. The grounds of the appellant allowed accordingly. The appeal is allowed for statistical purpose.”

7. Aggrieved from the order of the CIT(A), the assessee filed appeal before the ITAT.

8. The ld.AR of the assessee submitted that the issue raised by the AO is a debatable issue which cannot be rectified as per the judgment of Hon’ble Supreme Court in the case of T.S. Balaram cited Supra. He also referred to the Income-tax return filed by the assessee in USA, which is placed on the record and submitted that the income received outside India from J.P. Morgna, USA has been offered as income in the USA and as per the DTAA, the assessee has correctly reduced the income outside India as salary income from the computation of income which is placed at page book page No.21.

9. Further, the ld.AR has also filed number of case laws, which are as under:-

1.	T.S. Balaram, Income-tax Officer v. Volkart Brothers [1971] 82 ITR 50 (SC)
2.	Mepco Industries Ltd. v. Commissioner of Income-tax [2009] 185 Taxman 409 (SC)
3.	Commissioner of Income-tax v. Hero Cycles (P.) Ltd. [1997] 94 Taxman 271 (SC)
4.	SUPREME COURT OF INDIA Commissioner of Income-tax v. South India Bank Ltd. [2001] 116 Taxman 364 (SC)
5.	HIGH COURT OF MYSORE [1974] 95 ITR 452 (MYS.) M.D. Narayan v. Agricultural Income-tax Officer
6.	HIGH COURT OF KARNATAKA D.S. Srinivas v. Income-tax Officer [2003] 129 Taxman 657 (Karnataka)
7.	HIGH COURT OF KARNATAKA K.S.Venkatesh v. Deputy Commissioner of Income-tax [2015] 63 taxmann.com 343 (Karnataka)
8.	Principal Commissioner of Income-tax v. Lanshree Products & Services Ltd. [2023] 150 taxmann.com 389 (Calcutta HC)
9.	Mastek Ltd. v. Assistant Commissioner of Income-tax [2023] 155 taxmann.com 40 (Gujarat) HC
10.	[2022] 145 taxmann.com 640 (Delhi) HC Ambarnuj Finance and Investment (P.) Ltd. v. Deputy Commissioner of Income-tax*
11.	Commissioner of Income-tax v. Lakshmi Prasad Lahkar [1994] 74 TAXMAN 112 (GAU.) HC
12.	V.M. Salgaocar & Bro. (P.) Ltd. v. Income-tax officer [1995] 53 ITD 34 (BANG.) ITAT
13.	[2020] 119 taxmann.com 279 (Bangalore - Trib.) Cessna Garden Developers (P.) Ltd. v. Assistant Commissioner of Income-tax Circle 2(1)(1)
14.	Cardinal Drugs Pvt Ltd (Agra ITAT) ITA No. 299/Agr/ 2012
15.	Assistant Commissioner of Income-tax, Central Circle - 18, New Delhi v. UflexLtd. [2012] 24 taxmann.com 228 (Delhi) ITAT
16.	M/s City Clinic Pvt. Ltd. Vs. ACIT - ITA No. 112/Chd/2017 ITAT Chandigarh
17.	IN THE ITAT AMRITSAR BENCH Smt. Poonam Mittal v. Income-tax Officer [2022] 138 taxmann.com 380 (Amritsar - Trib.)

10. On the other hand, the ld. DR relied on the order of the AO. The ld. DR submitted that there is no debatable issue, the assessee should have declared the income in India to the entire global income and it is allowable for claim of relief as per DTAA provision and the assessee had also claimed foreign tax credit in India without offering global income.

11. After considering the rival submissions, we note that the AO has rectified the order passed u/s 143(3) of the Act and added salary income received in USA from J.P. Morgan and the assessee has claimed relief in his computation of income. The assessee also claimed foreign tax credit without offering global income. The assessee reiterated the submission made before the lower authorities and he also relied on the various judgments noted supra. We note that the case law relied by the ld.AR of the assessee will not support the arguments since here there is factual position that in Indian Income-tax return i.e ITR 2, Schedule FSI, which is placed at page No.15, the assessee has not offered the salary received from JP Morgan, USA and he has offered under the head 'other sources of income' of Rs.12,64,665/- and has claimed tax paid outside India of Rs.4,15,267/- and he also accepted that he is a

resident/ordinary resident of India as per sec. 5(1)(c) of the Act and he is liable to tax in India on his global income, which was not shown in the Income-tax return filed by the assessee in India, therefore, there is factual mistake done by the assessee himself and, therefore, it is not a debatable issue. Accordingly the case law relied on by the assessee is not applicable. The AO has correctly invoked sec. 154 of the Act and rectified the order passed us/ 143(3) of the Act. As per page No.21 of the paper book filed before us, the assessee has claimed relief under Article 16 of the Indo-USA DTAA (Treaty) r.w.s 90 of the Act on the salary received and the CIT(A) has accepted the arguments put forth before him and CIT(A) has given direction to the AO noted Supra. We also direct the AO to follow the direction of the CIT(A) and to pass OGE (Order Giving Effect) within 6 months from the receipt of this order considering the eligibility of the assessee as per DTAA provisions. The assessee is directed to file necessary documents for support of his case. Accordingly, this issue is partly allowed for statistical purposes.

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

Order pronounced in court on 28th day of February, 2024
as per the Income Tax Appellate Tribunal Rule 1963 sub
rule 34 .

Sd/-

(NARENDER KUMAR CHOUDHRY)
Judicial Member

Bangalore,

Dated : 28.02.2024.

Vms

Copyto:

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

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

By order

Assessment Registrar, ITAT, Bangalore.