

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.990/Chny/2022  
(निर्धारण वर्ष / Assessment Year: 2020-21)

<b>Shri Prakash Varadarajulu</b> TNHB Flats, Anna Nagar West Extension, Chennai – 600 101.	<b>बनाम/ Vs.</b>	<b>DCIT (CPC)</b> Bengaluru.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ACXPV-7394-R</b>		
<b>(□ पीलार्थी/Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थी की ओरसे/ Appellant by</b>	<b>:</b>	<b>Shri S.P. Chidambaram (Advocate) – Ld. AR</b>
<b>प्रत्यर्थी की ओरसे/Respondent by</b>	<b>:</b>	<b>Shri P. Sajit Kumar (JCIT) –Ld. DR</b>
<b>सुनवाई की तारीख/Date of Hearing</b>	<b>:</b>	<b>16-02-2023</b>
<b>घोषणा की तारीख /Date of Pronouncement</b>	<b>:</b>	<b>16-02-2023</b>

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2020-21 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 18-05-2022 in the matter of an intimation issued by Centralized Processing Centre (CPC), Bangaluru u/s 143(1) vide order dated 25-11-2021 denying foreign tax credit for Rs.49.84 Lacs in view of the fact that Form 67 was filed belatedly.
2. The Registry has noted delay of 129 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of the

an affidavit filed by the assessee wherein it has been submitted that the assessee was in China on an international assignment and returned to India during November, 2022 when the documents were collected and the appeal was filed. Considering the contents of affidavit, the bench formed an opinion that the delay was to be condoned. Accordingly, the appeal is admitted for adjudication on merits.

3. Upon perusal of case records, it could be seen that Ld. CIT(A) has upheld the denial of tax credit on the ground that though the assessee had filed return of income u/s 139(1) on 10-01-2021, Form No. 67 was filed on 15-01-2021 i.e., beyond due date as specified u/s 139(1). Aggrieved, the assessee is in further appeal before us.

4. We find that filing of Form 67 has been held to be directory and not mandatory in many decisions of the Tribunal. The Mumbai Tribunal, in its recent decision, titled as **Sonakshi Sinha vs. CIT (142 Taxmann.com 414)**, held as under: -

12. 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. (Supra)* wherein following its earlier order in the case of *Ms. Brinda Rama Krishna (supra)* it was held 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 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 Lakshmipathi v. CIT(A)* [IT Appeal No. 680/Bang/2022, 6-9-2022. 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.

In the absence of any contrary decision on record and respectfully following the consistent view of Tribunal on this issue, we direct lower authorities to grant the foreign tax credit as claimed by the assessee.

5. The appeal stand allowed.

Order pronounced on 16<sup>th</sup> February, 2023.

Sd/-  
(MAHAVIR SINGH)  
उपअध्यक्ष / VICE PRESIDENT

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 16-02-2023  
EDN/-

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF