

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 439/Kol/2022
Assessment Year: 2020-21

Atanu Mukherjee (PAN:AJTPM 0060 A)	Vs.	ITO, Ward-50(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	20.12.2022
For the Appellant/ निर्धारिती की ओर से	Shri Ranjan Kr. Kali, Advocate Shri Avidip Kumar, Advocate
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 02.06.2022 for the AY 2020-21.

2. The only grievance raised by the assessee against the order of Ld. CIT(A) is against upholding the order of AO denying Foreign Tax Credit to the assessee on the ground of belated filing of Form 67.

3. Facts in brief are that the assessee, being an individual and tax resident of India, filed his return of income belatedly on 31.03.2021 declaring total income of Rs. 93,44,290/-. The assessee claimed foreign tax credit (hereinafter called for 'FTC') of Rs. 20,92,790/- u/s 90(2) of the Act. The return was processed u/s 143(1) of the Act vide intimation dated 24.12.2021 determining total income of Rs. 93,44,290/- meaning thereby that returned income was accepted however, the assessee was denied the claim of FTC to the extent of Rs. 20,92,790/- and a demand of Rs. 28,48,010/- was slapped on the assessee. The said claim was denied because of late filing of prescribed Form 67 under Rule 128 of the Income Tax Rules, 1962 (hereinafter referred to as the 'Rule') by the assessee.

4. Aggrieved by the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) simply dismissed the appeal of the assessee by observing and holding as under:

"6.12. In view of the above, after having considered the totality of facts and circumstances of the case and keeping in view the provisions of Rule 128 of the Rules r. w. Section 90(2) of the Act, I am of the considered opinion that, in the instant case, the assessee has not fulfilled the conditions precedent for the purpose of claiming FTC to the extent of Rs. 20,92,790/-. Accordingly, I do not want to interfere with the order of the AO on this issue. Thus, the ground of appeal raised by the assessee is dismissed. Consequently, additional interest charged by the AO u/s 234A, 234B and 234C of the Act to the extent of Rs. 7,55,223/-."

5. After hearing the rival contentions and perusing the material on record, we note that the undisputed facts are that the assessee is an individual and tax resident of India. The assessee during the relevant previous year served with M/s Dastur International INC in USA and M/s M N Dastur Company India Pvt. Ltd. in India. The assessee's income was taxable under the Act and accordingly assessee offered salary income earned from services rendered specifically in USA for the period commencing from April 2019 to March 2020 to tax in India. The assessee claimed FTC for tax paid in USA u/s 90/90A read with Rule 128 of the Rule. However, the assessee was denied FTC on the ground of late filing of Form 67 in consonance with Rule 128 of the Rules which provides that Form 67 has to file on or before the due date of return of income as prescribed u/s 139(1) of the Act and this is the compliance to be made in terms of

Rule 128(9) of the Rules. Now the main question before us is whether mere late filing of Form 67 would result in complete denial of tax which has been deposited by the assessee in USA where services were rendered. We have perused the Article 25 in the applicable DTAA between India and USA and also Rule 128 of the rules and provisions of Section 90(2) of the Act. Rule 128(9) of the rules provides that Form 67 should be filed on or before the due date of return of income however we also observe that the said Rule nowhere states that in case of late filing of Form 67 the credit of FTC which is deposited by the assessee in foreign country would be denied. In our considered view the FTC can not be denied to the assessee merely for late filing of Form 67 as it is a procedural formality on the part of the assessee. We have also perused the various decisions filed before us by the Ld. Counsel for the assessee in defence of his argument that FTC cannot be denied merely on the basis of late filing of Form 67. We have perused the decision of Co-ordinate Bench of Bangalore in the case of M/s Brinda Rama Krishna vs. ITO in ITA No. 454/Bang/2021 for AY 2018-19 dated 17.11.2021 and find that a similar issue has been decided in favour of the assessee. The operative part is reproduced 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 a 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.

17. In the result, the appeal is allowed.”

Similar ratio has been laid down in the other decision namely decision of Co-ordinate Bench of Bangalore in the case of Shri Pradeep Lankapally vs. DCIT in ITA No. 560/Bang/2021 for AY 2018-19 dated 31.01.2022. We also note that similar issue also has been decided in ITA No. 261/JP/2022 for AY 2020-21 dated 15.09.2022 wherein the Co-ordinate Bench has allowed FTC by holding that the filing of form 67 is a

procedural formality and could not be the basis for denial of FTC to the assessee. Considering the aforesaid facts and in the light of the decisions of Co-ordinate Benches, we allow the appeal of the assessee.

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

Order is pronounced in the open court on 20th December, 2022

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 20th December, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Atanu Mukherjee, 146-BD, Block-Salt lake, Kolkata-700064.
2. Respondent – ITO, Ward-50(1), Kolkata
3. Ld. CIT(A)-NFAC-Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata