

Assessee was entitled to tax credits for both State as well as Federal taxes paid outside India

Summary – The Ahmedabad ITAT in a recent case of Dr. Rajiv I. Modi, (the Assessee) held that An assessee is entitled to tax credits in respect of State income taxes paid abroad as section 91 does not differentiate between State and Federal taxes and provides for both types of Income taxes to be taken into account for purpose of tax credits against Indian Income Tax liability

Facts

- The assessee was a Director in a pharmaceutical company. During the relevant previous year, the assessee had received salary of Rs. 62.11 lakhs from a USA based entity. In respect of this salary earning from USA, the assessee had paid state income tax aggregating to Rs.5.33 lakhs in USA and claimed a credit in respect of the income tax so paid in computation of his tax liability in India.
- The Assessing Officer rejected the claim on the ground that article 2 of the Double Taxation Avoidance Agreement between India and USA covers only federal income tax imposed by the income tax authorities in USA.
- On appeal, the Commissioner (Appeals) very fairly noted that there was a decision on the same issue in assessee's own case, in favour of the assessee, but declined to follow the said decision on the ground that it had been challenged before the High Court, hence upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- The issue as to whether state taxes on income paid by the assessee in the USA are eligible for tax credit is no longer *res integra*. The Co-ordinate Bench of Tribunal in the case of *Tata Sons Ltd. v. Dy. CIT [2011] 10 taxmann.com 87 (Mum.)*, has decided the issue in favour of the taxpayer. While doing so, the Tribunal observed that section 90(2) makes it clear that 'where the Central Government has entered into an agreement with the Government of any country outside India for granting relief of tax, or for avoidance of double taxation, then in relation to the assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to that assessee' meaning thereby that the Act gets modified in regard to the assessee insofar as the agreement is concerned if it falls within the category stated therein. It would thus appear that the treaty override is only restricted to the extent it is beneficial to a taxpayer. In other words, the fact that a taxpayer is entitled to make a particular claim, in accordance with a tax treaty provisions, does not disentitle him to make the claim in accordance with the provisions of the Act. In this view of the matter, the provisions of section 91 are to be treated as general in application and these provisions can yield to the treaty provisions only to the extent the provisions of the treaty are beneficial to the assessee; that is not the case so far as question of tax credits in respect of state income taxes paid in USA are

concerned. Accordingly, even though the assessee is covered by the scope of India US and India Canada tax treaties, so far as tax credits in respect of taxes paid in these countries are concerned, the provisions of section 91, being beneficial to the assessee, hold the field. As section 91 does not discriminate between state and federal taxes, and in effect provides for both these types of income taxes to be taken into account for the purpose of tax credits against Indian income tax liability, the assessee is, in principle, entitled to tax credits in respect of the same. Of course, as is the scheme of tax credit envisaged in section 91, tax credit in respect of foreign income tax is restricted to actual income tax liability in India, in respect of income on which taxes have been so paid abroad.

- The concerned Commissioner (Appeals) has declined to follow the decision of the Tribunal even though he was fully aware of the same. Merely because a judicial precedent is challenged in further appeal, the precedence value of such a judicial precedent does not get diluted. The stand of the Commissioner (Appeals), in conscious disregard of a binding judicial precedent, cannot but be condemned. Be that as it may, in any event, there is no reason to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, the plea of the assessee in respect of the credit for the state tax paid in the USA is upheld. This is, however, subject to the rider that the credit for all taxes paid abroad in any case cannot exceed the Indian income tax liability in respect of the same income. The Assessing Officer will verify this aspect of the matter. With these observations, the matter stands restored to the file of the Assessing Officer for granting admissible relief, if any.
- In the result, the appeal is allowed for statistical purposes in the terms indicated above.