

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.3331/Mum/2024
(Assessment Year: 2018-19)

Hardik Hitesh Shah 702, 7 th Floor, A-Wing Veesita Residency, Azad Road, Andheri East, Mumbai-400 069 PAN:BJZPS7889E	vs	The Income-tax Officer, Ward 41(1)(1), Mumbai Kautilya Bhavan BKC, Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Nikhil Tiwari
Respondent by : Shri Hemanshu Joshi (SR. DR.)

Date of hearing : 14/01/2025
Date of pronouncement : 16/01/2025

ORDER

PER ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), date of order 29/04/2024 for A.Y. 2018-19. The impugned order was emanated from the order of the National e-Assessment Centre, Delhi (for brevity, 'Ld.AO') passed under section 143(3) read with section 143(3A)& 143(3B) of the Act, date of order 22/02/2021.

2. The assessee has taken the following grounds:-

The following grounds of appeal are without prejudice to one another:-

“1. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in upholding the additions of INR 20,15,911 to the assessed income of the Appellant by the Learned Additional / Joint/ Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment Centre on account of perquisite in respect of the tax paid by the employer on the relocation allowance of INR 32,79,300 suo moto and voluntarily offered to tax during assessment proceedings, ignoring that perquisite on account of tax paid by the employer had been included in the computation of income at the time of offering the relocation allowance to tax voluntarily during assessment proceedings for AY 2018-19.

2. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred upholding the addition of INR 7,73,345 to the assessed income of the Appellant by the Learned Additional / Joint/ Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment Centre on account of alleged unexplained credit in the foreign bank account held by the appellant, ignoring the bona-fide explanation duly supported by documentary evidence furnished by the appellant during assessment proceedings for the AY 2018-19.

3. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in upholding the erroneous tax demand of INR 62,02,682 computed by the Learned Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment Centre due to total additions of INR 60,68,556 made during assessment while granting TDS credit of only INR 90,692 instead of INR 20,00,523 as reflected in the Form 26AS of the Appellant.

4. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in upholding the levy of interest of INR 15,83,085 and INR 96,445 under Section 234B and 234C of the Act respectively by the Learned Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment Centre.

5. The learned Hon'ble CIT(A) has in facts and circumstances of the case and in law erred in upholding the penalty proceedings initiated under Section 270A of the Act by the Learned Additional Joint/Deputy Assistant Commissioner of Income

Tax/ Income-tax Officer, National e-Assessment Centre for alleged under-reporting of income and Section 271AAC of the Act for alleged unexplained cash deposits.

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted. The Appellant may kindly be given an opportunity of being heard as per the principles of natural justice.

Additional grounds

“On the facts and in the circumstances of the case, the Appellant wishes to raise the following additional ground of appeal which is independent of the other grounds of appeal.

Credit of TDS not granted as reflected in Form 26AS

6. The Hon'ble CIT(A) has in the facts and circumstances of the case and in law erred in not granting entire TDS credit of Rs. 20,15,911 (being taxes paid by the employer on the relocation allowance) and as reflecting in the Form 26AS of the Appellant.

The Appellant craves, to consider the above ground of appeal without prejudice to each other and craves leave to add, alter, modify or delete all or any of the above grounds of appeal.”

3. The brief facts of the case are that during the impugned assessment year, the assessee filed the return showing status as 'Resident & Ordinarily Resident in India' under section 6 of the Act and offered the global tax in the return of income. The assessee was an employee and was sent to an international assignment to US (United States), rendered services in the US and accordingly received salary and perquisites amount o Rs.65,95,935/-. The assessment was completed with an addition of Rs.7,73,345/- related to unaccounted cash deposited in the bank account in USA during his stay in the US. The alleged amount was added back under section 68 read with section 115BE of the Act with the total income of the assessee. Further, the assessee had declared the perquisite for relocation charges received from the employer amount to

Rs.32,79,300/- which was credited in the bank account held in the US and inadvertently omitted to be offered to tax in India. Further, in terms of the US assignment, the assessee has an agreement with the employer that any tax arising in India (after considering foreign tax credit) on US salary would be borne by the employer of the assessee. Therefore, upon realizing the inadvertent mistake, which was bonafide and unintentional errors, the assessee informed his employer and requested the employer to pay the necessary taxes under section 192 of the Act alongwith applicable interest under section 201(1A) of the Act. Accordingly, the employer paid the tax of the assessee amount to Rs.20,15,911/- and also the interest amount to Rs.13,18,067/- under section 201(1A) of the Act. Both the additions of Rs.32,79,300/- and Rs.20,15,911/- were duly accepted by the assessee. But the tax credit amount to Rs.20,15,911/- was not allowed by the Ld.AO during the assessment proceedings though the said tax was reflected in assessee's Form 26AS. Finally, the Ld.AO allowed a meager amount of TDS in respect of this income. The impugned assessment order was assailed before the Ld. CIT(A). The Ld.CIT(A), after considering the same rejected the appeal of the assessee. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a written submission which is kept in the record.

4.1 The Ld.AR argued ground-wise, which is as follows:-

Ground.1: Ground 1 is not pressed, so rejected.

Ground.2: Related to the cash deposit, the Ld.AR stated that the Ld.AO had considered the deposit in bank account held in US and out of that USD 1921.77 on 07/04/2017 was duly deposited as salary from employer was considered as cash deposit, which is not correct. Finally, the Ld.AO calculated total cash deposit of

Rs.7,73,345/-; out of that the salary amount to Rs.1,23,185/- wrongly taken as cash deposit. So, the balance amount of Rs.6,50,160/- was related to the cash deposit in US. The assessee withdrew cash in US through the credit card USD 1305.99 and it is further explained that the assessee had arranged tours for his family members and booked the cruise for different destinations to entertain his family during his stay in US. Accordingly, the family members had paid their proportionate touring expenses to assessee and depositing the same in bank account. The copies of confirmation / declaration of repayment of USD 9,000 from concerned persons, on whose behalf the expenses were incurred by the assessee are placed on record at **pages 175 – 179 of APB**. Further the assessee had completed these transactions in the said bank account during his stay in US. So, all transactions related withdrawals of cash and deposit of cash were completed in the US during his tenure of 9 months' stay in the US. The copy of the foreign bank account statement is annexed in **APB pages 37 to 129**. We find that the assessee had sufficient cash to deposit in the bank account which was received from his family members. Finally, the assessee was not required to maintain books of account as it was not applicable for the assessee, being an employee. The assessee is filing the return by declaring total income amount to Rs.93,15,130/-. So, the cash transactions in US are duly supported with evidence and nature of cash deposits are explained properly.

5. The Ld.DR argued and fully relied on the order of the revenue authorities.

6. We heard the rival submissions and considered the documents available in the record. We find that the amount considered by the Ld.AO is wrongly taken as the salary in the list of cash deposit. So the addition of the amount of Rs.1,23,185/- related to the deposit of salary is deleted. For rest of the amount,

the assessee has filed the details of bank account and the confirmations as proof of depositing cash which was received from the family members for arranging tours during his stay in the US. All the transactions are duly completed during his stay in the US. Further the assessee is not liable for maintaining the books of account. So the separate cash book is not required for verification of the cash. The Ld.DR had not filed any contrary evidence against the submission of the Ld.AR. The veracity of the documents filed before the Ld. AO was never be challenged. Accordingly, we hold that the addition made by the Ld.AO is erroneous and is therefore, deleted.

Grounds 2 of the assessee's appeal is allowed.

7. **Ground 3 & Additional Ground:**

In our considered opinion, the assessee had disclosed, during the assessment stage, the income received from the employer as a perquisite amounting to Rs.20,15,911/-, as well as the relocation allowance of Rs.32,79,300/-. Both amounts were duly added back to the total income and treated as part of the assessee's income.

The Ld. AR drew our attention to a copy of Form 26AS for the A.Y. 2018–19, annexed in **APB pages 130 to 133**, where the tax amount is duly reflected. The amount was paid by the employer as a perquisite to the assessee and was disclosed in the total income.

Upon review, we find that the disallowance of the tax credit of Rs.20,15,911/- is unjustified. However, at this stage, we are unable to verify the tax credit claimed by the assessee, even though it is reflected in Form 26AS. The Ld. DR did not raise any significant objections to the assessee's submissions. Therefore, we are remanding this issue to the file of the Ld. AO for verification of the tax credit and

to allow it as per the provisions of the law. The reasonable opportunity should be granted to the assessee for hearing in set aside proceeding.

Accordingly, **Ground No. 3** and the additional ground of the assessee's appeal are allowed for statistical purposes for limited issue.

8. **Grounds 4 & 5** are consequential in nature.

9. In the result, appeal of the assessee bearing **ITA 3331/Mum/2024** is allowed.

Order pronounced in the open court on 16th day of January, 2025.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 16/01/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai