

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.412/Ahd/2023
Assessment Year: 2020-21**

Manoj Kaushikprasad Jingar, 9, Maulik Villa, Nr. Panchgini Society, Jodhpur Gam, Satellite, Ahmedabad – 380 015. [PAN – ABTPJ 5489 L]	Vs.	The Assessing Officer, CPC Bangalore/ The Income Tax Officer, Ward-5(3)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Vimal Shukla, AR	
Revenue by	Ms. Saumya Pandey Jain, Sr. DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	04.08.2023	

ORDER

This appeal is filed by the Assessee against order dated 19.05.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2020-21.

2. The Assessee has raised the following grounds of appeal :-

- “1. The learned AO has not given relief under Section 90 of Rs.55,403/- and CIT(A) has confirmed the action of the AO
2. The learned AO has considered the late filing of Form 67 invalid for availing the treaty benefit and CIT(A) has confirmed the action of the AO
3. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id AO in levying interest under section 234B/C/D of the Act.”

3. The assessee is an individual. The residential status of the assessee for A.Y. 2020-21 was resident but not ordinarily resident in India. The return of income for the A.Y. 2020-21 was filed on 27.02.2021 declaring total income at Rs.7,79,948/-. The assessee offered to tax the global income which included income earned in India and in Tanzania. The assessee claimed relief under

Section 90 of the Income Tax Act, 1961 for TDS deducted in Tanzania as per the DTAA within the Governments of India and Tanzania. The assessee also filed the required Form No.67 but the said Form was filed belatedly. The return was processed by CPC and the assessee received intimation under Section 143(1) of the Act dated 28.02.2021 from CPC wherein the CPC did not give the relief under Section 90 of Rs.55,403/- as claimed by the assessee and raised demand of Rs.73,710/-. The assessee filed rectification application under Section 154 of the Act to the CPC dated 12.03.2021. The CPC issued rectification order without making any changes in the original intimation under Section 143(1) of the Act and again raised demand of Rs.73,710/- in rectification order under Section 154 of the Act on 10.12.2021. The assessee again filed rectification request to CPC. The CPC passed rectification order under Section 154 of the Act on 23.09.2022 but without giving relief under Section 90 of the Act and confirmed the original demand.

4. Being aggrieved by the intimation under Section 143(1) of the Act, the rectification order under Section 154 of the Act passed by the Assessing Officer, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee has given all the details related to acknowledgement and statement of computation of total income for A.Y. 2020-21 to the Revenue Authorities. The assessee had declared Foreign Income of Rs.5,10,804/- and claimed relief of Rs.55,403/- for TDS deducted in Tanzania as per DTAA between the Governments of India and Tanzania. The assessee has filled the required Form No.67 alongwith certificate of tax withheld issued by the Tanzanian Revenue Authorities. The delay in filing the Form No.67 was due to the delay in obtaining the certificate of tax withheld issued by the Tanzanian Revenue Authorities. As per the contentions of the Ld. AR, the assessee had offered income earned in Tanzania to tax and being eligible, claimed relief under Section 90 of the Act as per the DTAA between the Governments of India and Tanzania for avoidance of double taxation. The Ld. AR submitted that the global income has already been taxed by the Tanzanian Government and in fact i.e. again thr source of income of the assessee which is salary earned from Tanzania. Thus, the Ld. AR submitted that the CIT(A) was not right in rejecting the

contentions of the assessee as well as denying the claim under Section 90/91 of the Act to the assessee in respect of DTAA within India and Tanzania. The Ld. AR relied upon the decision of the Tribunal in the case of Sonakshi Sinha vs CIT (ITA No.1704/Mum/2022, order dated 20th September, 2022).

6. The Ld. DR submitted that the assessee has not declared the salary in his return and, therefore, the assessee at this juncture cannot say that the belated filing of Form No.67 can be overlooked as it is mandatory requirement for foreign tax credit whether to grant or not as per provisions of the Income Tax Statute. The Ld. DR relied upon the orders of the Assessing Officer and the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. The observation of the CIT(A) that the assessee has not disclosed the salary from Tanzania appears to be incorrect as the assessee has categorically in his return of income mentioned salary which is none other than the salary derived from Tanzania. It is pertinent to note that the late filing of Form No.67 cannot deny the entitlement of the assessee the benefit of treaty when the salary earned is from Tanzania and there is DTAA between India and Tanzania. It is undoubtedly clear that the salary is earned outside India and the assessee has paid tax on the said element on foreign country and, therefore, the assessee cannot be taxed twice on the same amount. This will amount to double taxation. Hence, the CIT(A) as well as the Assessing Officer was not right in denying the claim of the assessee. Appeal of the assessee is thus allowed.

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

Order pronounced in the open Court on this 4th August, 2023.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 4th day of August, 2023

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad