

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1240/SRT/2024

Assessment Year: (2023-24)

(Hybrid hearing)

Amitkumar Pravinchandra Reshamwala B-1004, Arihant Heightsopp Stuti Icon. Auravpath, Palanpur-395 005	बनाम/ Vs.	Deputy Director of Income-tax, CPC, Bengaluru/AO (Int. Tax) Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AGSPR 4047 K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Ketan Ved, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	20/02/2025
उद्घोषणा की तारीख/Date of Pronouncement	29/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 27.09.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2023-24, which in turn arises out of assessment order passed by Centralized Processing Center/Assessing Officer u/s 154 of the Act dated 09.01.2024. Grounds of appeal raised by the assessee are as under:

"1. Re.: Not-rectifying the errors apparent on record:

1. The Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer of refusing to rectify the errors apparent on record as pointed out by the appellant vide its rectification request dated 01 December 2023.
2. The appellant submits that considering the facts and circumstances of the case and the law prevailing on the subject the errors pointed out by the appellant vide its aforesaid rectification request were apparent on record and are therefore rectifiable u/s 154 and the Commissioner of Income-tax (Appeals) ought to have held as such.
3. The appellant submits that the Assessing Officer be directed to rectify the errors apparent on record as pointed out by the appellant.

Without prejudice to the foregoing:

2. Re.: Short grant of relief u/s 90 of the Income-tax Act, 1961 [‘Act’] vis-à-vis credit for foreign taxes paid – Rs.3,34,075:

1. The Assessing Office [‘AO’]/Centralised Processing Centre, Bengaluru [‘CPC’] erred in granting the relief claimed under section 90 of the Act vis-à-vis credit for foreign taxes paid of Rs.8,86,1167 in the impugned order dated 09 January 2024 as against the credit of foreign taxes of Rs.12,20,242 claimed in the return of income and thereby short granting credit of foreign taxes paid by Rs.3,34,075, which action has been upheld by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [‘CIT(A)’/‘NFAC’].

2. The appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the AO/CPC erred in granting short the relief claimed u/s 90 for the credit of foreign taxes paid by Rs.3,34,075 and hence the action of the CIT(A) upholding the order of the AO/CPC is incorrect, erroneous and not in accordance with the law.

3. The appellant submits that the AO/CPC be directed to grant the full relief u/s 90 vis-à-vis the credit of foreign taxes paid of Rs.12,20,242 and accordingly compute the total tax liability thereon.

3. Re.: Interest u/s 234B of the Act has been levied in excess:

1. The AO/CPC has erred in levying excessive interest u/s 234B of the Income-tax Act, 1961.

2. The appellant submits that considering the facts and circumstances of this case and the law prevailing on the subject, excessive interest has been levied u/s 234B and hence the action of the AO/CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.

3. The appellant submits that the AO/CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.

4. Re.: Interest u/s 234C of the Act has been levied in excess:

1. The AO/CPC has erred in levying interest of Rs.1,50,498 instead of Rs.1,33,622 u/s 234C of the Income-tax Act, 1961.

2. The appellant submits that considering the facts and circumstances of this case and the law prevailing on the subject, no further interest is leviable u/s 234C (over and above the interest u/s 234C of Rs.1,3,622/- computed and paid by the appellant at the time of filing its return of income) and hence the action of the AO/CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.

3. The appellant submits that the AO/CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.

5. *Re.: General*

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.

Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the appellant.

The appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at the time of hearing of the appeal."

2. Facts of the case in brief are that assessee was a Resident and Ordinarily Resident (ROR) of India for AY 2023-24. He filed the return of income for AY 2023-24 on 25.07.2023, which was processed u/s 143(1) on 25.08.2023. The appellant had claimed foreign tax credit (FTC) of INR 8,86,167/- in respect of US federal taxes paid u/s 90 of the Act read with Article 23 of DTAA entered between India and USA and FTC of INR 3,34,075/- on South Caronila state taxes u/s 91 of the Act. However, in the said intimation u/s 143(1) of the Act, tax relief u/s 90/90A was allowed at Rs.8,86,167/- as against Rs.12,20,242/-. No relief u/s 91 of the Act was allowed. The tax payable was determined at Rs.3,67,960/- including interest u/s 234B and 234C of the Act. Subsequently,

order u/s 154 of the Act was passed on 09.01.2024 raising a demand of Rs.3,67,960/-. The AO has not granted FTC of Rs.3,34,075/- in respect of the state taxes paid.

3. Aggrieved by the order passed u/s 154 of the Act dated 09.01.2024 the appellant filed appeal before CIT(A). The CIT(A) has extracted the statement of facts, grounds of appeal and submission of the appellant at pages 2 to 7 of the appellate order. The appellant had relied on the decisions of ITAT Ahmedabad in case of Dr. Rajiv Modi reported in (2017) 66 taxmann.com 253 (Ahmedabad Trib.). The CIT(A) observed that appellant has relied on various judgments and since there are divergent views in the matter, the issue becomes contentious. This cannot be said to be an apparent mistake in the order. The CIT(A) relied on the decision of Hon'ble Supreme Court in case of Sanjay Kumar Agarwal vs. Sales Tax Officer in Review Petition (Civil) No.1620 of 2023 in Civil Appeal No.1661 of 2020. In the said decision, reference was made to the decision of the Hon'ble Constitution Bench in Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others where it was held that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record. A review petition has a limited purposes and cannot be allowed to be "an appeal in disguise". The petitioner cannot be permitted to re-agitate and re-argue the questions which have already been addressed and decided. An error on the face of record must be such an error which, mere looking at the record should strike and it should

not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. The CIT(A) held that the issue of the appellant is a controversial one and is yet to attain finality. Hence, the issue is beyond the ambit of the provisions of Section 154 of the Act. Accordingly, he dismissed the appeal of the assessee.

4. Further aggrieved by the order of CIT(A), the assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee filed a paper book and submitted that the claim of the assessee was in respect of FTC of Rs.3,34,075/- on South Carolina state taxes was u/s 91 of the Act. The appellant has also filed Form-67 on the Income-tax portal along with the proof of taxes paid outside India. The Ld. AR of the assessee relied on the decisions in cases of (i) Dr. Rajiv I. Modi v. DCIT (OSD) [2017] 86 taxmann.com 253 (Ahmedabad – Trib.) and (ii) Aditya Khanna vs. ITO (IT) [2019] 105 taxmann.com 323 (Delhi-Trib.) and submitted that the issue is covered by the above decisions.

5. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. He stated that the only issue in the appeal is FTC of Rs.3,34,075/- on South Carolina state taxes. The AO has allowed FTC of Rs.8,86,167/- with respect to the US Federal taxes paid u/s 90 of the Act. He submitted that Article 2 of Double Taxation Avoidance Agreement (DTAA) limit credit to only Federal tax and in not state tax. Section 91 of the Act is not applicable since India had DTAA with USA. The Ld. Sr. DR submitted that it is not permissible for the AO to go into the scopes of the relevant provisions of

the Act in a proceeding u/s 154 of the Act. A mistake apparent on the record must be obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on which there may be two possible opinions. He, therefore, argued that the claim of FTC in respect of state taxes has been rightly rejected u/s 154 of the Act.

6. We have heard both the parties and perused the materials on record. We have also deliberated various case laws relied upon by both parties. We have also gone through the India US Double Taxation Avoidance Treaty. Ground No.1 and 2 are inter-related and hence are discussed and decided together. In this case, assessee filed return of income on 25.07.2023. The case was processed u/s 143(1) of the Act by the CPC on 25.08.2023. In the said return, tax relief of Rs.8,86,167/- was allowed u/s 90/90A of the Act against claim of Rs.12,20,242/-. No relief u/s 91 was allowed. Subsequently, order u/s 154 was passed on 09.01.2024. The reliefs u/s 90/90A and u/s 91 were not changed and tax relief of FTC of Rs.3,34,075/- in respect of South Carolina state taxes was not granted. The Ld. AR has relied on the decisions in cases of Dr. Rajiv I. Modi (supra) and Aditya Khanna (supra).

6.1 FTC is allowed to a resident of India in respect of tax paid by him in a source country or specified territory outside India by deduction or otherwise. Where DTAA is entered, the FTC is allowed for the taxes covered under the DTAA. The provision of DTAA has an overriding effect over the provisions of the Act to the extent they are more beneficial. In case of no DTAA, the FTC

claim may be considered as per the provisions of section 91 of the Act. FTC is restricted to the amount of tax payable in India on the corresponding income. Excess foreign tax paid over the taxes payable in India will not be allowed as credit. FTC can be claimed only against the tax, surcharge and cess payable on the corresponding income in India.

6.2 We find that in both cases the order of CIT(A) was against the assessment order u/s 143(3) of the Act and not against order u/s 154 of the Act. In the cases relied upon, regular scrutiny assessment orders u/s 143(3) of the Act were passed. However, in the present case, no such order has been passed and only processing was done by CPC and intimation u/s 143(1) was issued. The rectification order u/s 154 was in respect of the intimation u/s 143(1) dated 25.08.2023. In the said intimation dated 25.08.2023, credit for US Federal tax was allowed u/s 90 of the Act but FTC of Rs.3,34,075/- on South Carolina state taxes was not allowed u/s 90 or 91 of the Act. In the rectification order, the tax relief claimed u/s 91 was rejected. The appellant has claimed benefit of the above tax u/s 91 of the Act. However, Section 91 is applicable in respect of countries with which no agreement exists. The DTAA was entered into by the Central Government with United States of America, where South Carolina is situated. Article 2 of the DTAA is relevant and hence reproduced below for clarity:

“ARTICLE 2 – Taxes covered -1. The existing taxes to which the Convention shall apply are:

(a) *in the United States, the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the exercise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as “United States Tax”); provided, however, the Convention shall apply to the exercise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under this or any other Convention which applies to these taxes; and*

(b) *in India:*

(i) *the income-tax including any surcharge thereon, but excluding income-tax on undistributed income of companies, imposed under the Income-tax Act; and*

(ii) *the surtax
(hereinafter referred to as “Indian tax”).*

Taxes referred to in (a) and (b) above shall not include any amount payable in respect of any default or omission in relation to the above taxes or which represent a penalty imposed relating to those taxes.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention.”

6.3 Since India has DTAA with USA, Section 91 is not applicable. Therefore, contention of the appellant that he was eligible to avail FTC of Rs.3,34,075/- on South Carolina state taxes u/s 91 is not tenable. Be that as it may, it is a

debatable issue and is not specifically covered in the DTAA or the Act. The CPC has rightly granted FTC of Rs.8,86,167/- with respect to the US Federal tax paid u/s 90 of the Act. In absence of any clear provisions to allow FTC of state taxes, it was not possible to allow such benefit to the assessee. Hence, there was no obvious or patent mistake in the intimation u/s 143(1) of the Act. If at all there was a mistake, it is something which can be established by a long-drawn process of reasons on points on which there may conceivably two opinions. Reliance is placed on the decision of Hon'ble Supreme Court in case of Balaram vs. Volkart Brothers 82 ITR 50 (SC). Hence, the claim was not amenable u/s 154 of the Act.

6.4 The Hon'ble Supreme Court in case of CIT vs. Keshri Metals Pvt. Ltd. 237 ITR 165 (SC) held that there has to be a mistake apparent from record. In other words, a look at the record must show that there has been an error, and that error may be rectified. Reference to documents outside the records and the law is impermissible when applying the provisions of section 154 of the Act.

6.5 Again, the Hon'ble Supreme Court in case of CIT vs. Hero Cycle Pvt. Ltd. 228 ITR 463 (SC) held that a point which was not examined on fact or in law cannot be dealt as mistake apparent on record.

6.6 The Hon'ble Supreme Court in case of ACIT vs. Saurashtra Kutch Stock Exchange Ltd., 305 ITR 227 (SC) held that an error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the record

means an error which strikes one on mere looking and does not need a long-drawn-out process of reasoning on points on which there may be conceivably two opinions. Such error should not require any extraneous matter to show its correctness.

6.7 In view of the facts discussed above and the decisions cited supra, we do not find any merit in the ground Nos. 1 and 2 raised by the appellant and accordingly, same are dismissed.

7. The ground Nos 3 and 4 are interest u/s 234B and 234C of the Act. The Hon'ble Supreme Court in case of CIT vs. Anjum M.H.Ghaswala 252 ITR 1 (SC) has held that interest u/s 234B is mandatory and automatic. Section 234B in clear terms imposes a mandate to collect interest at the rates stipulated therein. The expression 'shall' used in the said section cannot by any stretch of imagination be construed as 'may'. Hence, the ground Nos. 3 and 4 are rejected.

8. Ground No.5 raised by assessee is in general in nature and do not require any adjudication.

9. In the result, appeal of assessee is dismissed.

Order pronounced under proviso to Rule 34 of the ITAT Rules, 1963 on 29/05/2025 in the open court.

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 29/05/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्योषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
 - प्रत्यर्थी/ The Respondent
 - आयकर आयुक्त/ CIT
 - आयकर आयुक्त (अपील)/ The CIT(A)
 - विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत