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To,
The National Faceless Appeal Centre (NFAC)

Reference: Mr. ABCD
PAN: XYZ123456789
Assessment Year (AY): 2021-22
Appeal No. 123456789
Notice No. - _____
Dated: 01/04/2023

Subject: Response to the Notice under Section 250 of the Income tax Act, 1961

Respected Sir/ Ma'am,

This is in reference to the above captioned subject, we are submitting the following reply with respect to the pending Appeal Proceedings for your kind perusal. Furthermore, we have enclosed the “**Form-35**” as “**Annexure-1**”.

Statement of Facts

1. The Appellant ABCD is filing the present appeal aggrieved by the Rectification Order dated _____ passed under section 154 of the Income Tax Act, 1961, passed by the CPC Bengaluru

for the Assessment year 2021-22. Kindly note that, for your quick perusal, please refer to the below-mentioned table:-

<u>S.NO</u>	<u>Date</u>	<u>Nature of Event</u>
1.	_____	Original ITR filed u/s 139(1).
2.	_____	Intimation Order u/s 143(1).
3.	_____	Filed FORM-67.
4.	_____	Reprocessed the Original ITR.
5.	_____	Intimation Order u/s 154.
6.	_____	Rectified ITR filed u/s 154.
7.	_____	Intimation Order u/s 154.

2. During the Assessment Year under consideration, the Learned AO completed its proceedings and consequently a Rectification Order u/s 154 of the Income Tax Act, 1961 ("The Act") was issued dated _____. The total amount of alleged tax liability including interests was determined at INR _____/-. Moreover, the aforesaid liability was calculated without granting Foreign Tax Credit u/s 90/90A of Act amounting to INR _____/-. .

3. The Appellant was not able to upload Form 67 along with the ITR filed under section 139(1) dated _____ vide acknowledgment No.123456789 , solely due to omission on the part of his accountant. Thereafter, the Appellant duly furnished "Form 67" and filed a rectified ITR dated _____ vide acknowledgment No. 123456789. Regrettably, the Learned Assessing Officer did not grant foreign tax credit without justifying any suitable reasons, without giving any proper opportunity of being heard and ignoring various judicial pronouncements in favour of the Appellant. As such the demand raised by CPC is erroneous and is liable to be deleted.

4. Aggrieved by the impugned Assessment Intimation Order, the Appellant is preferring the present appeal before the learned CIT (A).

GROUND OF APPEAL

Ground No.1

Issue: Facts of the case were not properly considered.

Ground: That, the rectification order passed by the learned AO, u/s 154 of the Income Tax Act, 1961 is incorrect, bad in law and most importantly the same had been passed without judicially appreciating facts of the present case. Since, the apparent relief with respect to foreign tax credit, u/s 90/90A was not granted in the said matter.

Response: During the year under consideration, the Appellant was working with _____ at a senior position. Please note that, from _____ to _____, the Appellant worked within the borders of XXX (Name of Country). **Firstly, we would like to mention that, the Appellant had already remitted hefty taxes within the boundaries of XXX to the tune of INR _____ /- on an earned income of INR _____ /-, thereby in compliance to the Article 15 of the DTAA (Double Taxation Avoidance Agreement) read with Article 2, the Appellant was lawfully eligible to claim deductions in lieu of the taxes surrendered in a foreign nation.** Kindly note that, solely due to the gross negligence of the accountant hired by the Appellant, the “Form 67” was not uploaded along with the Original Return furnished u/s 139(1) on _____. It is humbly submitted that, on acknowledgement of the aforesaid fact, the Appellant immediately initiated necessary procedure for reprocessing the ITR inclusive of the “Form 67”. It is relevant to mention, the Appellant took a prompt action and duly filed the required “Form 67” on _____ attached as “**Annexure-2**” and thereby correctly disclosed the taxes remitted within XXX along with the confirmation received from the XXX authorities marked as “**Annexure-3**”. It is relevant to mention that, it was an arduous task for the Appellant to receive the aforesaid document from

the XXX authorities, thereby there was only a bona-fide delay. Thereafter, the Appellant duly reprocessed the original ITR on _____ and its acknowledgement has been marked “Annexure-4”. However, the Appellant was surprised on the receipt of the Intimation Order u/s 154 of the Act dated _____, whereby the Learned AO did not consider the “Form-67” and reprocessed ITR of the Appellant, without any valid reasons and failed to grant the legitimate tax relief. Kindly note that, within the said ITR, a tax relief was claimed u/s 91 of the Act amounting to INR _____/-

Nevertheless, the Appellant refurbished a rectified ITR on _____ enclosed as “Annexure-5” and thereby claimed a tax relief u/s 90A. However, the Learned AO passed an Intimation Order on the same day itself and on reception of the Order, the Appellant was utterly shocked, since the Learned AO disregarded the correct facts for the second time without any judicious interpretation.

In this regard, it is most pertinent to mention that, as the Appellant has already remitted the necessary taxes for the income generated outside India. Therefore, purely in the Interests of the Justice, the Appellant is legally bound to avail benefits availed of the Foreign Tax Credit Relief under the Income Tax Act, 1961. Otherwise, the aforesaid action of the Learned AO will impose unnecessary burdens on the shoulders of the Appellant. Furthermore, a delay to file “Form 67” is not a rational ground, whereby the Learned AO could withhold the Foreign Tax Credit. The same is not mandatory in nature rather it is only directory, as Rule 128(9) does not provide for disallowance of FTC in case of delay in filing “Form 67”.

Ground No.2

Issue: No proper opportunity of being heard is given to the Appellant.

Ground: That, the Assessment Order passed is against the Principles of Natural Justice. The learned AO has erred in law and facts of the case, as he did not avail a proper opportunity to the Appellant of being heard.

Response: It is imperative to mention that, in the instant case, the Appellant did not receive correct reasons from the office of the Learned AO, while imposing a hefty demand in the hands of the Appellant, since the legitimate relief was not granted u/s 90/90A of the Act. Kindly note that, with respect to the ITR filed u/s 139(1) of the Act, the Adjustments are only made after giving an intimation u/s 143(1)(a) of the Act, to the Appellant against the proposed adjustment, either in writing or electronically. However, in our case, the Intimation Order u/s 143(1) was passed without informing the Appellant. Therefore, the said act was totally against the Principles of the Natural Justice, as no proper opportunity of being heard was conferred to the Appellant, it seems that the Learned AO was in a rush to dispose the aforesaid matter and most critically the Learned AO totally ignored the relevant facts and circumstance of the present case. Unfortunately, an unnecessary tax liability was made in the hands of law abiding citizen. It is relevant to mention that, the Appellant had been living in XXX for past couple of years, thereby even if any intimation was sent to the Indian address of the Appellant, the same would have remained unserved.

Moreover, the Learned AO was bound to grant an opportunity of being heard to the Appellant before disallowing the relief, as the sum involved in the existing case is a considerable amount in itself. It was the duty of the Learned AO to grant an opportunity of being heard to the Appellant, if he had any queries with respect to the ITR of the Appellant. Regrettably, the Learned AO miserably failed to discharge the power conferred upon him and took a baseless decision causing needless agony to the Appellant.

The Learned AO was under a compulsion to follow the fundamental principles of the Natural Justice and was required to listen the contentions of the opposite party. In consonance with the “**Audi Alteram Partem**”, the Learned AO was required to grant an opportunity of being heard to the Appellant. However, it clearly seems that, no efforts were made on the end of the Learned AO, to communicate with the Appellant.

Ground No.3

Issue: Demand of Rs. _____/- u/s 154 on account of relief u/s 90/90A not given.

Ground: That, in view of the facts and circumstances of the present case. The alleged demand raised for INR _____/-, within the section 154 of the Act is not legitimate, on account of relief pertaining to sections 90/90A of the Act. The AO wrongly raised such demand without considering the correct facts and circumstance of the case.

Response: It is humbly submitted that, the Appellant had already remitted massive taxes within the borders of XXX, thereby in compliance to the Article 15 of the DTAA (Double Taxation Avoidance Agreement) read with Article 2, the Appellant was in a position to assert deductions for the taxes surrendered in a foreign nation. Therefore, without any appropriate reasons the Appellant was not granted the relief u/s 90A of the Act.

It is relevant to mention that, the Appellant had no malafide intentions to escape any tax liability in India, as the Appellant had already paid the taxes in a foreign land to the tune of INR _____/- on a earned income of INR _____/-. Therefore, it is most humbly prayed before your Kind Office to absolve the Appellant from any further liabilities at the earliest, otherwise the Appellant will be taxed twice on a referred income of INR _____/-, upon which the legitimate taxes were already paid in XXX. **As it is an apparent fact, in pursuance to the “Annexure-3” i.e. the documents reflecting the remittance of taxes in the borders of XXX. However, the Learned AO did not refer to the submitted challan.**

Ground No.4

Issue: Material available on record had not been properly considered and judicially interpreted.

Ground: That, the material placed on record had not been properly considered and judicially interpreted and the same do not justify the demand raised.

Response: It is imperative to mention that, the Learned AO was required to analyze the “Form 67” and rectified ITRs filed by the Appellant. Additionally, if the Learned AO had any queries with the ITR, thereby he was under any obligation to communicate with the Appellant for clarification. Furthermore, to confirm the status of taxes remitted in a foreign land, the Learned AO was required to cross-check the submitted

Challan. However, it is prima-facie evident that, the Learned AO did not took any initiative on his part to confirm the true and correct facts of the present matter.

It is relevant to mention that, the rectified ITR was filed on _____ and on the same day itself the Learned AO passed the Rectification Order, the aforesaid action simply implies that, the Learned AO was not bothered to check the necessary facts and documents of the present case.

Ground No.5

Issue: Demand raised are based on mere surmises and conjunctures and the same cannot be justified by any material on record.

Ground: That, the demand raised are based on mere surmises and conjunctures and the same cannot be justified by any material on record.

Response: A demand was raised as a result of the failure to provide a relief under the Act. The demand was raised without considering the “Form 67” and the rectified ITRs. It is an apparent fact that, the Learned AO was in a hurry to pass the Intimation Order, since it seems that, the Learned AO had not referred to the submitted challan. Therefore, the demand is raised is solely based upon the guess work of the Learned AO. The demand raised certainly pertains to the mere surmises and conjectures. Moreover, the Learned AO had not discharged his power with due diligence.

Ground No.6

Issue: AO has erred in not following the judgments delivered by various courts in favour of the assessee.

Ground: That, the AO has erred in not following the judgments delivered by various courts in favour of the assessee.

Response: The Appellant has relied upon the following judgments.

2022 (3) TMI 834 - ITAT BANGALORE

M/S. 42 HERTZ SOFTWARE INDIA PVT. LTD. VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE – 3 (1) (1), BANGALORE.

Foreign Tax Credit (FTC) for default in filling Form 67 under Rule 128 - delay in compliance of a procedural provision - denial of claim as Assessee failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) - As submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision - HELD THAT:- There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms. Brinda Kumar Krishna [2022 (2) TMI 752 - ITAT BANGALORE]

It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P.) Ltd. [2021 (3) TMI 138 - SUPREME COURT].

We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee. Appeal of assessee stands allowed for statistical purposes.

2022 (2) TMI 752 - ITAT BANGALORE

MS. BRINDA RAMA KRISHNA VERSUS THE INCOME TAX OFFICER, WARD 5 (3) (1), BANGALORE.

Rectification of mistake u/s 154 - allowability of Foreign Tax Credit - Assessee from Australia has a global income as taxable in India - Assessee offered to tax salary income earned for services rendered in Australia for the period from December 2017 to March 2018 to tax in India and claimed foreign tax credit ("FTC") for taxes paid in Australia - India Australia DTAA - HELD THAT:- We agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. - The issue was not debatable and there was only one view possible on the issue which is the view set out above.

The issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. Therefore do not agree with the submission of the learned DR in this regard. Assessee appeal allowed.

Ground No.7

Issue: The Appellant craves leave to add, amend, alter and or delete any of the above grounds of appeal at or before the time of hearing.

Ground: The Appellant craves leave to add, amend, alter and or delete any of the above grounds of appeal at or before the time of hearing.

Response: The Appellant craves leave to add, amend, alter and or delete any of the above grounds of appeal at or before the time of hearing.

In the light of the above-stated facts, it is most respectfully prayed before your Kind Office to appreciate the facts in the instant case, as the Appellant is a law abiding citizen, who has already paid the necessary taxes. Therefore, it is requested to dispose the aforesaid matter at the earliest, in the Interests of the Justice giving credit of taxes paid by the Appellant in foreign country for which all necessary supporting are being attached and deleting unjust demand raised against the Appellant.

Thanking you in anticipation

ABCD

SD/-

Authorized Signatory

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