

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.283/Bang/2023
Assessment Year : 2020-21

M/s. EY Global Delivery Services India LLP, RMZ Infinity, Tower C, 3 rd Floor, Old Madras Road, K. R. Puram, Bengaluru – 560 016. PAN : AAGFE 8006 N	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Chavali Narayan, CA and Shri. Keerthi Narayan, CA
Revenue by	:	Shri. Gudimella VP Pavan Kumar, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	30.05.2023
Date of Pronouncement	:	31.05.2023

ORDER

Per George George K, Judicial Member:

This appeal at the instance of the assessee is directed against order of CIT(A), dated 10.02.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2020-21.

2. The grounds of appeal raised by the assessee read as follows:

General Grounds

- 1) *The impugned appellate order passed by the Ld. CIT(A) under section 250 of the Act to the extent it is pre-judicial to the*

Appellant is erroneous, bad-in law and contrary to the facts and circumstances of the case.

- 2) *The Ld. CIT(A) has erred on facts and in law in not passing a speaking order.*
- 3) *The Ld. CIT(A) has erred on facts and in law in not adjudicating all the grounds of appeal filed by the Appellant.*

Grounds in relation to Foreign Tax Credit

- 4) *The Ld. CIT(A) has erred on facts in not directing the Assessing Officer (Id. AO') to grant the Foreign Tax Credit for a sum of INR 1,38,21,316 as claimed by the Appellant in the Return of Income ('ROI') filed and also computed on Page 43 of the Rectification issued on 21 June 2022 to rectify the original Intimation dated 24 December 2021.*
- 5) *The Ld. CIT(A) has failed to appreciate that the Appellant had already filed Form 67 and the said Foreign Tax Credit was already claimed in the ROI filed.*
- 6) *The Ld. CIT(A) has erred in directing the Ld. AO to verify the Foreign Tax Credit claimed by the Appellant even though he had already computed the same as allowable on page 43 of the Rectification dated 21 June 2022 but failed to include the amount while computing the refund amount.*

Grounds in relation to Interest under section 244A of the Act

- 7) *The Ld. CIT(A) has erred, in not adjudicating the Ground raised in relation to granting of interest under section 244A of the Act.*
- 8) *The Ld. CIT(A) has failed to appreciate that the Appellant is eligible for interest under Section 244A and has erred in not adjudicating this ground.*
- 9) *The Ld. CIT(A) on a wrong presumption has dismissed the Ground of Appeal treating it to as consequential in nature.*

Grounds in relation to additional levy of Interest under section 234B and 234C of the Act

- 10) *The Ld. CIT(A) has erred, in dismissing the Ground of Appeal in relation to levy of additional interest under section 234B of the Act without appreciating that once the Foreign Tax credit is granted there will be no additional levy of interest under section 234B of the Act.*
- 11) *The Ld. CIT(A) has erred, in dismissing the Ground of Appeal in relation to levy of additional interest under section 234C of the Act without appreciating that 234C is applicable only on returned income and not on the assessed income.*

3. Grounds 1 to 3 are general in nature, no specific adjudication is required and hence the same are dismissed. No contentions were raised with regard to ground Nos.7 to 10, hence the same are dismissed. We shall adjudicate the surviving grounds as under:

Grounds in relation to Foreign Tax Credit (FTC) (Grounds 4 to 6)

4. For the Assessment Year 2020-21, the return of income was filed on 18.12.2020 claiming relief under section 90 of the Act for the foreign taxes paid amounting to Rs.1,38,21,316/-. The said amount pertains to the taxes paid by the assessee in USA on the income offered to tax in India. Intimation under section 143(1) of the Act was issued wherein the amount claimed as foreign tax credit was not granted. The assessee filed rectification application under section 154 of the Act. The rectification application of the assessee was not disposed off.

5. Aggrieved by the intimation under section 143(1) of the Act, assessee filed appeal before the First Appellate Authority. The CIT(A) directed the AO to examine the issue. The finding of the CIT(A) directing the AO to examine the issue reads as follows:

*“In **Ground No.6**, the Appellant agitates that the Assessing Officer erred in not granting the legitimate relief claimed by the appellant u/s 90 of the I.T. Act, with respect to non-grant of foreign tax credit.*

It is not clear from the intimation order u/s 143(1) as well as from the order u/s 154 of the I. T. Act as to under what circumstances the relief claimed u/s 90 of the Act, for foreign taxes paid, amounting to Rs.1,38,21,316/- was not granted by the CPC. From the details submitted during the course of appellate proceedings prima facie, the contention of the appellant appears to be correct. However, the A.O. is directed to verify the factual position of the appellant's plea and thereafter allow or disallow the appellant's claim after due verification of all material facts and as per

the legal provisions of the I.T. Act, 1961. Hence the ground No.6 of the Appeal is partly allowed for statistical purpose.”

6. Aggrieved, the assessee has filed the present appeal before the Tribunal. The learned AR relied on the grounds raised.

7. The learned DR submitted that CIT(A) had restored the issue on FTC to the files of the AO. Therefore, it was submitted that the directions of CIT(A) ought not to be interfered with.

8. We have heard the rival submissions and perused the material on record. The CIT(A), in the impugned order, had stated that prima facie the contentions of the assessee appears to be correct and directed the AO to verify the factual position of the assessee's plea and to allow the claim of the assessee in accordance with law. The directions of the CIT(A) are clear and we see no reason to interfere with the order of the CIT(A) on the said issue. The AO is directed to pass the appropriate orders in compliance with the directions of the CIT(A). It is ordered accordingly.

9. In the result, ground Nos.4, 5 and 6 are allowed for statistical purposes.

Interest under section 234C (ground No.11)

10. In the above ground, assessee challenges the AO's action in levying interest under section 234C of the Act on the assessed income instead of the returned income.

11. We have heard the rival submissions and perused the material on record. The Mumbai Bench of the Tribunal in the case of Aishwarya K. Rai Vs. DCIT

[2009] (1) TMI 860 – ITAT, Mumbai, had held that interest under section 234C of the Act is to be levied on the returned income and not on the assessed income. In view of the aforesaid order of the Tribunal, we direct the AO to restrict the levy of interest under section 234C of the Act to the returned income instead of the assessed income. It is ordered accordingly.

12. In the result, ground No.11 is allowed.

13. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.

Dated: 31.05.2023.

/NS/*

Copy to:

- | | |
|-------------------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.