

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 287/Bang/2024
Assessment Year : 2017-18

Shri Manas Das, S/o. Bireswar Das, # 1, Rahat Residency, Rahat Bagh, Nagavarapalya, C V Raman Nagar, Bengaluru – 560 093. PAN: ACBPD4044N	Vs.	The Income Tax Officer, Ward – 5(3)(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharath Rao, CA
Revenue by	:	Shri Muthu Shankar, Addl. CIT (DR)

Date of Hearing	:	18-04-2024
Date of Pronouncement	:	15-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 22.12.2023 passed by the NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

“The order under section 143(3) of the Income-tax Act, 1961 (‘the Act’) for the AY 2017-18 issued by the learned Income-tax Officer, Ward 5(3)(4), Bengaluru (‘ITO’ or ‘Assessing Officer’ or ‘AO’), is bad in law and on facts.

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

1. Disallowance of foreign tax credit on salary:

1.1. The learned CIT(A) / AO have erred in not granting credit for the taxes paid in the US as per Article 25 of the India — US Double Taxation Avoidance Agreement ('DTAA' / 'Treaty') and the provisions of section 90 of the Act.

1.2. On the facts and circumstances of the case, the learned AO has erred in concluding that no tax has been paid by the appellant in the US.

1.3. On the facts and circumstances of the case, the learned CIT(A) has erred in concluding that there has been no double taxation of income earned by the appellant for services rendered in the US.

1.4. On the facts and circumstances of the case, the learned CIT(A) has erred in concluding that proof of tax payment in the US was not submitted during assessment proceedings or the appeal proceedings without appreciating that the proof of payment of tax was submitted by the appellant by way of Form W-2 and copy of 2016 US Tax Return during the assessment proceedings as well as the appeal proceedings.

1.5. On the facts and circumstances of the case, the learned CIT(A) has erred in stating that there is an anomaly in the foreign salary reported by the appellant without appreciating that foreign salary was duly included in the Form 16 by the appellant's employer in India and the reconciliation of the same was provided to the learned CIT(A) during the course of the appeal proceedings.

1.6. The learned CIT(A) /AO has misconstrued the tax equalization model adopted by the appellant's employer without appreciating that the employer duly grossed-up the tax payments.

1.7. The learned AO has failed to appreciate that there is no specific provision in the Act which allows claim of foreign tax at the withholding stage and the regular compliances as required by section 192 of the Act have been met by the employer, hence the credit for tax paid in US has been claimed as a refund at the stage of tax return filing by the appellant.

2. Interest under section 234B and section 234C of the Act
On the facts and in the circumstances of the case. the learned AO has erred in levying additional interest of INR 46,332 under section 234B and INR 13,692 under section 234C of the Act as it is consequential in nature and is

liable to be quashed if the Grounds of Appeal mentioned herein are accepted.

3. Penalty proceedings under section 270A of the Act

The learned AO ought to have appreciated the fact that all the supporting documents were submitted to the AO. The appellant has not under-reported or mis-reported any income in the tax return which is evident from the details furnished to the AO and the initiation of penalty proceedings is not applicable in this case.

The Appellant prays that direction be given to grant all such relief arising from the Grounds of Appeal mentioned supra as also consequential relief thereto.

The Appellant craves, leave to add to or alter, by deletion, substitution or otherwise, any or all of the above Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary at any time before or during the hearing of the Appeal.”

2. Brief facts of the case are as under:

2.1 Assessee is an employee of Intel Technology India Private Limited ('Intel India') and was on assignment to Intel Corporation, US ('Intel US') from 16 June 2013 to 17 October 2016. For the Financial Year (FY) 2016-17, relevant to the Assessment Year (AY) 2017-18 under consideration, Manas Das qualified to be a Resident and Ordinarily Resident (ROR) as per section 6 of the Income-tax Act, 1961 ('the Act'). Thereby, he was taxable on his global income for AY 2017-18 in India.

2.2 It is submitted that Intel India and Intel US agreed on equalization policy under international mobility program provided in **Page 161 of the Paper Book** wherein Intel would pay the tax that would arise owing to the assessee's international

assignment. Based on the above international mobility program, the tax implication borne by Intel US on behalf of the assessee has been considered as income of the assessee and tax has been paid on such grossed-up income in India.

2.3 It is submitted that while on assignment to the US, the assessee did not receive any additional salary from Intel US. All components of payment made to the assessee is included in the Form 16 issued by Intel India (Submission made before the AO, **Page 79 of the Paper Book**).

2.4 The assessee filed a return of income for the AY 2017-18, with total income of INR 2,56,34,210 and taxes amounting to INR 87,58,471. A relief under section 90 of the Act amounting to INR 40,22,341 was claimed for the doubly taxed income resulting in a refund of INR 38,78,980.

2.5 The return was selected for scrutiny to examine the issue of double taxation relief under section 90 of the Act. During the hearing all the documents and evidence for claiming the Foreign Tax Credit (FTC) such as US Tax Return (**page 37-34 of Paper Book**), computation of FTC (**page 45 of Paper Book**), form 16 (**page 64-70 of Paper Book**), Form 26AS (**page 71-72 of Paper Book**), Form 67 (**page 73-75 of Paper Book**) and copy of assignment letter (**page 81 of Paper Book**) sought by the Ld.AO were duly produced before the AO. The Ld.AO disallowed the claim of FTC of INR 40,19,463 on salary income and

consequentially imposed a tax demand of INR 140,481, along with interest of INR 46,332 and INR 13,692 under section 234B and section 234C of the Act respectively.

2.6 Aggrieved by the disallowance made in the assessment order, the assessee preferred appeal before the Ld.CIT(A).

2.7 During the course of the appeal proceedings, all the documentation and details sought by the CIT(A), such as cross charge letter, breakup of salary paid by Intel India, breakup of income pertaining to assignment and non-assignment period and Copy of Tax equalization policy under international mobility program, was provided to the Ld.CIT(A). The Ld.CIT(A) admitted that partial amount of Rs.62,92,920 has suffered double taxation. However, the Ld.CIT(A) recorded that claim of foreign tax credit is not substantiated by any evidence, and dismissed the claim of the assessee by disallowing the entire claim.

2.8 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted as under:

- 1) The assessee for the relevant year under consideration is a Resident and Ordinarily Resident (ROR) and filed its tax return for AY 2017-18 on July 19, 2017 declaring the global income of Appellant amounting to INR 2,56,34,210/- and paid taxes amounting to INR 87,58,471/-. Accordingly, the

assessee is eligible for relief from double taxation on the same income under Article 25 of the India-US DTAA. The details of the amount paid in US, the amount doubly taxed and actual tax liability are provided below:

Sl No	Particulars	Currency	Amount	Reference																		
1	Salary for the period 1 January 2016 to 17 October 2016 (291 days)	USD	300,479	Form W-2 issued by Intel US, Page 39 of the Paper Book																		
2	Salary for the period 1 April 2016 to 17 October 2016 – Doubly Taxed Income (200 days)	USD	206,515	Proportionate salary for 200 days of India FY 2016-17 (USD 300,479 * 200 / 291). Page 45 of the Paper Book																		
3	Doubly Taxed Income as mentioned in Sl # 2 above in Indian Rupees	INR	1,36,81,604	Converted from USD to INR at 1 USD = INR 66.25 (Average Exchange Rate) (USD 206,515 * 66.25). Page 45 of the Paper Book																		
4	Breakdown of Salary mentioned in Sl # 3 <table border="1" data-bbox="264 1288 748 1637"> <thead> <tr> <th>Sl No</th> <th>Particulars</th> <th>Amount (INR)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Cash Salary</td> <td>62,92,920</td> </tr> <tr> <td>2</td> <td>US Taxes borne by Employer on behalf of Appellant</td> <td>60,11,951</td> </tr> <tr> <td>3</td> <td>Relocation Benefits</td> <td>13,42,615</td> </tr> <tr> <td>4</td> <td>Exchange Rate Difference</td> <td>34,118</td> </tr> <tr> <td></td> <td>Total</td> <td>1,36,81,604</td> </tr> </tbody> </table>	Sl No	Particulars	Amount (INR)	1	Cash Salary	62,92,920	2	US Taxes borne by Employer on behalf of Appellant	60,11,951	3	Relocation Benefits	13,42,615	4	Exchange Rate Difference	34,118		Total	1,36,81,604		1,36,81,604	Table 2 in Page 152 and Table 1 in Page 153 of the Paper Book
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3	Relocation Benefits	13,42,615																				
4	Exchange Rate Difference	34,118																				
	Total	1,36,81,604																				
5	Tax paid in US for 2016 on total income of USD 309,409 (Page 44 of the Paper Book)	USD	90,900	US Tax Return. Page 38 of the Paper Book																		
6	Proportionate US tax paid on salary income of US 300,479	USD	88,276	(USD 90,900 * USD 300,479 / USD 309,409). Page 45 of the Paper Book.																		

7	Proportionate US tax paid on doubly taxed income of USD 206,515	USD	60,671	(USD 88,276 * USD 206,515 / USD 300,479). Page 45 of the Paper Book
8	Proportionate tax paid in sl # 7 above, in INR, claimed as FTC	INR	40,19,463	Converted from USD to INR at 1 USD = INR 66.25 (Average Exchange Rate) (USD 60,671 * 66.25). Page 45 of the Paper Book
9	Tax Liability in India	INR	89,01,829	Page 4 of the Paper Book
10	Gross Total Income	INR	2,57,95,080	Page 3 of the Paper Book
11	Tax Rate		34.51%	Tax Liability / Total Income (INR 89,01,829 / INR 2,57,95,080)
12	India tax payable on doubly taxed income of INR 1,36,81,604.	INR	47,21,904	(INR 1,36,81,604 * 34.51 %) Page 45 of the Paper Book
13	FTC claimed in the Tax Return as per Article 25 of India – US Double Taxation Avoidance Agreement ('DTAA'), lower of Sl #8 and Sl # 12	INR	40,19,463	Reported in the Form 67. Page 74 of the Paper Book

4. It is further submitted that, the Ld.CIT(A) and Ld.AO misconstrued that the amount of INR 1,14,08,619 (which is the US Taxes, US Benefits and corresponding India tax gross-up on the same). The intent of the letter was only to elucidate the non-monetary benefits provided to the assessee during the FY 2016-17. A reconciliation for the same is provided by the Ld.AR as under:-

Sl No.	Particulars	As per Letter (INR)	Reference
	As per letter issued by appellant's employer		Page 81 of the Paper Book
1	US Taxes including India tax gross-up	93,25,915	Page 81 of the Paper Book
2	US Relocation benefits including India tax gross-up	20,82,704	Page 81 of the Paper Book
		1,14,08,619	
Less:	Elements which are not doubly taxed		
	India Tax Gross-up on US Taxes	33,13,964	Page 153 of the Paper Book
	India Tax Gross-up on US Relocation Benefits	7,40,089	Page 153 of the Paper Book
	Non-monetary benefits received by appellant in the US for the period of assignment	73,54,566	
Add:	India salary received by the appellant during the period of assignment	62,92,920	Page 152 of the Paper Book
Add:	Difference on account of exchange rates	34,118	Page 153 of the Paper Book
	Doubly taxed income considered in the tax return for FTC purpose	1,36,81,604	

5. He submitted that authorities below failed to appreciate that the tax equalization model adopted by the assessee's employer, and that the tax paid by employer on behalf of the employee was duly grossed-up in the hands of the employee as per provisions of section 17(2) of the Act. In support, copy of the tax equalization policy was provided during the course of the appeal proceedings.

6. On the contrary, the Ld.DR placed reliance on orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We are of the opinion that the evidences filed by the assessee need to be considered and verified. The Ld.CIT(A) partially allows the claim by observing that no evidences were filed. In the

interest of justice, we remit the issue back to the Ld.AO to carry out necessary verification in respect of such claim disallowed by the Ld.CIT(A). The disallowance upheld by the Ld.CIT(A) is due to the reason that USA followed different period for taxing income and had different due dates as compared to India. The Ld.AO is direct that in the event the income has suffered tax in US, the same cannot be taxed again in India and credit of such taxes paid must be granted to the assessee. The Ld.AO is directed to consider the claim of assessee in accordance with law in light of evidences filed.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee also stands allowed for statistical purposes.

Order pronounced in the open court on 15th May, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 15th May, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore