

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

**BEFORE SHRI B. R. BASKARAN, AM AND SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.1169/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2019-20)

Prajosh Nanu Room No. 3, Plot no. 265, Sanjoli Building, Sulochana Shetti, Marg Sion West, Mumbai-400022.	<b>बनाम/</b> Vs.	ACIT, CPC
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APKPK0260R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Ajit Jain & Siddhesh Chaugule	
Revenue by:	Shri P. D. Chougule (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 06/10/2022

घोषणा की तारीख /Date of Pronouncement: 21/10/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) (NFAC), Delhi dated 22.03.2022 for the assessment year 2019-20.

2. The relevant grounds of appeal raised by the assessee are as under: -

“1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) herein referred as ‘the Ld. CIT (A)’ has erred in not granting the credit of foreign taxes paid as should have been duly allowed under Article 24(2) of the India-UK Double Tax Avoidance Agreement (‘DTAA’) read with Section 90 of the Act, even though the Appellant was ‘Resident’ in India and therefore, had offered his global income to tax in India including the UK sourced income which had suffered tax in UK as well.



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2. In the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not granting the credit of foreign taxes paid just due to filing of Form 67 after return filing date when filing of Form 67 is a procedural/directory requirement and procedural norms should not extinguish the substantive right of claiming the credit of foreign taxes.

3. In the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in upholding the action of the Ld. Assistant Director of Income Tax, CPC in levying additional interest under section 234C of the Act.”

**3.** The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of the AO by not granting the credit of foreign taxes paid as per the relevant Double Tax Avoidance Agreement (DTAA) read with Section 90 of the Income Tax Act, 1961 (hereinafter “the Act”).

**4.** Brief facts is that the assessee individual was qualifying as “Resident and Ordinarily Resident” in India during the Financial Year (FY) 2018-19 under the Act. From the period 1<sup>st</sup> April 2018 to 31<sup>st</sup> Oct, 2018, the assessee was working in India with M/s. JP Morgan Services India Pvt. Ltd. Thereafter, assessee went on employment to United Kingdom (UK) from 1<sup>st</sup> Nov, 2018 and started working with M/s. JP Morgan Chase & Co. in UK, for the period from 1<sup>st</sup> Nov, 2018 to 31<sup>st</sup> Mar, 2019. So the assessee was rendering services in UK and received salary in UK. The assessee filed his original India Tax return for FY 2018-19 on 31.08.2019. Later, the assessee received intimation



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u/s 143(1) of the Act which was served upon the assessee on 18.01.2021. As per the above intimation, the entire Foreign Tax Credit (FTC) of INR 8,02,913 as claimed by the assessee was not allowed by CPC. Aggrieved by the said intimation, the assessee filed an online rectification request on 3.02.2021. And in response to the said intimation, CPC by order u/s 154 of the Act dated 17.03.2021 did not allow the entire FTC of Rs.8,02,913/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of the CPC by holding as under: -

“In the given case the appellant has filed the return of income on 31/08/2019. However, the form 67 as mandatorily required to be filed for claiming foreign tax credit was not filed or furnished on or before the due date of furnishing of return of income which was 31.08.2019. Therefore, the claim was not in accordance with the-provisions of rule 128 of the Income Tax Rules,1962 the form 67 as only been filed by the appellant of 17/10/2019, which is much beyond the due date for filing return of income. Therefore, as the appellant did not comply with the mandatory requirement u/r 128 of the Income Tax Rules,1962 of furnishing Form 67 on or before the due date of filing of return of income, the action of A.O. in disallowing the foreign tax credit is in accordance with provisions of Income Tax Act,1961 and is hereby upheld. The grounds of appeal are treated as dismissed.”

**5.** Aggrieved, by the aforesaid action of Ld. CIT(A), the assessee is before us.



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6. We have heard both the parties and perused the records. The Ld. CIT(A) has disallowed the claim of the assessee (FTS credit) because according to him Form 67 was required to be filed mandatorily furnished on or before the due date of furnishing of return of income which was on 31.08.2019 [in accordance to Rule 128 of the Income Tax Rules, 1962 (hereinafter “the Rules”)]. And since the assessee had filed the Form 67 only on 17.10.2019 which is after forty eight (48) days (beyond the due date of filing of the return of income i.e. 31.08.2019) according to him, was against the mandatory requirement prescribed under Rule 128 of the Rules. Therefore, he confirmed the action of the AO/CPC. Aggrieved, assessee is before us assailing the action of Ld. CIT(A).

7. At the outset, the Ld. AR of the assessee brought to our notice that the impugned action of the Ld. CIT(A) was erroneous, since the statute/Act does not mandatorily prescribed furnishing of Form 67 for claiming foreign tax credit (FTC) before the due date of furnishing of return, and the Rules 128 was only directory in nature; and for the aforesaid proposition, the assessee relied on the co-ordinate bench decision in similar case upon the same issue (ITA. No.1704/Mum/2022 For AY. 2018-19 Sonakshi Sinha Vs. CIT). We note in that case also similar issue came for consideration of the Tribunal and the Tribunal has allowed the Foreign Tax Credit of Rs.29,21,327/- in that case (Sonakshi Sinha case), wherein the grounds of appeal raised by the assessee are as under: -



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“i. on the facts and circumstances of the case and in law, Commissioner of Income tax (Appeals), National faceless appeal Centre (NFAC) has erred by not considering the explanation, documents and disclosures made with regard to the claim of relief u/s 90 of the income tax act 1961

ii. the CIT (A), National faceless appeal Centre has erred in passing an order and disallowing the claim of relief of foreign tax credit u/s 90 of the income tax act, 1961 amounting to ₹ 2,921,327/- on the same income of ₹ 14,610,080/- offered in the same year, which has been doubly taxed in the United Kingdom and in India. iii. On the facts and circumstances of the case, the CIT (A), NFAC has not disputed the allowability of the foreign tax credit. He has only disallowed the credit on the ground that form 67 has not been filed on or before the due date of filing of return of income as per rule 128 (9) of the income tax rules, 1962.

iv. On the facts and circumstances of the case and in law, the CIT (A) NFAC failed to appreciate the fact that during the course of assessment proceedings, the learned AO had erred in not issuing any show cause notice providing any opportunity to the appellant to explain as to why the disallowance of the credit should not be made and passed the assessment order disallowing the foreign tax credit of ₹ 2,921,327/-.

v. The CIT (A) NFAC failed to appreciate the fact that the appellant on realizing the mistake of not filing form 67 for assessment year 2018 – 19, had filed the form on 20/1/2020 being later then the time limit specified Under rule 128 (9) of the income tax rules, 1962. The act of late filing of form 67 clearly shows the intention of the appellant to rectify the procedural lapse that was made at the time of filing the return of income u/s 139 (1) of the income tax act 1961 for claiming the foreign tax credit.”



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**8.** And on the aforesaid grounds, the Tribunal held as under: -

“012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) Ltd v. ACIT [2022] 139 taxmann.com 448 (Bangalore - Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v.ITO [2022] 135 taxmann.com 358 (Bang - Trib) it was held that "one of the requirements of Rule128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns and that 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. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmi pathi V



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CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further , the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.

013. Other grounds of appeal are also revolving around the issue of claim of foreign tax credit and therefore those are allowed.”



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8. Respectfully following the Tribunals ratio in the aforesaid case which allowed the claim of the assessee, on the same reasoning we allow the appeal of assessee and direct the AO to allow the foreign tax credit claimed by the assessee.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 21/10/2022.

Sd/-

Sd/-

(B. R. BASKARAN)  
ACCOUNTANT MEMBER

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 21/10/2022.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai