

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1213/Mum/2022 (A.Y. 2010-11)

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| Udayan Bhaskaran Nair F-421, Bansi Amrut Nagar Cooperative Housing Society, Amrut Nagar Ghatkoar West Mumbai-400 086. PAN : ACQPN4298M (Appellant) | Vs. | ITO-35(3)(3) Kautilya Bhavan Bandra Kurla Compex Bandra Mumbai-400 051. (Respondent) |
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| Assessee by | Shri Mehul Shah |
| Department by | Shri Vivek Upadhyay |
| Date of Hearing | 18.08.2022 |
| Date of Pronouncement | 22.08.2022 |

ORDER

The assessee has filed this appeal challenging the order dated 12.3.2022 passed by learned CIT(A)-National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11. The assessee is aggrieved by the decision of learned CIT(A) in rejecting the appeal filed by the assessee.

2. Facts relating to the case are peculiar in nature and are stated in brief. The assessee was working with M/s. iNautix Technologies Pvt. Ltd., Chennai. During the financial year relevant to A.Y. 2010-11, the assessee was deputed by his employer to United Kingdom for a period of three months. During that period, TDS was deducted in UK for salary paid to the assessee. After completion of the financial year, the employer of the assessee issued Form No. 16. According to the assessee, the said Form 16 included salary paid to him and also the TDS deducted at source both in India and UK. According to the assessee, he did not receive any order from the assessing officer.

3. Subsequently, the return of income filed by the assessee for AY 2017-18 was processed and a portion of tax came to be refundable to the assessee. However, the assessee received a notice under section 245 of the I.T. Act for A.Y. 2017-18, wherein it was stated that refund for A.Y. 2017-18 was adjusted against outstanding demand in the hands of the assessee. The above said intimation was received by the assessee in the year 2017. According to Ld A.R, the assessee made inquiries with the tax authorities and found that the tax demand has arisen in AY 2010-11, since foreign tax credit was not given credit in that year. Then the assessee filed a petition under section 154 for A.Y. 2010-11, wherein it was stated that he came to know of the error of non-credit of foreign tax credit only after receipt of intimation under section 245 of the Act. Above said rectification application was filed before the Assessing Officer on 11.4.2018, much after the expiry of limitation period for filing rectification petition u/s 154 of the Act.

4. In the meantime the assessee also filed an appeal before learned CIT(A) for A.Y. 2010-11 with the contention that the foreign tax credit was not given him. The Learned CIT(A) dismissed the appeal by observing as under :-

“As seen from Form 35, the appellant stated that the appeal is filed for A.Y. 2010-11 against the order u/s. 143(1). According to the appellant the date of the order is shown as 01-04-2019. However as seen from the statement of facts and grounds filed by the appellant, the appellant has not received any intimation u/s. 143(1). What the appellant has appealed against is the intimation u/s. 245 of the Act, which is not an appealable order u/s. 246A before CIT(Appeals). Hence the appeal becomes infructuous and invalid. Further, the dates of service mentioned do not pertain to the intimation u/s. 143(1).

Aggrieved, the assessee has filed this appeal.

5. The Ld A.R submitted that the assessee was not given credit of foreign tax credit in AY 2010-11 and hence the AO may be directed to given credit of TDS deducted in UK.

6. I heard Ld D.R and perused the record. The year under consideration is AY 2010-11. The Ld A.R is aware that the Income tax Act prescribes certain procedures for filing appeal before Ld CIT(A), which are required to be complied with mandatorily. It is the claim of the assessee that the tax demand has arisen due to non-granting of Foreign tax credit. However, the assessee himself admits that he has not received any intimation u/s 143(1) of the Act. Without examining the intimation issued for AY 2010-11, it would not be possible for any authority to ascertain the reason for raising demand. As rightly pointed out by Ld CIT(A), an appeal for AY 2010-11 can be filed only on the basis of order/intimation, against which the assessee is aggrieved. In the absence of any such document, it will not be possible for any appellate authority to address the grievance of the assessee. It is pertinent to note that the Ld. A.R did not bring to my notice all these factual aspects and he simply pleaded that the AO should be directed to give credit of foreign tax credit. The Ld A.R is also very much aware that the appellate authorities cannot address the grievance without the copy of base order. The assessee may explore the other courses available in law in order to get his grievance addressed.

7. In view of the above, I do not find any infirmity in the decision rendered by Ld CIT(A).

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 22.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/08/2022

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai