

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

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

ITA No. 832/Bang/2022
Assessment Year : 2019-20

Soumya Ghosh, C-1103, Windmills Of Your Mind, EPIP Zone, Whitefield, Bengaluru – 560 066. PAN: AFFPG0104B	Vs.	The Assistant Commissioner of Income Tax, Circle – 3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT (DR)

Date of Hearing	:	19-10-2022
Date of Pronouncement	:	28-10-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 19/07/2022 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2019-20 on following grounds of appeal:

“1. The order passed by the Hon'ble Commissioner of Income Tax NFAC, Delhi, passed under section 250 of the Income Tax Act, 1961 ("the Act") is so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. *The appellant denies himself to a liability of Rs. 32,22,030/-, on the facts and circumstances of the case.*
3. *The authorities below failed to appreciate that the foreign tax Credit of Rs. 21,95,472/- ought not to have been denied in computing the tax liability U/s 143(1) of the Act, on the facts and circumstances of the case.*
4. *The authorities below failed to appreciate that the Foreign Tax Credit allowable of Rs. 21,95,472/- was in pursuance of claim under section 90, read with Article 25 and Article 4 of the India - Singapore DTAA and the provisions of DTAA override the provisions of the income Tax Act, on the facts and circumstances of the case.*
5. *The learned CIT(A) failed to appreciate that the filing of the form 67 was directory and not mandatory, to erroneously hold that the delay in filing would disentitle the appellant's claim of foreign tax credit, on the facts and circumstances of the case.*
6. *The authorities below failed to appreciate that the adjustment of foreign tax credit in processing the return of income U/s 143(1) of the act, was beyond the scope of the section, on the facts and circumstances of the case.*
7. *Without prejudice, the adjustment U/s 143(1) of the Act, was made in violation of the principles of natural justice, on the facts and circumstances of the case.*
8. *The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
9. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."*

2. Brief facts of the case are as under:

2.1 The Ld.AO noted that Assessee claimed Foreign Tax Credit (FTC) of Rs.21,95,472/- u/s.90/91 in respect of tax withheld by the Singapore as per India-Singapore DTAA. The assessee filed the return of income on 27/08/2020 u/s. 139(4) along Form 67.

2.2 The CPC disallowed the claim on the ground that the Assessee failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.

Aggrieved by the assessment order assessee preferred appeal before the Ld.CIT(A).

3. The CIT(A) confirmed the Order of the Ld.AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is non-est in law. The CIT(A) also held that provisions of Rule 128(8) &(9) are mandatory in nature. The CIT(A) rejected the contention of the assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

Aggrieved by the order of Ld.CIT(A), assessee preferred appeal before this *Tribunal*.

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 the 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.

7.1 Reliance is placed on the decision of *Coordinate Bench of this Tribunal* in case of *Ms.Brinda Kumar Krishna vs. ITO* reported in (2022) 135 taxmann.com 358 wherein this *Tribunal* observed as under:

"16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application

u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard.”

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.

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

Order pronounced in the open court on 28th October, 2022.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th October, 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