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International
Tax
Gyaan

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SITG No.
186

Ramco Systems Ltd.

v.

DCIT (Corporate Circle)

The assessee can claim additional foreign tax credit for withholding tax during the course of assessment proceedings if income already offered to tax



[2023] 156 taxmann.com 640 (Chennai- Trib.) [08.11.2023]

30.12.2023
Jain Shrimal & Co.

Facts of the case

- M/s Ramco Systems Limited is engaged in the business of developing software, filed its return of income for A.Y. 2016-17, and further revised admitting income of NIL, hence the case was selected for complete scrutiny.
- Since the assessee entered into few international transactions, therefore the case was referred to T.P.O., however nothing adverse was concluded by the latter. Resultantly, there was no addition of income, but the A.O. did not allow the additional withholding tax of 5% (in addition to original 10%, which was allowed), since such claim of tax credit was not made by assessee in income tax return.
- Therefore, the assessee made the additional claim of withholding tax of Rs. 69,63,628 during the scrutiny assessment proceedings, and credit for the same amount was claimed by the assessee company, however denied by Ld. A.O.
- Ld. CIT(A) allowed such credit and gave the necessary directions to the A.O., however aggrieved by it the Ld. A.O. went into the appeal before the Tribunal.



Revenue's contention

- **Claim not made through return of income:**
The Ld. A.O. submits that since the assessee had not claimed the deduction with regards to additional enhanced rate of withholding tax, through return of income, or revised return of income.
- Therefore, the Ld. CIT(A) is incorrect in directing the A.O. to allow the credit of tax and pleads before the ITAT to reverse the appellate order.

Assessee's contention

- **Claim not made through return of income:**
Assessee contended that it had made claim of foreign tax credit in his original return of income and such FTC was allowed by Ld. AO during the course of assessment proceedings to the extent of 10% as claimed in income tax return.
- However, assessee came to know about the additional TDS of 5% only in June, 2019 which is much after the due date for filing revised return of income hence assessee could not make claim in return. Thus, once when AO had accepted the income and claim of FTC in case of assessee, AO should have accepted such additional claim of assessee made during the course of assessment proceeding as the corresponding income was already offered for tax. Assessee also provided undertaking that such FTC has not been claimed in any other year.


Judicial Pronouncement

- **Valid claim on tax credit:** The revenue had not given reasons for not allowing the additional claim made during the assessment proceedings. It is true that such credit was not claimed through return of income also the additional deduction was made only in June 2019.
- Hence such claim of tax credit was made during the ongoing assessment proceedings. Further, such claim of FTC also does not impact the income of the assessee, but shall only relate to giving credit on the taxes paid on the already declared income. Therefore, the assessee has a valid reason for claiming such additional credit during the assessment proceedings.
- **Form 67:** In case of *Brinda Rama Krishna, ITA No. 454/Bang/2021, dated 17.11.2021*, Bangalore bench held that Rule 128(9) does not provide for disallowance of FTC, in case of delay in filing Form 67. **Also, important thing to note is that Form 67 is directory in nature, rather than being a mandatory requirement.** In the same case, the ITAT also held that DTAA provisions overrides the provisions of the act, and hence the ITAT in that case allowed the FTC to the assessee.
- Similarly, ITAT Bangalore bench in a case of *42 Hertz Software Pvt. Ltd., ITA No. 29/Bang/2021, dated 7/3/2022*, allowed the FTC claimed through assessment proceedings.

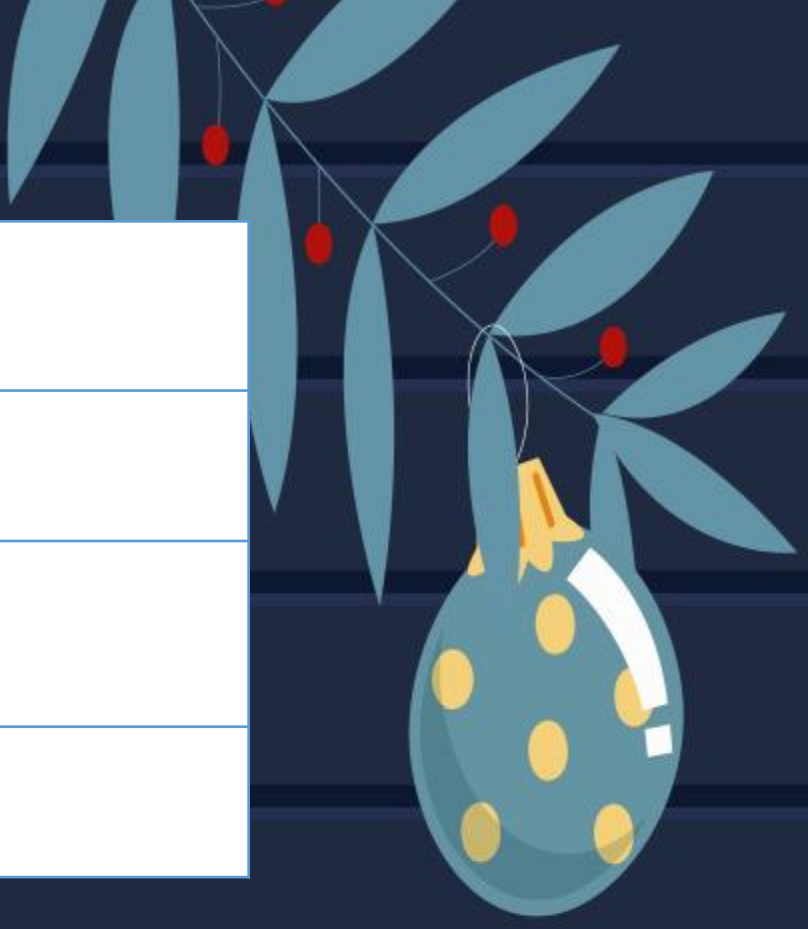
Therefore, considering all the facts of the case, ITAT held that the Ld. CIT(A) has rightly directed the A.O. to allow the claim of additional withholding tax paid by the assessee. Thus, ITAT dismissed the appeal of revenue as it find no reason to interfere with the order passed by Ld. CIT(A).

Our Comments

- **Allowance of additional FTC:** Once the A.O. allowed the original credit of withholding tax paid in the foreign country in India, and thereafter the foreign tax authorities enhances the rate of tax in such foreign country, then in such cases, the assessee should get such enhanced tax credit, irrespective of the fact that the due date for filing revised return of income has passed. The assessee is allowed to claim FTC during assessment proceedings.
- However the pertinent question that arises, what are the remedies available to the assessee for claiming enhanced FTC, if there are no assessment proceedings going on for that particular year and due date of filing revised return of income is passed.
- In our humble opinion, since the assessee cannot make a fresh claim which has an impact of reducing tax through E-filing of rectification request, therefore the former might have to approach the A.O., and make a request through filing an application for claiming the enhanced FTC or file an appeal before CIT(A).
- The another question that arises is if in case the rate of withholding tax reduces in the foreign state, then whether the Ld. A.O. is allowed to reduce the FTC claimed by the assessee earlier for a particular year.



Section/Article	Section 90/90A of the act
DTAA/Country	India- Australia DTAA
Court	ITAT, Chennai
Date of decision	08.11.2023



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