

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>ITA No. 561/Bang/2022</b>
<b>Assessment Year : 2019-20</b>

Shri Santosh Kumar Yekula, Flat No. 591, Pace Prana Apartments, 109 Padikuppam Road, Anna Nagar West Extn, Chennai – 600 040. <b>PAN: ABNPY7738B</b>	<b>Vs.</b>	The Assistant Director of Income Tax, CPC, Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Risha P, CA
Revenue by	:	Shri Sankar Ganesh K, JCIT DR ITAT

Date of Hearing	:	17-08-2022
Date of Pronouncement	:	25-08-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 18/05/2022 passed by the National Faceless Appeal Centre, Delhi relating to A.Y. 2019-20.

2. It is submitted by Ld.AR that the appeal was filed before the Ld.CIT(A) with a delay of 8 months and 2 days which was condoned by the Ld.CIT(A). However, in respect of the issue on merits, the Ld.AR submitted that the Ld.CIT(A) did not consider Form 67 for

the claim of foreign tax credit and the disallowance was made u/s. 143(1) of the Act without giving an intimation to the assessee.

3. The Ld.AR submitted that on an appeal before the Ld.CIT(A), the Ld. CIT(A) considered the issue by observing as under:

6.12. In the above decision, Hon'ble ITAT, Bangalore has decided the issue : "whether filing of Form No.67 within due date of filing of return is directory or mandatory". On careful consideration, Hon'ble ITAT has opined that filing of Form No.67 within due date of filing of return is only a directory requirement and not a mandatory requirement.

6.12. I have carefully considered the various facts involved in this case, as discussed above, claim of the appellant and the case laws relied upon. However I am inclined to respectfully disagree with the decision granted by Hon'ble ITAT, Bangalore as relied upon by the assessee, as it is observed that the assessee is a resident of Chennai (Tamilnadu), while the decision relied upon has been delivered by a non jurisdictional ITAT, therefore not a binding one. The reasons for respectfully disagreeing with the decision granted by Hon'ble ITAT, Bangalore has been discussed in the subsequent paragraph.

6.14. Form 67 has been filed by the assessee beyond the due date u/s 139(1) and because of this, the appellant was not found eligible for the Foreign Tax Credit by AO, CPC. It is true that DTAA should take precedence over domestic laws, but that is relevant for determining the eligibility of FTC claim and not with regard to procedural requirements. The Income Tax provisions clearly stipulate the procedure and timeline for making a claim. CPC has followed the rule which is mandatory and hence non furnishing of Form No.67 before the due date u/s.139(1) of the Act is a stringent requirement for the said claim. Hence, CPC made the disallowance. There is no defect in the intimation. As far as the reasonableness of the Foreign Tax Credit or eligibility is concerned, the CPC cannot ignore or waive the procedural requirement. As the present appellate authority also does not have the power to condone delay in filing the Form 67 for claim of Foreign Tax Credit, this ground of appeal no. 1 is dismissed.

On the contrary, the Ld.DR relied on the orders passed by authorities below.

4. We note that an identical issue of non-consideration of Form 67 by the Ld.CIT(A) has been dealt with by this *Coordinate Bench of this Tribunal* in case of *M/s. 42 Hertz Software India Pvt. Ltd. vs.*

ACIT in ITA No. 29/Bang/2021 by order dated 07/03/2022 wherein this Tribunal observed as under:

*“4. It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision.*

*5. On the contrary, the Ld.DR submitted that fulfillment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to FTC.*

*We have perused he submissions advanced by both sides in light of records placed before us.*

*6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms.Brinda Kumar Krishna vs.ITO in ITA no.454/Bang/2021 by order dated 17/11/2021.*

*7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P.) Ltd. reported in (2021) 432 ITR 471.*

*8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.*

*Accordingly the grounds raised by assessee stands allowed for statistical purposes.”*

5. Respectfully following the above, we direct the Ld.AO to consider the issue in accordance with law by considering the disclosure made in Form 67 by the assessee after proper verification.

Accordingly the grounds raised by assessee stands allowed for statistical purposes.

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

**Order pronounced in the open court on 25<sup>th</sup> August, 2022.**

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 25<sup>th</sup> August, 2022.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore