

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

**ITA No.9106/Mum./2025**

**(Assessment Year : 2023-24)**

**Mr. Vinay Dube,**

4501 & 4601 Planet Godrej CHS Electra 30,

K.K. Marg Jacob Circle,

Mumbai – 400011

PAN : CJOPD8648E

..... Appellant

v/s

**I.T.O - 8(2)(1),**

Aayakar Bhavan,

M.K. Road,

Mumbai – 400020

..... Respondent

Assessee by : Shri Rahul Sarada, AR

Revenue by : Shri Anurag Tripathi, SR. AR

Date of Hearing – 09/04/2026

Date of Order – 15/04/2026

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The assessee has filed the present appeal against the impugned order dated 27/10/2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2023-24.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The Commissioner of Income Tax (Appeal), National Faceless Appeal Centre failed to appreciate that the Appellant was entitled to the full relief of Rs.84,16,067/- claimed*

*by the Appellant under section 90/90A of the Act. Hence, the CIT (A) erred in granting only proportionate rebate to the Appellant.*

2. *The Appellant submits that the above grounds of appeal are in addition to, in the alternative and without prejudice to each other. The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."*

3. The solitary grievance of the assessee is against the denial of foreign tax credit under section 90/90A of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual having salary income in India and capital gains both in India and the USA, and income from other sources both in India and the USA. For the year under consideration, the assessee filed its return of income on 31/07/2023, declaring a total income of Rs. 5,03,70,569. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. As in Schedule FSI, an amount of Rs. 84,16,067 was claimed as relief under section 90/90A of the Act against the tax of Rs. 1,96,82,460 paid outside India on the income earned outside India, the assessee was asked to furnish material evidence in support of the taxes paid amounting to Rs. 1,96,82,460 in the USA. The assessee was also asked to furnish as to how the relief amounting to Rs. 84,16,067 was quantified. Since the assessee did not furnish any details in response to the notice issued under section 142(1) and sought adjournment, notice was issued to show cause as to why the claim of tax relief amounting to Rs. 84,16,067 made under section 90/90A of the Act should not be denied. In response to the show cause notice, the assessee submitted the income tax return filed in the USA for the Calendar Year 2022 (i.e. from

01/01/2022 to 31/12/2022), which covers the period from 01/04/2022 to 31/12/2022 of the relevant financial year. As regards the balance period from 01/01/2023 to 31/03/2023, the assessee submitted that the preparation and filing of the tax return for the Calendar Year 2023 (i.e. from 01/01/2023 to 31/12/2023) is in process, and he shall furnish the same upon receipt from the USA tax return preparer.

5. The Assessing Officer ("AO"), vide order dated 08/03/2025 passed under section 143(3) read with section 144B of the Act, held that since the assessee's return of income in USA has been filed only for the period starting from 01/04/2022 to 31/12/2022, and the return of income for the remaining period starting from 01/01/2023 to 31/03/2023 is yet to be filed, it is quite clear that the assessee has not been able to exactly quantify the relief under section 90 of the Act available to him. Therefore, the AO held that the relief under section 90 of the Act, amounting to Rs. 84,16,067, has been claimed without any basis and on an estimated basis for which no clarification is brought on record. Accordingly, the entire claim amounting to Rs. 84,16,067 under section 90/90A in respect of taxes paid outside India was disallowed.

6. The learned CIT(A), vide impugned order, directed the AO to verify the foreign tax paid for the period starting from 01/04/2022 to 31/12/2022 covered by the assessee's USA return for the Calendar Year 2022. Accordingly, the learned CIT(A) directed the AO to grant a proportionate rebate under section 90/90A of the Act, as per law, after due verification. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

*“5.2.1 During the current appellate proceedings, the issue under consideration is whether the assessee is eligible for relief under section 90 of the Income-tax Act, 1961 read with the India–USA DTAA, in respect of taxes paid in the United States. It is noted that the assessee had claimed foreign tax credit (FTC) of Rs. 84,16,067/- in the return of income. During assessment, the AO disallowed the claim on the ground that complete details of foreign tax payment were not furnished. However, it is seen that the assessee had subsequently filed the U.S. Individual Income Tax Return for Calendar Year 2022, before completion of assessment, evidencing payment of federal and state taxes on income which is also offered to tax in India. Thus, the material evidence was available on record and ought to have been considered by the AO.*

*5.2.2 Relief under section 90 being a substantive right flowing from the DTAA, cannot be denied merely on technical or procedural grounds, once the fact of tax payment in the foreign jurisdiction is established. The CBDT Circular No. 333 dated 02.04.1982 also clarifies that DTAA provisions prevail over domestic law. Judicial authorities including Union of India v. Azadi Bachao Andolan (263 ITR 706, SC) and CIT v. Dinesh Vora (393 ITR 186, Bom HC) have consistently held that treaty relief must be interpreted liberally to avoid double taxation and should be granted once documentary evidence of tax payment abroad is produced.*

*5.2.3 In view of the above and considering that only part of the relevant period (April 2022 to December 2022) is covered by the U.S. return already filed, the assessee is entitled to proportionate relief under section 90/90A corresponding to the income and taxes relating to the period duly supported by evidence of tax payment. The AO is accordingly directed to verify the quantum of foreign income and tax paid relatable to the period covered by the filed U.S. return and grant proportionate rebate under section 90/90A as per law, after due verification. The disallowance of the entire claim of Rs. 84,16,067/- is, therefore, partly deleted, and the AO shall allow proportionate relief based on verifiable evidence of foreign tax payment.”*

Being aggrieved, the assessee is in appeal before us.

7. Having considered the submissions of both sides and perused the material available on record, in the present case, there is no dispute regarding the fact that the assessee earned income both in India and USA. Insofar as the income earned in India, the assessee has filed its return of income. Regarding the income earned in the USA, the assessee's tax returns were prepared by a consulting firm on behalf of his previous employer. In the return of income for the year under consideration, the assessee claimed relief under section 90/90A of the Act to an extent of Rs. 84,16,067 against the tax of Rs.

1,96,82,460 paid in the USA. In order to substantiate its claim of taxes paid in the USA in respect of income earned in the USA, it is evident from the record that the assessee furnished its return of income for the Calendar Year 2022, which covered the period from 01/04/2022 to 31/12/2022, relevant for the year under consideration. However, for the balance period from 01/01/2023 to 31/03/2023, we find that the assessee could not furnish its return of income filed in the USA for the Calendar Year 2023.

8. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the return of income for the Calendar Year 2023 is now available with the assessee, and the assessee has also duly paid the taxes in the USA on the income earned for the Calendar Year 2023. Accordingly, the learned AR submitted that the entire claim for relief under section 90/90A of the Act can be verified, as the details of taxes paid for the entire financial year, i.e., from 01/04/2022 to 31/03/2023, are available with the assessee.

9. It is evident from the perusal of the impugned order that insofar as the period from 01/04/2022 to 31/12/2022, the learned CIT(A) has already directed the AO to verify the quantum of foreign income and tax paid and grant proportionate relief to the assessee under section 90/90A of the Act. As the details of foreign income and tax paid for the balance period, i.e. from 01/01/2023 to 31/03/2023, is now available with the assessee as the tax return for the Calendar Year 2023 has been filed in USA, we deem it appropriate to restore this issue to the file of the AO for verification of the quantum of income and tax paid by the assessee for the entire financial year 2022-23 from the tax return filed by the assessee in USA for the Calendar

Years 2022 and 2023. Accordingly, we restore this issue to the file of the AO for *de novo* adjudication after necessary verification of the details and grant relief to the assessee under section 90/90A of the Act, as per law. With the above directions, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 15/04/2026

**Sd/-  
BIJAYANANDA PRUSETH  
ACCOUNTANT MEMBER**

**Sd/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 15/04/2026**

*Prabhat*

*Copy of the order forwarded to:*

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai