

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

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.379/Bang/2022
Assessment Year : 2018-19

Shri. Vardhan Vishwanath Vijaya, A-701, Tower – 2, Adarsh Palm Retreat Apartments, Devarabisanahalli, Outer Ring Road, Bengaluru – 560 103. PAN : AAJPV 0010 G	Vs.	The ITO, Ward – 5[3][6], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Dept.

Date of hearing	:	13.06.2022
Date of Pronouncement	:	13.06.2022

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 29.11.2021 of National Faceless Appeal Centre, Delhi, relating to Assessment Year 2018-19.

2. The assessee, an individual, filed return of income for Assessment Year 2018-19 declaring a total income of Rs.14,29,490/-. The assessee is a salaried employee. The assessee has income under the head – salary, income from house property, capital gain and income from other sources including foreign dividends. In the return of income, the assessee claimed credit for taxes paid in USA on dividends received in USA, under section

90 of the Income Tax Act, 1961 (hereinafter called 'the Act'), of a sum of Rs.1,56,820/-. Apart from denying credit for tax paid in USA, on dividend income earned in USA, the AO also made 3 other adjustments to the total income returned by the assessee in the intimation dated 28.05.2020 under section 143(1) of the Act. One of the adjustment so made, resulting in an addition of Rs.2,35,108 to the total income declared by the Assessee, is an addition on account of difference in figures between Schedule SI (Income that are subject to a special rate of tax) and Schedule CG (capital gain) and Schedule OS (Other source). The action of the AO was confirmed by the First Appellate Authority. Hence, this appeal by the assessee, before the Tribunal.

3. As already stated, learned Counsel for the assessee pressed for adjudication of only the variation to the total income on account of difference in figures between schedule – SI and Schedule CG and Schedule OS. Apart from the above, learned Counsel for the assessee also prayed that the assessee should be allowed tax credit under section 90 of the Act in respect of dividend income received in USA.

4. I have carefully considered the claim of the assessee as above. The breakup of schedule – SI as given by the assessee in the return of income is as follows:

Schedule SI		Income chargeable to Income tax at special rates			
SPECIAL RATE					
SI No	Section/Description	<input type="checkbox"/>	Special rate (%)	Income (₹)	Tax thereon (₹)
1	111A (STCG on shares units on which where STT paid)	<input checked="" type="checkbox"/>	15	108377	16257
2	115AD (STCG for FII on securities where STT not paid)	<input type="checkbox"/>	30	Nil	Nil
3	112 proviso (LTCG on listed securities/ units without indexation)	<input type="checkbox"/>	10	Nil	Nil
4	112(1)(c)(ii) (LTCG for non-resident on unlisted securities)	<input type="checkbox"/>	10	Nil	Nil
5	115AC (LTCG for non-resident on bonds/GDR)	<input type="checkbox"/>	10	Nil	Nil
6	115ACA (LTCG for an employee of specified company on GDR)	<input type="checkbox"/>	10	Nil	Nil
7	115AD (LTCG for FII on securities)	<input type="checkbox"/>	10	Nil	Nil
8	115E (LTCG for non-resident on specified asset)	<input type="checkbox"/>	10	Nil	Nil
9	112 (LTCG on others)	<input checked="" type="checkbox"/>	20	552538	110508
10	115BB (Winnings from lotteries, puzzles, races, games etc.)	<input type="checkbox"/>	30	Nil	Nil
11	115BBDA (Dividend income from domestic company exceeding Rs.10 lakh)	<input type="checkbox"/>	10	Nil	Nil
12	115BBE (Income under section 68, 69, 69A, 69B, 69C or 69D)	<input type="checkbox"/>	60	Nil	Nil
13	115BBF (Tax on income from patent)	<input type="checkbox"/>	10	Nil	Nil
14	115BBG (Tax on income from transfer of carbon credits)	<input type="checkbox"/>	10	Nil	Nil
15	115AC (Income of a non-resident from bonds or GDR purchased in foreign currency)	<input type="checkbox"/>	10	Nil	Nil
16	Chargeable under DTAA rate	<input type="checkbox"/>		Nil	Nil
Total				660915	126765

5. The AO has considered schedule – SI as above and has found discrepancy in the figures as set out in schedule – SI as compared to schedule – CG and schedule – OS. In doing so, the AO has ignored schedule BFLA (Brought Forward Loss Adjustment). In Schedule CG the STCG on Shares/Units on which STT was paid which is to be taxed only at 15% is shown as Rs.1,41,384 whereas this figure after BFLA of Rs.33,007 is Rs.1,08,733. Similarly in Schedule SI, LTCG on others of Rs.5,52,538 is claimed as taxable at 20% and the corresponding figure in Schedule CG is shown at Rs.7,62,220. This figure after BFLA of Rs.2,09,682 is Rs.5,52,538. Thus it is clear that if schedule BFLA is considered then there will not be any discrepancy. The assessee did not participate in the proceedings before CIT(A) and could not explain this aspect. I am of the view that this aspect requires examination by the AO and therefore the issue has to be set aside to the AO for fresh consideration. The AO will look into the schedule BFLA also and thereafter decide the issue afresh after affording the assessee opportunity of being heard.

6. In so far as the credit for taxes paid in US is concerned, one of the requirements is that the assessee has to file Form 67 which was filed before the AO only after the date of intimation under section 143(1) of the Act. Filing of Form No.67 is only a procedural requirement and therefore that cannot be the basis to deny credit for taxes paid in US. I am of the view that the AO shall consider the claim of the assessee for credit for taxes paid in USA also in the set aside proceedings. The AO will afford opportunity of being heard to the assessee in the set aside proceedings. I, therefore, allow appeal of the assessee for statistical purposes.

7. In the result, appeal of the assessee is treated as allowed for statistical purposes.

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

Sd/-
(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated: 13.06.2022.
/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.