IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 875/DEL/2017 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

Kapil Dev Ranwan A-31, Bhaleri Road Saink Basti, Charu Rajasthan ADJPR6671E **(APPELLANT)**	Vs	DCIT Circle-1, Room NO. 201, 2nd Floor, ITO, CGO Complex-1, Hapur Chungi Ghaziabad **(RESPONDENT)**

Appellant by	**Sh. Nageshwar Rao, Adv**
Respondent by	**Sh. Satpal Gulati, CIT**

Date of Hearing	**29.10.2020**
Date of Pronouncement	**05.11.2020**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 02/11/2016 passed by CIT(A)- Ghaziabad, for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

"1. That Deputy Commissioner of Income Tax, Circle-1, Ghaziabad ('AO') / CIT(A) have grossly erred in facts and law in ignoring the provisions of India-United Kingdom ('UK') DTAA and disallowing the foreign tax credit claimed under Article 24 of India- UK DTAA read with Section 90 of the Act amounting to Rs 4,075,122.

2. That CIT(A) has grossly erred in facts in stating that the aggregate stay in UK for the said previous year is less than 183 days disregarding the fact that the Appellant stayed in UK for 241 days.

3. That AO/ CIT(A) have grossly erred in facts and law in concluding that the Appellant should have availed exemption from tax in UK under Article 16(2) of the India-UK DTAA ignoring the fact that Article 16(2) is not at all applicable in UK.

4. That AO/ CIT(A) have erred in facts and law in levying interest under Section 234B and Section 234C of the Act amounting to Rs 530,352 and Rs 54,526 respectively on the aforesaid additions made to the total tax liability of the Appellant.

5. That CIT(A) has erred in facts in stating that the Appellant has failed to reconcile the double taxation of income in India and UK for the purpose of Article 24(2) of the India-UK DTAA disregarding the reconciliation, computation of foreign tax credit and proof of UK taxes paid placed on records during appellate proceedings."

3. Return declaring an income of Rs. 1,08,02,354/- was filed on 21.07.2012 and the same was revised on 27.03.2014 declaring an income of Rs. 1,55,65,501/-. The return was revised to claim tax relief in the form of foreign tax credit amounting to Rs. 40,75,122/- on the double taxed in India under Article 24 of double taxation avoidance agreement with United Kingdom. According to appellant a sum of Rs. 1,36,19,761/- has been double taxed in India as well as in United Kingdom. The case was selected in CASS. The assessee is salaried employee of IBM India Pvt. Ltd and was an international assignment to United Kingdom during previous year 2011-12. The assessee claimed relief u/s 90 of the Income Tax Act read with Article 24 of the Indo-UK Double Taxation Avoidance Agreement. The Assessing Officer invoked Article

16(2) of DTAA and did not allow the reliefs claimed by the assessee vide assessment order u/s 143(3) dated 12.3.2015.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as per the provisions of Article 24 of the India- UK DTAA were income of an Indian Tax resident is also reliable to tax in UK, India shall allow a credit for the taxes paid in the UK against the Indian Taxes payable in respect of the double tax income. Further, the tax credit would be limited to the proportionate taxes payable on the double tax income in India. Hence, all combined reading of the provisions of Section 90(2) of the Income Tax Act, 1961 and Article 24 of the India-UK DTAA, it may be held that as the assessee's income has been double tax i.e. in India as well as in the UK, the provisions of the India-UK DTAA would be applicable to him as the same are more beneficial. The tax credit can be claimed in India under Article 24 of the India-UK DTAA, if the following conditions are satisfied:

(a) a resident of India derives items of income
(b) Such items of Income have been tax in UK
(c) Such taxation is in accordance with the provisions of the convention.

Therefore, the assessee who is a resident of India and has derived from salary which has suffered tax in the UK on account of his employment exercise in UK would be eligible to claim tax credit under this Article. The assessee has provided all the necessary details and documentation in support of the foreign tax credit claim under Article 24 of the India-UK DTAA. The Ld. AR further submitted that the Assessing Officer had not considered the provisions of Article 24 of the India-UK DTAA and the applicability of the same during the assessment proceedings and the assessee had not been given a reasonable opportunity of being heard to substantiate his claim. The Assessing Officer erroneously applied the provisions of Article 16 in the India UK DTAA which are inapplicable in the present entity as the assessee is a resident and

ordinarily resident in India during the concerned previous year. The Ld. AR submitted that the Assessing Officer failed to appreciate that the assessee was running services in UK during the relevant previous year and the foreign tax credit was claimed on the income double tax both in UK and India. The assessee was in UK for a period exceeding 183 days hence Article 16 (2) is not at all applicable in the present case.

6. The Ld. DR submitted that the Assessing Officer as well as the CIT(A) has rightly made additions as the assessee's stay in the United Kingdom was more than 183 days and the provisions of Section 90 of the Income Tax Act will be applicable in the present case.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee was working in UK for more than 183 days which was never disputed by the Revenue at any point of time. Besides this the Revenue authorities are very well aware that the assessee has paid taxes in UK for the remuneration received in UK. The assessee is a resident of India. Therefore, Article 16(2) does not apply in the present scenario. In-fact, if we go through the provisions of Section 90(2) of the Income Tax Act, 1961 and Article 24 of the India-UK DTAA, then the claim made by the assessee is valid and, therefore, the Assessing Officer as well as the CIT(A) was not right in making and sustaining the addition in that respect. Hence, appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 05th day of November, 2020

Sd/-	Sd/-
(N. K. BILLAIYA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 05 /11/2020
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI