

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH :NAGPUR [VIRTUAL HEARING]
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.376/NAG./2022
Assessment Year 2020-2021

Shri Arvind Prabhakar Bajirao, Office No.49, Adarsh Vinkar Colony, Tandapeth, Nagpur. PIN – 440 017. Maharashtra PAN AMZPB5222G	vs.	The ACIT, CPC, I.T. Department, Bengaluru – 560 050. Karnataka.
(Appellant)		(Respondent)

For Assessee :	Shri Arvind Bajirao
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	21.03.2024
Date of Pronouncement :	17.04.2024

ORDER

This assessee’s appeal for assessment year 2020-21, arises against the National Faceless Appeal Centre [in short the “NFAC”] Delhi’s Din and Order No. ITBA/NFAC/S/250/2022-23/1046044022(1), dated 28.09.2022, involving proceedings u/s. 143(1) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“On the fact and circumstances of the case and in law, Ld. NFAC, Delhi erred in passing the order under section 250 of the Income Tax Act, 1961 (the Act) which in contrary to the material on record and provisions of the Act unjust and bad in law.*

2. *On the fact and circumstances of the case and in law, The Assistant Director of Income Tax, CPC, Bengaluru erred by not granting the tax relief u/s.90 of Rs.2,19,190/- being relief allowed as per DTAA between India and Canada, as per the grounds contained in the Intimation order or otherwise.*
3. *On the fact and circumstances of the case and in law, LD. NFAC, Delhi has erred in passing the order under section 250 of the Income Tax Act, 1961 against rectification order under section 154 although appellant has preferred appeal against Intimation order under section 143(1) of the Act. The issue of not granting of tax relief under section 90 of Rs.2,19,190/- was emanating from Intimation under section 143(1) and not from Rectification order under section 154 of the Act.*
4. *The Appellant craves leave to add, to amend, alter, modify and/or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.”*

3. Both the learned representatives next invited my attention to the CIT(A)'s detailed discussion. Holding sec.154 rectification herein as not maintainable as under :

4.1 The appellant is an individual and during the year under consideration he was employed with Infosys Limited. During the period 01.04.2019 to 10.10.2019 he was posted in India and thereafter from 11.10.2019 to 31.03.2020 he was posted on-site at Canada (outside India) by Infosys Ltd. The appellant has earned total Salary of Rs. 17,53,605/- out of which salary of Rs. 6,19,237/- was earned during his employment at India and Rs. 11,34,368/- was earned during his employment at Canada (outside India) from Infosys Ltd.

4.2 The appellant was in India for more than 182 Days and his residential status in India was Resident. Further his Income from Salary during his employment at Canada was liable for Double Taxation in India as well as in Canada. The details of the same is as follows:

	Income Rs. (Net of all Deduction)	Total Income Tax Rs.	Rate of Tax%
	(A)	(B)	(C) =(B)/(A)*100
Total Salary (India and Canada)	16,41,773/-	3,17,233/-	19.3226%
Salary in Canada	11,41,773/-	3,17,233/-	47.5586%

Hence appellant was allowed to take Relief u/s 90 @ 19.3226% on the come from Salary of Rs. 11,34,368/- received in Canada i.e. Rs.2,19,190/- (1134368 * 19.3226%).

4.3 The appellant while filing return of Income took the services of

Clearsharp Technology Private Limited ("Clearsharp") an uthorised e-return intermediary (ERI) (ERIP000708) as per the Electronic Furnishing of Returns of Income Scheme, 2007 and Defmarco Software Private Limited (Cleartax) which is technology facilitator for Clearsharp. With the help of Clearsharp the appellant has filed the return on Income Tax Portal, however the ERI has wrongly claimed the Relief the details of the same are as follows:

Particulars	Incorrect Relief claimed in Return of Income	Correct Relief
Relief u/s 89(1)	2,19,190/-	NIL
Relief u/s 90	89,160/-	2,19,160/-

4.4 The appellant was not aware of such mistake of wrong claim of relief u/s 89(1) instead of section 90 done by e-return Intermediary (ERI) - Clearsharp. Only upon receipt of intimation order u/s 143(1) the appellant came to know such mistake apparent from record and tried to rectify such mistake apparent from record by filing Rectification u/s 154 of the Income Tax Act, 1961. However, the Income Tax Department – CPC, Bangalore has rejected the rectification request as mentioned below:

“Under Section 154 of Income Tax Act 1961, an application for rectification can be filed only to correct mistakes apparent from records. In the rectification request filed, additional relief beyond what was claimed in the return is being claimed. Since fresh claim/additional claim is not considered mistake apparent from records, your rectification request cannot be entertained.”

4.5 Further the Income Tax Department – CPC Bangalore has processed intimation u/s 143(1) on 24/12/2021 and due date of filing revised return /s

139(5) has already elapsed on 31/03/2021 due to which the appellant cannot file the revised return and claim relief u/s 90 correctly. We request your good selves

to kindly allow relief u/s 90 of Rs.2,19,190/-. In view of the above, the appellant prays that his appeal may be allowed.

5. APPELLATE ORDER:

Based on the submissions of the appellant and details available on record the appeal is adjudicated as under:

The appellant's contention is that the Ld. Assistant Director of Income Tax, CPC Bangalore erred by not granting the tax relief u/s 90 of Rs. 2,19,190/- being relief allowed as per DTAA between India and Canada. After looking into the submissions of the appellant it is clear that there is no mistake apparent from record that called for rectification u/s 154 of IT Act. Hence the act of CPC, Bengaluru is right and legal, hence no need for any interference. The appeal hence stands **dismissed**.

4. I have given my thoughtful consideration to the vehement rival stands and find no merit in the assessee's action taking recourse to sec.154 rectification remedy. This is for the precise reason that sec.143(1) intimation dated 20.01.2022 had in fact proceeded on the basis of the assessee's details submitted in his computation/return of income only as it is evident from the above extracted portion of the lower appellate discussion. Learned counsel could hardly rebut the fact that the assessee had not declared all

the relevant figures correctly in his return/computation which resulted in CPC's intimation allegedly "processing" his return. Faced with this situation, I hereby quote T S Balram, ITO vs. Volkart Bros. [1971] 82 ITR 50 (SC) that such an instance requiring detailed enquiries could not be taken as an apparent mistake deserving rectification u/sec.154 of the Act. I thus reject the assessee's sole substantive grievance raised in the instant appeal with a rider that he shall be indeed at liberty to take recourse to regular appeal proceedings as per law, if so advised. Ordered accordingly.

5. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 17.04.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 17th April, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.