

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2367/Del/2019 : Asstt. Year : 2013-14**

**ITA No. 2368/Del/2019 : Asstt. Year : 2014-15**

Ericsson India Global Services Pvt. Ltd., 4 <sup>th</sup> Floor, Dakha House, 18/7, WEA, Pusa Lane, Karol Bagh, New Delhi-110005	Vs.	Addl. CIT, Special Range-3, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCE4175D</b>		

**Assessee by : Sh. Vishal Kalra, Adv. &  
Sh. Ankit Sahi, Adv.**

**Revenue by : Sh. Vijay B. Vasanta, CIT-DR**

**Date of Hearing: 08.05.2024**

**Date of Pronouncement: 10.07.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-44, New Delhi dated 21.12.2018 and 28.12.2018. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

2. In ITA No. 2367/Del/2019, following grounds have been raised by the assessee:

*"1. That on facts and in the circumstances of the case & in law, the order passed by the Ld. Commissioner of Income Tax (Appeals)-44 ["Ld. CIT(A)], to the extent confirming Assessing Officer's ["AO"] action, is bad in law and hence, void ab-initio.*

*2. That on facts and in the circumstances of the case & in law, the Ld. CIT(A) erred in disallowing the claim of Foreign tax credit.*

*2.1 That on facts and in the circumstances of the case & in law, the Ld. CIT(A) erred in law in disallowing the claim of Foreign tax credit without providing adequate opportunity of being heard to the assessee.*

*2.2 The Ld. CIT(A) has grossly erred on facts in stating that the assessee has not been able to demonstrate whether the corresponding income on which additional foreign tax credit has been claimed, was offered to tax or was assessed to tax in India, without appreciating that such a disclosure is duly appearing in the Foreign Sourced Income (FSI) schedule of the income tax return.*

*2.3 That on facts and in the circumstances of the case & in law, the Ld. CIT (A) erred in disallowing the claim of foreign tax credit stating that no evidence has been submitted for the delay in making the claim.*

3. In ITA No. 2368/Del/2019, following grounds have been raised by the assessee:

*"1. That on facts and in the circumstances of the case & in law, the order dated 21 December 2018 passed by the Ld. Commissioner of Income Tax (Appeals)-44 ["Ld. CIT(A)], to the extent confirming Assessing Officer's ["AO"] action, is bad in law and hence, void ab-initio.*

*2. That on facts and in the circumstances of the case & in law, the Ld. CIT(A) erred in not allowing complete claim of Foreign tax credit claimed by the assessee.*

*2.1. That on facts and in the circumstances of the case & in law, the Ld. CIT(A) erred in holding that additional Foreign tax credit claimed by the assessee in the modified return filed under provisions of section 92CD is not allowable.*

*2.2. That on facts and in the circumstances of the case & in law, the Ld. CIT(A) erred in holding that additional Foreign tax credit claimed by the assessee during the course of assessment proceedings is not allowable."*

4. The assessee has also raised additional grounds of appeal under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 which are as under:

**ITA No. 2367/Del/2019**

*"1. That on the facts and circumstances of the case and in law, the education cess ("EC") and secondary and higher education*

*cess ("SHEC") on Income Tax is an allowable expenditure for computing total income as per the provisions of the Income-tax Act, 1961.*

*2. That on the facts and circumstances of the case and in law, the Ld. AO has erred in levying interest u/s 234B and 234C of the Income-tax Act, 1961 ('Act') on the additional income agreed as per the Advance Pricing Agreement entered between the appellant and the Central Board of Direct Taxes and offered to tax by the appellant in the modified return of income u/s 92CD(1) of the Act."*

**ITA No. 2368/Del/2019**

*"1. That on the facts and circumstances of the case and in law, the education cess ("EC") and secondary and higher education cess ("SHEC") on Income Tax is an allowable expenditure for computing total income as per the provisions of the Act.*

5. The assessee is engaged in the business of providing services in terms of operating and supporting the network, development and delivery of software-based solutions for telecommunication industry. It is a captive information and communication technology service provided to its associated enterprises ("AEs") which primarily include network operations, engineering, system integration and customer support services and contract software development services.

6. The assessee filed return of income on 28.11.2014, declaring total income of Rs.459,64,35,090/-. In the said return, the assessee claimed foreign tax credit ("FTC") relief under section 90/91 of Rs. 14,41,380/-. Subsequently, revised return was filed for the year under consideration on 31.03.2016 to enhance the FTC claim to Rs.8,25,75,166/-. During the course of assessment proceedings, the assessee revised its claim of foreign tax credit to Rs.8,98,74,874/- on receipt of additional foreign tax credit certificates from the vendors till date.

7. The Transfer Pricing Officer (TPO), vide order dated October 25, 2017, made adjustment of Rs.45,92,49,542/-. However, the same stands

undisputed post conclusion of unilateral advance pricing agreement ("APA").

8. The Assessing Officer vide order dated February 16, 2018, confirmed the adjustment made by TPO and allowed the FTC claim as per revised return i.e. Rs. 8,25,75,166/-.

9. Thereafter, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] challenging the transfer pricing addition as well as for allowing FTC as per revised claim made during assessment.

10. During the pendency of appeal before the Id. CIT(A), the Assessee entered into APA signed with Government of India on March 20, 2018. Post the signing of APA, the Assessee also filed the modified return claiming FTC credit of Rs.14,12,43,510/-.

11. The Id. CIT(A), vide order dated December 21, 2018, upheld the action of AO in allowing the claim as per revised return. The Id. CIT(A) held that the nature of modified return filed under section 92CD(1) in pursuance to conclusion of APA is different from revised return filed under section 139(5) of the Act. Further, Id. CIT(A) held that the date of filing revised return under section 139(5) of the Act cannot be extended to include modified return filed in pursuance to section 92CD(1) of the Act.

12. Aggrieved, the assessee filed appeal before the Tribunal.

13. The Id. AR submitted that the Assessee renders services to numerous Ericsson group entities based outside India and receives income from these entities. These foreign entities have deducted tax as per the laws in their respective countries while making payments to the Assessee.

14. The company being resident in India is taxable in respect of its global income in India. Accordingly, the foreign tax credit has been claimed in respect of income which has been taxed twice i.e. once in the source country and at the second time in the country of residence i.e. India.

15. Based on the information available till the date of filing of returns, the Assessee claimed relief of foreign tax credit. The same has been tabulated as below:

Type of return filed	Original	Revised	Modified return post APA
Date of filing	November 28, 2014	March 31, 2016	June 29, 2018
Total income from outside India	(refer page 39-52 of PB)	(refer page 86-99 of PB)	(refer page 133-146 of PB)
Total taxes paid outside India	(refer page 52 of PB)	(refer page 99 of PB)	(refer page 146-147 of PB)
Total foreign tax credit claimed	14,41,380 (refer page 20 of PB)	8,25,75,166 (refer page 67 of PB)	14,12,43,510 (refer page 114 of PB)

16. In this regard, it is submitted that the Assessee revised its claim of foreign tax credit in view of receipt of additional FTC certificates from the foreign entities. The Id. AR also submitted that the AO in subsequent years i.e., AY 2017-18 and 2018-19 considered the revised FTC claim as per revised return of income filed under section 92CD(1) of the Act pursuant to signing of APA and hence the action of the Id. CIT(A) in not appreciating the aforesaid and upholding the action of AO in allowing the claim as per original return is bad in law and Assessee is entitled to FTC claim as per modified return of Rs.14,12,43,510/-. The Id. AR placed reliance on the decision of the Pune Bench of the Tribunal in the case of Dar Al Handasah Consultants (Shair & partners) India Private Limited vs DCIT in ITA No.1413/PUN/2019, wherein it was held as under:

*"ii. Whether assessment u/s 92CD provides for granting deduction u/s 10A?*

*13. Having answered the first question in negative, it remains to be decided as to whether the assessee is entitled to deduction u/s. 10A within the framework of the APA provisions. In this regard, it assumes significance to note the mandate of sub-section (2) of section 92CD of the Act, which provides that: "Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139". A careful circumspection of sub-section (2) deciphers and delineates that in the computation of total income by the AO pursuant to the filing of the modified return by the assessee in terms of the APA, all other provisions of this Act shall apply accordingly. In other words, if an assessee is otherwise eligible for deduction under any other appropriate provision in respect of the income offered in the modified return, there cannot be any embargo on granting deduction under such relevant provision. The saving clause contained in sub-section (2), making all other provisions of the Act applicable in the assessment of the modified return, ostensibly includes the applicability of section 10A as well, of course, subject to the fulfillment of others conditions as set out in the section. It, therefore, follows that if an assessee is otherwise entitled to deduction u/s. 10A, or for that matter under any other provision of the Act, in respect of the income offered in the modified return, the same cannot be denied. As such, the view of the authorities below that in the absence of any specific provision in section 92CD for granting of deduction u/s.10A, no deduction can be allowed, is sans merit. Such stipulation is contained in subsection (2) of 92CD itself. It is, ergo, held that the assessment u/s 92CD provides for granting deduction u/s 10A of the Act."*

17. The Id. DR submitted that the claim of the FTC in any way other than filing of the revised return cannot be accepted and since the due date for filing of the revised return is already expired, the assessee cannot be given any other benefit. The Id. DR argued that the nature of modified return filed in pursuance to Section 92CD(1) of the Income Tax Act, 1961 is different from revised return filed u/s 139(5) of the Income Tax Act, 1961.

18. Heard the arguments of both the parties and perused the material available on record.

19. If an assessee is otherwise eligible for FTC and claimed in the modified return, there cannot be any embargo on granting such claim under such relevant provision. If the tax is due for according credit, the state cannot deny the benefit owing to procedural errors and usurp the rights of the tax payer. Substantial justice takes precedence over such procedural errors leading to manifest injustice or violation of the benefit or vitiating the eligible legal gains. Hence, it is hereby directed that the benefit of FTC be given to the assessee as the benefit of FTC has already been given by the Revenue for A.Y. 2017-18 and A.Y. 2018-19.

20. With regard to Section 234B and Section 234C, the same shall be charged as per the terms mentioned in the APA.

21. The issue of education cess is not pressed.

22. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order Pronounced in the Open Court on 10/07/2024.

Sd/-

**(Saktijit Dey)**  
**Vice President**

**Dated:10/07/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**