



SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy #taxinpic

SITG No. 300

Bank of India

v.

Assistant Commissioner of Income Tax



Foreign tax credit paid in an earlier year must be allowed in the year when the related foreign income becomes taxable in India, subject to the limit of Indian tax liability.

07.03.2026



[2025] 181 taxmann.com 911 (Mumbai - Trib.)

Jain Shrimal & Co.

Facts of the Case

- ❖ Assessee, Bank of India, is a resident bank in India having multiple overseas branches in countries such as the UK, USA, France, Belgium, Kenya, Japan, Singapore, China, Hong Kong, Cambodia and Jersey. These foreign branches earned profits and paid taxes in their respective jurisdictions under the applicable foreign tax laws.
- ❖ During A.Y. 2012-13, the overseas branches of assessee earned profits amounting to approximately Rs.844.55 crores, on which foreign taxes of about Rs. 182.64 crores were paid. However, the Indian operations of the assessee incurred a loss of about Rs.1035.94 crores, resulting in an overall global net loss of Rs. 191.39 crores after set-off of foreign branch income.
- ❖ Since assessee had an overall loss in India for AY 2012-13, no Indian income-tax liability arose, and consequently the Ld. AO did not allow foreign tax credit (FTC) for the taxes paid abroad. The authorities also held that there was no provision in the Act permitting carry-forward of unutilized FTC.
- ❖ In the subsequent AY 2013-14, the assessee offered foreign branch income of approximately Rs.1178.90 crores to tax in India. While computing its tax liability, the assessee claimed foreign tax credit aggregating to Rs.297.95 crores, which included Rs.182.64 crores of foreign taxes paid in AY 2012-13 relating to foreign branch income of Rs.844.55 crores which was denied by Id. AO.

Assessee's Contention

- ❖ Assessee contended that during AY 2012-13, its overseas branches earned profits on which foreign taxes were duly paid in the respective jurisdictions. However, since the Indian operations resulted in a global loss, there was no Indian tax liability, and therefore foreign tax credit (FTC) could not be utilized in that year.
- ❖ Assessee further argued that in AY 2013-14, the brought forward losses from the earlier year were reduced because the foreign branch profits had already been adjusted while computing global income. Consequently, the reduced loss carry-forward increased the taxable income in AY 2013-14, effectively subjecting the foreign income to tax in India.
- ❖ It was contended that once the foreign-sourced income becomes taxable in India, FTC should be granted in the year in which the income is actually subjected to tax, even if the foreign tax was paid in an earlier year. **Denial of such credit would result in economic double taxation, contrary to the objective of Double Taxation Avoidance Agreements (DTAAs).**
- ❖ Assessee therefore claimed FTC aggregating to Rs. 297.95 crores, including Rs. 182.64 crores relating to foreign taxes paid in AY 2012-13, under section 90 for treaty jurisdictions and section 91 for non-treaty jurisdictions.

Revenue's Contention

- ❖ Revenue contended that foreign tax credit can only be allowed in the year in which the corresponding income is taxed in India and where Indian tax liability actually arises. Since the assessee had reported a net loss in AY 2012-13, no FTC could be granted in that year.
- ❖ It was further argued that the Income-tax Act does not contain any provision permitting the carry-forward of unutilized foreign tax credit to subsequent assessment years. Therefore, assessee could not claim credit of foreign taxes paid in an earlier year in AY 2013-14.
- ❖ Revenue maintained that granting FTC in a later year would effectively amount to creating a mechanism of carry-forward of foreign tax credit, which was not contemplated under the statute for the relevant period. Hence, the claim made by the assessee for adjustment of earlier year foreign taxes against the tax liability of AY 2013-14 was not allowable.

Legal provisions

Section 90 of the Income Tax Act, 1961:

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory), or

Legal provisions

Section 90 of the Income Tax Act, 1961:

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

Legal provisions

Section 91 of the Income Tax Act, 1961:

If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Article 23A and 23B of the OECD Model (2019)

".....relief must be provided regardless of when the tax is levied by the State of source. The State of residence must therefore provide relief of double taxation through the credit or exemption method with respect to such item of income or capital even though State of source taxes it in an earlier or later year"

Legal provisions

Article 23B of OECD Model Convention

"1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first-mentioned State shall allow: (a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State; (b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State. Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State."

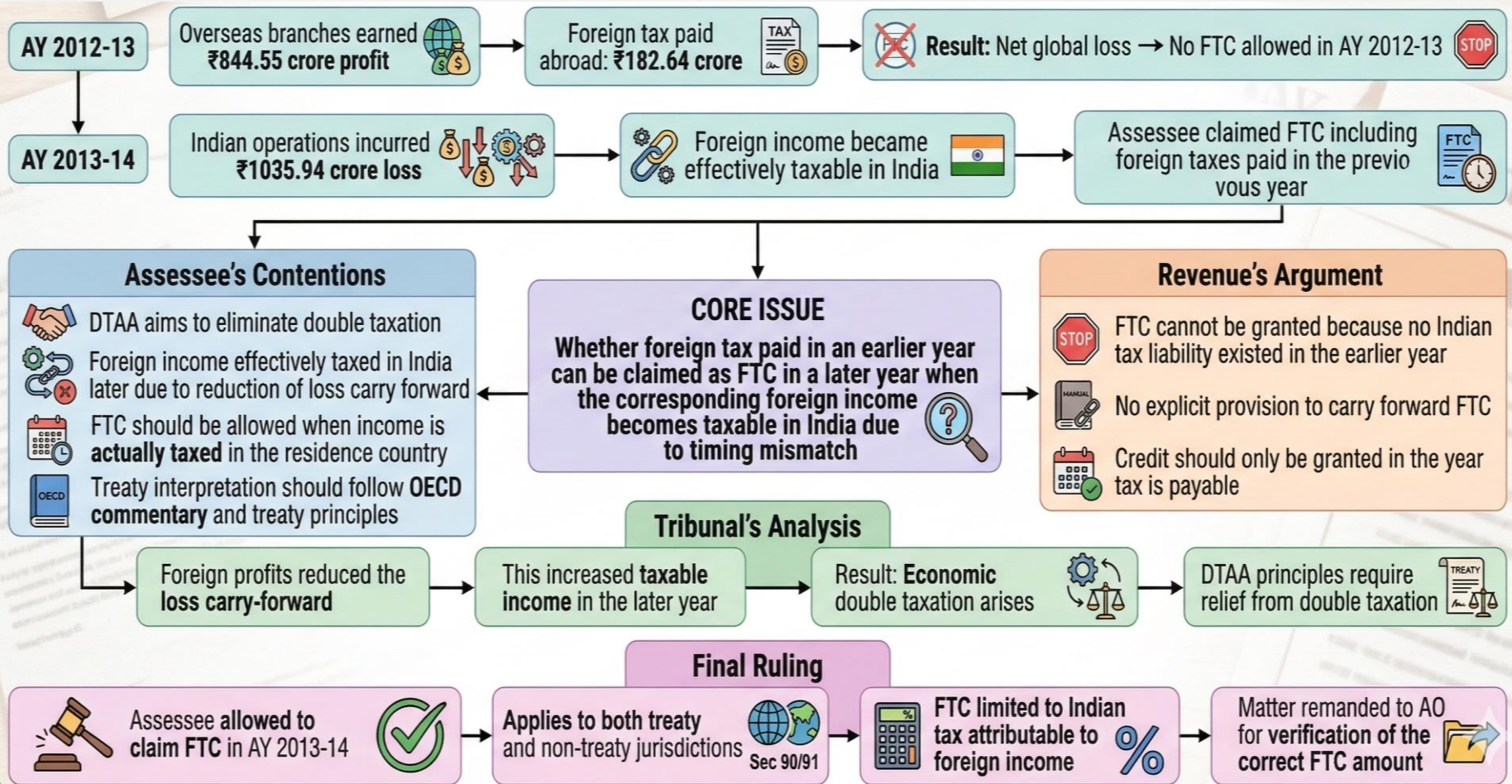
Ruling

- ❖ Hon'ble Tribunal observed that in AY 2012-13, although foreign branch profits were earned and foreign taxes were paid, assessee had an overall loss in India. Consequently, FTC could not be utilized in that year because credit can only be granted against Indian tax liability.
- ❖ However, Tribunal noted that in AY 2013-14, the reduced carry-forward loss (due to earlier inclusion of foreign profits in global income) resulted in a higher taxable income in India. **This effectively meant that the foreign-sourced income from the earlier year became indirectly subjected to tax in India during the current year.**
- ❖ **Hon'ble Bench held that denial of FTC in such circumstances would defeat the object of DTAAs**, which is elimination of double taxation. Even though the Act did not explicitly provide for carry-forward of FTC, the absence of a specific prohibition cannot be interpreted as a statutory bar.

Ruling

- ❖ Accordingly, the Tribunal held that assessee was entitled to claim foreign tax credit in AY 2013-14 in respect of foreign taxes paid in AY 2012-13, to the extent the related foreign income effectively became taxable in the current year due to the reduced loss carry-forward. However, since the exact quantum of such foreign income required factual verification, the matter was remitted to the Ld. AO to determine the amount of foreign income considered as taxed in AY 2013-14 and to allow FTC accordingly, subject to the limitation of Indian tax payable on such income.

#taxinpic



Our Comments

- ❖ This decision supports the main purpose of **tax treaties**, which is to **avoid double taxation of the same income**. Hon'ble Tribunal interpreted the treaty provisions in a practical way so that the taxpayer does not suffer just because the **foreign tax was paid in one year while the income became taxable in India in another year**.
- ❖ The ruling is important for **banks and multinational companies that have branches in other countries**. Sometimes these companies have losses in India in one year, so they cannot use the foreign tax credit immediately. The Tribunal clarified that the credit can still be allowed in the year when the income actually becomes taxable in India.
- ❖ While the ruling gives clarity for years before Rule 128, it raises practical questions on how proportionate FTC should be calculated when the foreign income taxed in the current year is lower than the income on which foreign taxes were originally paid, especially where credits are claimed under sections 90 and 91.

Our Comments

- ❖ It also remains unclear how long such FTC can effectively be carried forward in cases where the taxpayer continues to incur domestic losses while foreign branches remain profitable, and how the FTC limitation rule should be applied in such situations.

Section/Article	Section 90 and 91 & Article 23/24 of OECD Model Convention
Court	ITAT Mumbai
Date of decision	23.12.2025

Note: Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



Visit our website blog for previous case laws.-

<https://jainshrimal.com/blog/#taxgyaan>



Join Whatsapp group for discussion on International taxation
By scanning the QR-



Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.

Thank you for consistently reading SITG for the past 300 weeks.

We look forward to meeting you again in the next edition of SITG,
where we will bring more interesting case studies.

THANK YOU!

