आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.60/Chny/2022**
निर्धारण वर्ष/Assessment Year: 2018-19

Dhivya Anbazhagan, C Block, 7th Floor, No. 1, AIS Housing Complex, (TAISHA), West Natesan Nagar, Virugambakkam, Chennai 600 092. **[PAN:BLFPD0855H]**	Vs.	The Assistant Director of Income Tax, Central Processing Centre, Bengaluru.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri V. Balaji, C.A. & Ms. M.A. Abhinaya, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri Varuvooru Sreedhar, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	17.10.2022
घोषणा की तारीख /Date of Pronouncement	:	19.10.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), New Delhi dated 01.12.2021 relevant to the assessment year 2018-19.

2. Brief facts of the case are that the assessee has filed her return of income for the assessment year 2018-19 on 06.02.2019 declaring

total income of ₹.11,96,790/-. The return filed by the assessee has been processed under the section 143(1) of the Income Tax Act, 1961 ["Act" in short] by the ADIT, CPC, Bengaluru on 13.03.2020 and determining total income at ₹.11,96790/-. However, the ADIT, CPC allowed TDS credit at ₹.3,64,737/- as against TDS credit claimed by the assessee at ₹.10,86,723/-.

3. The assessee carried the matter in appeal before the first appellate authority and challenged short credit for TDS on the ground that the Assessing Officer does not have power to make adjustment and denied the credit while processing the return of income under section 143(1) of the Act. The ld. CIT(A), after considering the relevant submissions of the assessee, rejected the arguments of the assessee on the ground that the CPC, Bengaluru within his power to make adjustment as per the provisions of section 143(1)(a)(ii) of the Act, to an incorrect claim, if such incorrect claims are apparent from any information in the return. The ld. CIT(A) has also discussed the issue of taxability of salary received by the assessee in Germany and held that the claim of the assessee for non-taxability of salary earned in Germany, has no legal basis.

4. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee, referring to the grounds of appeal filed before the ld. CIT(A) submitted that the assessee has challenged the powers of the Assessing Officer in making *prima facie* adjustment while processing return of income under section 143(1) of the Act, in light of short credit for TDS, whereas, the ld. CIT(A) has decided the taxability of salary earned in Germany in light of DTAA between India and Germany. Before the ld. CIT(A), the assessee has not taken any ground of salary earned by the assessee in India and prayed for remitting the matter back to the file of the Assessing Officer.

5. On the other hand, the ld. DR has submitted that if the assessee makes an incorrect claim, if claims are ascertained, the CPC Bengaluru, can make adjustment under section 143(1)(a)(ii) of the Act. However, the taxability of salary earned in Germany and taxation, the salary earned in Germany is taxable in India and there is no merit in the argument of the assessee.

6. We have heard both the sides, perused the materials brought on record and gone through the orders of authorities below. We find that

the assessee has challenged adjustment made by the CPC, Bengaluru while processing the return under section 143(1) of the Act, with regard to short credit for TDS on the ground that the CPC, Bengaluru, does not have power to allow short credit for TDS when the assessee has claimed TDS as per Form 26AS. However, the Id. CIT(A) has decided the issue on merits and held that the salary earned by the assessee in Germany has to be taxed in India. So, we find that *prima facie*, the issue raised before the Id. CIT(A) is on denial of TDS credit pertaining to the salary earned in Germany, whereas, the Id. CIT(A) has decided taxability of salary earned by the assessee in Germany in India in terms of DTAA. However, we find that there is no specific adjudication on ground raised by the assessee before the Id. CIT(A) on the issue, while processing the return of income under section 143(1) of the Act, whether the Assessing Officer has power to make adjustment if such issue is not ascertainable from the return of income filed, was the question before the Id. CIT(A). However, the Id. CIT(A) went ahead to decide the issue and held that in case of incorrect claim and such claim ascertained in the return, the CPC, Bengaluru, can make adjustment even through the salary earned in Germany. Therefore, we are of the considered view that the Id. CIT(A) has went beyond the scope of his power and decided the issue of taxability of salary, even though the adjustment made by the CPC, Bengaluru, was only on short credit. Accordingly, we set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to first decide the ground raised by the assessee and powers of the Assessing Officer, CPC, Bengaluru. Thus, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 19th October, 2022 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 19.10.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.