

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.2540, 2541 & 2542/Del/2022
Assessment Years: 2019-20, 2020-21 & 2021-22

Rani Khanna,
A-1/309, Safdarjund Enclave,
New Delhi – 11 029.

Vs. DCIT,
Circle-28(1),
New Delhi.

PAN: AAFPK7388C

(Appellant)

(Respondent)

Assessee by	:	Shri Sanjay Jain, CA
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	12.12.2022
Date of Pronouncement	:	24.02.2023

ORDER

These appeals filed by the assessee are directed against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Years 2019-20, 2020-21 & 2021-22 raising various grounds.

2. The Id. Counsel of the assessee submitted that the authorities below have dismissed the claim of the assessee only on the ground that the assessee could not file No.67 within the prescribed time and, thus, the authorities below have erred in denying claim of deduction on account of foreign tax credit. Placing reliance on the order of *ITAT Mumbai Bench dated 01.12.2022 in ITA No.2094/Mum/2022 for AY 2019-20 in the case of Nirmala Murli Relwani vs. ACIT*, the Id. AR submitted that mere delay in filing Form No.67 as per the provisions of Rule 128(9) will not preclude the

assessee for claiming the benefit of foreign tax credit in respect of tax paid outside India.

3. Replying to the above, the Id. Sr. DR supported the orders of the authorities below.

4. On careful perusal of the order of the ITAT Mumbai Bench in the case *Nirmala Murli Relwani vs. ACIT (supra)* wherein, relying on its earlier order in the case *Anuj Bhagwati vs. DCIT, dated 20th September, 2022*, the coordinate Bench of the Tribunal has granted relief to the assessee under identical facts and circumstances wherein the assessee filed Form No.67 belatedly, after prescribed time limit. The relevant paras 11 and 12 of the said order in the case of *Nirmala Murli Relwani (supra)* read as follows:-

"11. We further find that in another decision in Anuj Bhagwati vs DCIT, in ITAs No.1844 and 1845/Mum./2022, the coordinate bench of the Tribunal vide order dated 20/09/2022, while deciding a similar issue held that section 90/91 of the Act has not been amended insofar as grant of foreign tax credit is concerned and Rules cannot override the Act and therefore filing of Form No. 67 is not mandatory but it is directory. The relevant findings of the coordinate bench of the Tribunal in the aforesaid decision are as under:

"8. We considering the facts, circumstances provisions of the Act and judicial decisions are of the opinion that there is no amendment on these aspects in the Section 90 of the Act and the Rules cannot override the Act and therefore the filing of Form No 67 is not mandatory but it is directory. Accordingly, We restore the disputed issue to the file of the CIT(A) to adjudicate afresh on merits considering the observations in above paragraphs and the ratio of judicial decisions. Further the assesses should be provided adequate opportunity of hearing and shall

cooperate in submitting the information for early disposal of appeal and allow the grounds of appeal of the assesses for statistical purposes.”

12. Thus, respectfully following the aforesaid decisions of the coordinate bench of the Tribunal, we are of the considered opinion that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), as they stood during the year under consideration, will not preclude the assesses from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since in the present case, the claim of the assesses was denied on this technical aspect without going into the merits, therefore, we deem it appropriate to direct the jurisdictional Assessing Officer to decide the claim of the foreign tax credit on merits, after accepting the Form No. 67 and other related documents filed by the assesses. Accordingly, grounds raised by the assesses are allowed for statistical purposes.

5. Respectfully following the order of the coordinate Bench, ITAT Mumbai, in the case of *Nirmala Murli Relwani (supra)*, I hold that merely because the assessee could not file Form No.67 within the prescribed time limit as per the provisions of Rule 128(9) of the Income-tax Rules, 1962, as it stood during the year under consideration, will not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Therefore, the claims of the assessee for all the assessment years under identical facts and circumstances are allowed and the AO is directed to give benefit of foreign tax credit in respect of tax paid outside India by the assessee. Accordingly, grounds of the assessee are allowed.

6. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 24.02.2023.

sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 24th February, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi