

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 1167/Kol/2024  
Assessment Year: 2021-22**

**BGA Electrical & Services Private Limited,**

A/2D, KYD Street, Park Street,

H.O. Kolkata - 700016

[PAN: AAICB7899K]

.....**Appellant**

**vs.**

**The Deputy Commissioner of Income Tax,**

**Circle 3(2), Port Blair,**

VIP Road, Port Blair,

Andaman & Nicobar Island – 744103 ..... **Respondent**

**Appearances by:**

Assessee represented by : Vijeta Untwalia, AR

Department represented by : Akhil Kumar, Sr. DR

Date of concluding the hearing : 11.11.2024

Date of pronouncing the order : 18.11.2024

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), Addl./JCIT(A)-1, Nashik (hereinafter referred to as "the Ld. CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2021-22, dated 28.03.2024, which has been passed against the intimation issued u/s 143(1) of the Act, dated 13.11.2022.

1. In this case, the appellant has filed his return of income on 07.02.2022 through which he claimed exemption u/s 90 of the Act of Rs. 75,000/-. Through order u/s 143(1), the CPC Bengaluru, denied the relief u/s 90 of the Act on the ground that Form No. 67 was filed beyond the time allowed in terms of Rule 128 of the I.T. Rules.

1.1 The Ld. CIT(A) upheld the denial of such claim by the Ld. AO. Aggrieved, the appellant has filed the present appeal through the following grounds of appeal:-

*“1) That the order passed by the Honourable CIT(Appeals)/Addl./Joint CIT(Appeals), NFAC [here in after referred to as "the Honourable CIT(Appeals), NFAC"] u/s 250 of the Income Tax Act, 1961 on dated 28/03/2024, by upholding the intimation order passed u/s 143(1) of The Income Tax Act, 1961 by the Ld. Asst. Director of Income Tax, CPC, Bengaluru, is beyond jurisdiction and contrary to the law & facts, hence liable to be quashed.*

*2) That the Honourable CIT(Appeals), NFAC erred in upholding the adjustment made by the CPC, Bengaluru, without ensuring compliance with the mandatory requirement of the first proviso to section 143(1) of the Income Tax Act, 1961. This proviso mandates that no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. The failure to provide prior intimation to the appellant as required under this proviso constitutes a violation of the principles of natural justice.*

*3) That on the facts and in the circumstances of the case, the Honourable CIT(Appeals), NFAC was not justified and grossly erred in confirming the disallowance of Foreign Tax Credit of Rs. 75,000/- under section 90 of the Act read with Article 23 of India- Nepal DTAA.*

*4) That on the facts and in the circumstances of the case, the Honourable CIT(Appeals), NFAC was not justified and grossly erred in confirming the late filing of Form No. 67 invalid for availing treaty (DTAA) benefit.*

*5) That on the facts and in the circumstances of the case, the Honourable CIT(Appeals), NFAC was not justified and grossly erred in confirming that filing of Form no. 67 within due date is a pre-condition for claiming foreign tax credit*

*6) That the Honourable CIT(Appeals), NFAC erred in law and facts of the case by upholding the enhancement of interest u/s 234B and 234C of the Act, since once the foreign tax credit is given, there will no demand.*

*7) That the Honourable CIT(Appeals), NFAC erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the appellate order, hence it is against the principles of natural justice.*

*8) That the appellant be allowed to add/alter/amend/delete either, all or any of the grounds of appeal either before or at the time of hearing.”*

2. Before us, the Ld. AR argued that the claim through Form No. 67 was genuine and deserved to be allowed even if the Form 67 was belatedly filed.

2.1 The Ld. DR relied on the language of Rule 128 of the IT Rules and stated that the Ld. AO had no option but to deny such claim.

3. We have considered the rival contentions and gone through the documents before us. It is a settled position that the DTAA's provide for eliminating double taxation of income and such provision would normally override other provisions of the Act. In this case, the appellant is seen to have earned foreign business income of Rs. 5,00,000/- from one M/s Annapurna Impex and BG Associates J.V. on which tax of Rs. 75,000/- was paid in Nepal. Admittedly, Form No. 67 was filed belatedly, however, we have been made aware of a case of the Coordinate Bench of the Tribunal in the case of Anindya Sarkar Vs. Assistant Director of Income Tax, CPC, Bangaluru, ITA No. 1345/Kol/2024, order dated 26.07.2024, in which after discussing a number of authorities it has been held as under:

*“10. The relevant extract of Article 25 of India Singapore Double Taxation Avoidance Agreement (DTAA) is as under:*

*“1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.*

*2. Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Singapore, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Singapore tax paid, whether directly or by deduction. Where the income is a dividend paid by a company which is a resident of Singapore to a company which is a resident of India and which owns directly or indirectly not less than 25 per cent of the share capital of the company paying the dividend, the deduction shall take into account the Singapore tax paid in respect of the profits out of which the dividend is paid. Such deduction in either case shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Singapore.”*

*11. Since the provision of DTAA override the provision of Section 90 of the Act as they are more beneficial to the assessee, in view of judicial pronouncements in this regard and since Rule 128(a) does not preclude the assessee from the claiming credit for FTC in case of delay in filing the return of income as the credit for FTC is a vested right of the assessee and since form 67 was filed in response to the query received from CPC as contended by the assessee, therefore, there was no justification for not allowing the credit for FTC. Hence, respectfully following the decision cited in preceding*

*paragraphs, Ground Nos. 1 and 2 of the appeal are allowed and the AO is directed to allow the FTC in accordance with DTAA between India & Singapore and as per law.”*

For the sake of recapitulation, the provision of India-Nepal DTAA dealing with Avoidance of Double Taxation may be extracted as under:

*“ARTICLE 23*

*METHODS FOR ELIMINATION OF DOUBLE TAXATION*

*1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.*

*2. Double Taxation shall be eliminated as follows:*

*(i) In India*

*(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Nepal, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Nepal.*

*Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Nepal.*

*(b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.*

*(ii) in Nepal*

*(a) Where a resident of Nepal derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Nepal shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.*

*Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.*

*(b) Where in accordance with any provision of the Agreement income derived by a resident of Nepal is exempt from tax in Nepal, Nepal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.”*

It is clear that the appellant deserves the credit for taxes paid in Nepal since the provisions of DTAA (in this case DTAA with Nepal) have an overriding effect over other provisions of the Act. Accordingly, the claim of the appellant is directed to be allowed.

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

Order pronounced in the court on 18.11.2024

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 18.11.2024.  
AK, PS

*Copy of the order forwarded to:*

1. BGA Electrical & Services Private Limited
2. The Deputy Commissioner of Income Tax, Circle 3(2), Port Blair
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches