

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

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

<b>ITA Nos. 549 &amp; 550/Bang/2022</b>
<b>Assessment Years : 2017-18 &amp; 2018-19</b>

Shri Tanmoy Ghosh, D-1904, Atelier, Rustomjee Urbania, Eastern Express Highway, Majiwada Thane – 400 601 Maharashtra. <b>PAN: AFLPG1512M</b>	<b>Vs.</b>	The Assistant Director of Income Tax, CPC, Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	None
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	03-08-2022
Date of Pronouncement	:	25-08-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals are filed by assessee against separate orders dated 09/05/2022 for A.Ys. 2017-18 & 2018-19 by the National Faceless Appeal Centre, Delhi.

2. The only issue alleged by assessee in these appeals are in respect of non-granting of foreign tax credit amounting to Rs.3,59,082/- for A.Y. 2017-18 and Rs.24,61,493/- for A.Y. 2018-19. It is submitted that the above claim was rejected by the

Ld.CIT(A) in the impugned orders as there was a delay in filing Form 67 which was beyond the due date of filing the return u/s. 139(1) for the relevant Assessment Years under consideration.

3. Before us the Ld.AR submitted that assessee claimed FTC on the salary income in accordance with the article 24(2) of India – UK DTAA for the assessment years under consideration.

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

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, both the appeals 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 /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore