



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.390/CTK/2024**  
Assessment Year : 2016-17

Shyam Sundar Jena, Dulla Devi Road Kalyani Nagar, Cuttack	Vs.	The ITO, Ward-1(1), Cuttack
PAN/GIR No.AJEPJ 5491 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Sandeep Kumar Jena, Adv  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 17/10/2024**  
**Date of Pronouncement : 17/10/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id  
CIT(A), NFAC, Delhi dated 11.7.2024 in Appeal No.NFAC/2015-  
16/10163161 for the assessment year 2016-17.

2. Shri Sandeep kumar Jena, Id AR appeared for the assessee and Shri  
S.C.Mohanty, Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual who derives income in the form of salary from Infosys. He is also deriving income from United State of America (USA). It was the submission that when he has filed his return of income disclosing entire salary receipts, he has claimed credit of tax paid to an extent of Rs.2,83,488/- under the head 'TDS'. It was the submission that the amount consisted of Rs.2,33,328/-, which was the tax paid in USA. It was the submission that in the intimation issued, the benefit of TDS/tax deducted and paid in a foreign country has not been given benefit of. It was the submission that in an application under section 154 of the Act, the Assessing Officer has admitted that it was a mistake but had further held that the return had been filed in ITR-1 as against ITR-2, and therefore, there was no option to give credit of the relief u/s.90A. It was the submission that on appeal, the assessee had filed written submission before the Id CIT(A), NFAC but the CIT(A) had dismissed the appeal of the assessee recording that the assessee has not furnished any information. It was the submission that the assessee had filed written submission before the Id CIT(A), NFAC on 6.7.2024. Id AR placed the acknowledgement of the details filed which are as follows:

ACKNOWLEDGEMENT OF SUBMISSION  
BEFORE CIT(A) ON 06/07/24 B

Acknowledgement Number : 604112111060724

e-Proceedings Response Acknowledgement

INCOME TAX DEPARTMENT

PROCEEDING DETAILS

PAN/TAN	AJEPJ5491R
Name	SHYAM SUNDAR JENA
Financial Year	2015-16
Assessment Year	2016-17
Proceeding Name	First Appeal Proceedings
Notice/Communication Reference ID	100081008113
Notice Section	250
Description	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.
Notice Issue Date	19-Jun-2024
Due Date for Submission	28-Jun-2024
Communication Sent date	
Document Reference ID	ITBA/NFAC/F/APL_1/2024-25/1065812360(1)

RESPONSE SUBMITTED

Remarks	Response to Notice under Section 250 DIN: ITBA/NFAC/F/APL_1/2024-25/1065812360(1) dated 19/06/2024.
Hash * Value Of Remarks	352266600ea5e0a261847236ba14deaa1a5ad5f732931554faa5a49727c95ce9

Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	Annexure 4_Rectification Order dated 15.06.22.pdf	Annexure 4	4738793	adbe773c7f60fd64aeffb4f55a653f47dd7cba2091889caeeba1616cc0e9c86a
2	Annexure 5_Form 16_Salary Certificate.pdf	Annexure 5	2591379	3b1ad42e6dfcba33b3c33162fba6ba4b75ba8594bb6e49ab706e01e8ff98fecb
3	Annexure 6_ITR -1 & 2 description on IT Portal.pdf	Annexure 6	94458	c6d6de7f4dca32375dfc262e6ff19dea539cb084d8245c163c241b82e3340ee1
4	Shyam Sundar	Response to Notice	847819	366d8e84ed0ac0c3

Attachment Name	Description	Size(bytes)	Hash * value of Attachment
Jena_CIT appeal reply_06.07.24.pdf			9eccdc51ebc17494 d6f8db88c676a343 a31f2283507e6100
enclosures.pdf	List of Enclosures	97785	3b3dca6ccfbfa718c 9740154cc416aad3 bbe752eb32eaad6c5 2c1ca0981aff99
Annexure 1.1_Form ITR 1 SAHAJ.pdf	Annexure 1.1	106339	3e015624cd08feea9 a65865886f8d11f3b 24b1f4fb2951b08f5 33fcf91ad919f
Annexure 1.2_SOI AY 2016-17.pdf	Annexure 1.2	428303	74e3c0080d417539 be25c9203f34247d 3ed8565dcaa184d4 bfb0536d8128bb9c
Annexure 2.1_India US Double Taxation Avoidance Treaty.pdf	Annexure 2.1	13977	4b0f05605c3992726 106e0b1bb07e9259e f1a0b7f1c6c5fdb84 a6ef71da10915
Annexure 2.2_Notification No.S.O.2123 (E) dated 28.08.2008.pdf	Annexure 2.2	127203	0e951a2b5e0bf4d7 0a7323bf7593d5b1 aa29b6679effdb94 546e7e7b06552100
Annexure 3_Intimation us 143(1).pdf	Annexure 3	116191	1b2790a905fabad9 b44ce7d6a2e82698 16cfd2e7c058a39 1055c83285e6c280

s a system generated acknowledgement and does not require signature

h \* This value will uniquely identify the uploaded files and remarks.

4. It was the submission that the Id CIT(A) has erred in not considering the written submission filed.

5. In reply, Id Sr DR vehemently supported the order of the AO and Id CIT(A). It was the submission that the return has not been filed in ITR-2 and the requisite tax recovery certificate (TRC) and the requisite Form 10F has also not been produced relevant to provisions of section 90A(5) of the Act.

6. We have considered the rival submissions. A perusal of the details filed by the assessee on 6.7.2024, which admittedly has not been considered by the Id CIT(A) shows that necessary TRC from the foreign tax authorities nor the requisite form in respect of the claim of credit of tax recovery in the foreign country has been produced before the Id CIT(A). The same is also not before us. This being so, we find no error in the order passed u/s.154 by the Assessing Officer, which is also upheld by the Id CIT(A)

7. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 17/10/2024.

Sd/-  
**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 17/10/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Shyam Sundar Jena, Dulla Devi Road Kalyani Nagar, Cuttack
  2. The Respondent: ITO, Ward-1(1), Cuttack
  3. The CIT(A)- NFAC, Delhi
  4. Pr.CIT, Cuttack
  5. DR, ITAT,
  6. Guard file.
- //True Copy//

**By order**

Sr.Pvt.Secretary  
**ITAT, Cuttack**