

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No. 4/Ahd/2024
Assessment Year: 2019-20**

Mr. Chiragkumar Nandalal Makadia, F-201, Rudraksh Flat, Behind Kumkum Party Plot, Near Chhani Jakat Naka Circle T.P.-13, Vadodara, Gujarat-390024 [PAN - APAPM 4432 K]	Vs.	The ITO, Ward-4(1)(7), Vadodara
(Appellant)		(Respondent)
Assessee by	Shri Ketan Ved, AR	
Revenue by	Shri Sanjaykumar Sr DR	
Date of Hearing	06.08.2024	
Date of Pronouncement	12.08.2024	

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 07.11.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2019-20.

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

"1. Re.: Relief under section 90 of the Act denied

1.1 The learned CIT(A) has erred in confirming the Order of Centralized Processing Center ("CPC"), Bengaluru by denying the relief claimed under section 90 of the Act of INR 2,65,367 in the revised return of income.

1.2 The learned CIT(A) has erred in denying the relief on the ground that the Appellant has not filed Form 67 within the due date of filing of return of income prescribed under section 139(1) of the Act without

appreciating the fact that the same was furnished alongwith the revised return of income wherein the foreign tax credit was claimed as prescribed under Rule 128 of the Income-tax Rules, 1962.

1.3 The learned CIT(A) has erred in not appreciating that the Appellant had filed original return of income under section 139(1) of the Act well within the due date and the revised return under section 139(5) of the Act within the due date as applicable for the captioned assessment year.

1.4 Without prejudice to the above, the learned CIT(A) erred in not appreciating that submission of Form 67 is a procedural requirement and based on the substantive provisions of the Act read with the DTAA, the Appellant should be eligible to claim relief of taxes paid in Netherlands.

1.5 Without further prejudice, the Appellant submits that he has complied with the procedural requirement and if there is any defect therein, the appellant should be provided an opportunity to remedy the defect.

2. Re.: Consequential levy of interest under sections 234B and 234C of the Act

2.1 The learned CIT(A) erred in confirming the levy of interest under section 234B and 234C of the Act of INR 35,472 and INR 7,464 respectively as against NIL interest as per revised return of income filed by the Appellant.

3. Re.: General

3.1 Each one of the above grounds of appeal is without prejudice to the other.

3.2 The Appellant craves leave to add, alter, amend, substitute and / or modify in any manner whatsoever the foregoing grounds of appeal at or before the hearing of the appeal."

3. During the relevant assessment year being AY 2019-20, the assessee was on a deputation to Netherlands by his employer, Jacobs Engineering India Private Limited. The assessee's total number of days of stay in India during the AY 2019-20 was 192 days and his stay in India during 7 years preceding the previous year 2018-19 exceeded 729 days. Accordingly, in

view of section 6(1) of the Act, the assessee states that the assessee qualifies as a “resident and ordinarily resident” in India for AY 2019-20. The assessee filed his income-tax return for AY 2019-20 in Form ITR-1 on 05.08.2019 and also filed revised return of income in Form ITR-2 on 09.06.2020. In the revised return of income, the assessee declared the total income of Rs.22,80,270/- including salary and perquisites received in Netherlands, thereby claiming a relief u/s 90 of the Act of Rs.2,65,367/- and a refund due of Rs.1,17,560/-. The Assessing Officer processed the said revised return of income, and intimation was issued u/s 143(1) of the Act dated 09.03.2021 determining a demand of Rs.1,90,740/-.

4. Being aggrieved by the intimation u/s 143(1) of the Act dated 09.03.2021, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. AR submitted that the salary received from his employer has been subjected to tax in Netherlands, and the assessee is eligible to claim foreign tax credit under Article 23 of the India-Netherlands DTAA of the tax; therefore, accordingly the assessee has revised his return of income. The observations of the CIT(A) that Form 67 was filed beyond the due date of filing of return of income is not justifiable as the return of income was extended to 31.08.2020 and the revised return was filed on 09.06.2020, and the extended revised return in assessee’s case would have been 30.11.2020. Besides this, the ld. AR submitted that the assessee has claimed a relief of Rs.2,65,367/- in respect of income-tax paid in Netherlands u/s 90 of the Act r.w. Article 23 of the India-Netherlands DTAA, and also has given computation in that respect. The ld. AR also

submitted that the certification from Worley Netherland B.V. (Formerly known as "Jacobs Netherlands B.V.) as per Rule 128 (8)(ii)(b) certifying the Netherlands tax liability of EUR 3,212.03 was also submitted before the Assessing Officer/CPC. The ld. AR submitted that the tax authorities should collect the legitimate tax only and, therefore, the CIT(A) erred in not appreciating the fact that submission of Form 67 is a procedural requirement; and based on substantive provisions of Act read with India-Netherlands DTAA, the assessee is eligible to claim relief of tax paid in Netherlands.

6. The ld. DR relied upon the order of the CIT(A) and the intimation u/s 143(1) of the Act dated 09.03.2021. The ld. DR further submitted that Form 67 was filed belatedly and, therefore, the CPC has rightly denied the claim of the assessee.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has filed return of income beyond the due date of filing of return of income, but the same was filed within the extended due date of the return of income. The revised return of income was also filed on 09.06.2020 and Form 67 was also filed within the extended period of filing of the due return. This aspect was not taken into account and, in fact, the assessee has paid the taxes outside India u/s 90 of the Act read with Article 23 of the India-Netherlands DTAA. This fact is not denied by the Assessing Officer or by the CIT(A). The late filing of Form No.67 cannot be the reason for denying the entitlement of the assessee in respect of the benefit of treaty when the salary earned in Netherlands and the tax thereof was paid in the said

foreign country as per the provisions of Article 23 of the DTAA between India and Netherlands. The same should have been taken into account. The salaries earned outside India and this fact was not disputed, in fact, the payment of tax in foreign country was also not disputed. Therefore, the assessee cannot be taxed twice on the same amount which results into double taxation. Thus, the CIT(A) as well as Assessing Officer was not right in denying the claim of the assessee. Accordingly, the appeal filed by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 12th August, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 12th day of August, 2024

*BTK**

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad