

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.1041/Bang/2022 : Asst.Year 2020-2021

ITA No.1042/Bang/2022 : Asst.Year 2021-2022

Sri.Sudheendra Phani Kumar Bommathpalli No.92, Ferns Habitat Near Doddanakundi Village Marathahalli Post Bengaluru - 560 037. PAN : ABZPP2006R.	v.	The Assistant Director of Income TAX, CPC Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Navneet S Kini, CA

Respondent by : Sri.Sankar Ganesh K, JCIT-DR

Date of Hearing : 13.12.2022	Date of Pronouncement : 13.12.2022
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 06.09.2022. The orders of the CIT(A) arise out of the intimation passed u/s 143(1) of the I.T.Act. The relevant assessment years are 2019-2020 and 2020-2021.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. Identical ground is raised in these appeals, which reads as follows:-

“Foreign tax credit has been disallowed on the grounds that filing of form 67 within due date is a pre-condition for claiming foreign tax credit. This assumption is not in line with the decision of this Honourable tribunal in the case of Ms.Brinda Ramakrishna, ITA No.454/Bang/2021 vide its order dated 17-Nov-2021.”

3. The brief facts of the case are as follows:

The assessee was employed with LSI India Research and Development Private Limited in USA, during the assessment years 2019-2020 and 2020-2021. For the assessment years under consideration, the assessee had earned income from salary, capital gains, dividend & interest. The assessee had claimed Foreign Tax Credit (FTC) of Rs.1,65,546 and Rs.3,43,020 for the assessment years 2019-2020 and 2020-2021, respectively. The intimation for assessment year was issued on 29.03.2021 and 25.11.2021 for assessment years 2019-2020 and 2020-2021 respectively. In the said intimation, FTC claimed by the assessee u/s 90 / 91 of the I.T.Act was denied for the reason that Form No.67 (statement of income from a country or a specified territory outside India and FTC) was not filed within the due date specified u/s 139(1) of the I.T.Act.

4. Aggrieved by the rejection of claim of FTC, the assessee preferred appeals before the first appellate authority. The CIT(A) confirmed the view taken by the AO. The relevant finding of the CIT(A) for assessment year 2019-2020, reads as follows:-

“5.6 As per Rule 128(9) of the I.T.Rules, 1962 mentioned supra, the appellant is required to furnish Form No.67 well within the due date specified for furnishing the return of income under sub-section (1) of Section 139 of the Act. It is seen that the appellant has neither filed the return of income A.Y. 2019-20 on or before 31.08.2019 (the extended due date of filing the return), nor filed the Form 67 filed within the due date of filing of return. Since the appellant has failed to submit Form 67 within the stipulated time limit, the AO while passing the intimation order disallowed the claim of Foreign Tax Credit u/s 90 of the Act. Hence, I agree with the action of the AO in disallowing the claim of Foreign Tax Credit to the appellant, since the appellant has failed to submit Form 67 within the due date, which was required by the appellant to file the same as per the provisions of I.T.Act. Therefore, the Grounds of Appeal No.1 to 4 are hereby dismissed.”

5. Aggrieved by the orders of the CIT(A), the assessee has filed the present appeals before the Tribunal. At the time of hearing, the learned AR Sri.Navneet S.Kini, CA has filed a letter dated 07.12.2022, wherein it is submitted that the issue in question is covered in favour of the assessee by the order of the Tribunal in the case of Ms.Brinda Ramakrishna v. ITO in ITA No.454/Bang/2021 (order dated 17.11.2021).

6. The learned Departmental Representative supported the orders of the CIT(A).

7. We have heard rival submissions and perused the material on record. In the instant cases, the claim of FTC has been rejected solely for the reason that Form No.67 has not been furnished within the due date specified u/s 139(1) of the I.T.Act. We find on identical facts, the Bangalore Bench of the Tribunal in the case of Ms.Brinda Ramakrishna v. ITO (supra) had held that when assessee filed Form No.67 during the

course of assessment proceedings, the assessee was entitled to FTC. It was held by the Tribunal that Rule 128(9) of the I.T.Rules, 1962, does not provide for disallowance of FTC in a case of delay in filing Form No.67. It was further held by the Tribunal that filing of Form No.67 is not mandatory but directory requirement. The relevant finding of the Tribunal reads as follows:-

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. Similar view has been held by the Bangalore Bench of the Tribunal in the case of 42 Hertz Software India (P) Ltd. v. ACIT reported in (2022) 139 taxmann.com 448 (Bang-Trib.). Since the facts of the instant case are identical to the facts considered by the Bangalore Bench orders, cited supra, we hold that the assessee cannot be denied the FTC for the reason that Form No.67 has not been filed within the due date specified u/s 139(1) of the I.T.Act. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 13th day of December, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 13th December, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT NFAC Delhi
4. The CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore