

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **846/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2019-20

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[PAN: AAIPF-7614-F]

(अपीलार्थी/Appellant)

Assistant Director of Income
Tax,
Centralized Processing Centre,
Bengaluru.

v.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. V. Balaji, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 27.02.2023

घोषणा की तारीख/Date of Pronouncement

: 28.02.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.05.2022 and pertains to assessment year 2019-20.

2. At the time of hearing, we find that there is a delay of 94 days in filing of appeal before the tribunal, for which a petition for condonation of delay along with affidavit explaining the reasons has been filed. The Id. Counsel for the assessee, referring to petition filed by the assessee submitted that the assessee was not aware whether appeal can be filed against the order of the CIT(A) before the Income Tax Appellate Tribunal. But, after consultation with regard to demand raised by the Assessing Officer by, rejecting credit for tax paid in other countries, the counsel advised the assessee to file an appeal before the Tribunal which caused delay of 94 days. The delay in filing of appeal is neither intentional nor to derive any undue benefit. Therefore, in the interests of justice, the delay may be condoned.

3. The Id. DR, on the other hand opposed petition filed by the assessee for condonation of delay and submitted that reasons given by the assessee does not come under reasonable cause and thus, delay should not be condoned.

4. We have heard the parties and considered reasons given by the assessee for condonation of delay and we find that,

there is a reasonable cause with the assessee in not filing appeal within time allowed under the Act. Therefore, considering reasons given by the assessee, we condone the delay in filing of appeal and admit appeal filed by the assessee for adjudication.

5. The assessee has raised the following grounds of appeal:

"Ground No. 1: Non grant of Foreign Tax Credit ('FTC') of Rs. 36,25,781

On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the action of the Ld. Assessing Officer, CPC (Ld. AO) of making the adjustment in the Intimation under Section 143(1) of the Income-tax Act, 1961 (Act') of not allowing Foreign Tax Credit (FTC) of Rs. 36.25.781 allowable as per Section 90 of the Act read with Article 24(4) of the India-Philippines Double Taxation Avoidance Agreement ((DTAA') and Article 23(4) of India Netherlands DTAA read with CBDT circular No. 333 dated 02 April 1982. It is prayed that the Ld. Jurisdictional Assessing Officer be directed to grant the FTC of Rs. 36,25,781.

Ground No. 2: Order of the Hon'ble Income Tax Appellate Tribunal (ITAT) not followed by the Ld. CIT(A) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not following the order of the ITAT, Bangalore in case of Ms. Brinda RamaKrishna vs. The Income Tax Officer, Ward 5(3)(1) on the premise that the same has no relevance to the facts of the case of the Appellant.

It is prayed the decision of Hon'ble Bangalore ITAT in the case of Ms. Brinda Ramakrishna vs. The Income Tax Officer, Ward 5(3)1) is relevant to the facts of the Appellant and the same has also been followed by the Hon'ble Bangalore ITAT in the case of Vinodkumar Lakshmipathi vs. CIT(A) NFAC Delhi (TA No.680/Bang/2022) wherein the return of income as well as Form 67 in support of claim of FTC were filed after the due date to file the return of income under Section 139(1) of the Act.

Further, it is also prayed that the principles of judicial discipline require that the orders of the higher appellate authorities should be

followed unreservedly by the subordinate authorities else it would result in undue harassment to the assessee and chaos in administration of the tax laws as held by the Hon'ble Telangana High Court in Para 35 of its decision in the case of Mylan Laboratories Limited v. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/income-Tax Officer National Faceless Assessment Centre, Income Tax Department, Delhi & Another [TS-46-HC 2022(TEL)] and accordingly, the Ld. Jurisdictional Assessing Officer be directed to allow FTOC of Rs. 36,25,781.

Ground No. 3: Non-grant of FTC is not a permissible adjustment/ no adjustment of a debatable issue can be made in the Intimation under Section 143(1) of the Act.

On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have held that the non-grant of FTC of Rs. 36,25,781 is not a permissible adjustment under Section 143(1) of the Act as no such adjustment relating to debatable issues can be made in the Intimation under Section 143(1) of the Act.

It is prayed that the order of Ld. CIT(A) is contrary to the order of Hon'ble ITAT in the case of City Manager Association VS DCIT, CPC Bangaluru, (ITA No.1345/Ahd/2019) as well as to the decision of Hon'ble Supreme Court in the case of ACIT VS., Rajesh Jhaveri Stock Brokers (P.) Ltd [2007] 291 ITR 500 and accordingly, the Ld. Jurisdictional Assessing Officer be directed to allow the FTC of Rs. 36,25,781.

Ground No.4: Proceedings under Section 143(1) of the Act are invalid in law On the facts and circumstances of the case and in law. the Ld. CIT (A) ought to have held the entire 143(1) proceedings as invalid in law as the Ld. AO had not followed the provisos to Section 143(1)(a) of the Act of giving opportunity to the Appellant to defend his case. It is prayed that the order of the Ld. CIT(A) is contrary to the order of Hon'ble ITAT in the case of Arham Pumps V. Deputy Commissioner of Income Tax (CPC), Bengaluru (ITA NO.206/Ahd/2021) and the Ld. Jurisdictional Assessing Officer be directed to allow the FTC of Rs. 36,25,781. The Appellant craves leave to add, amend, alter, substitute, withdraw all or any of the above Grounds of Appeal anytime either before or during the hearing of the Appeal."

6. The brief facts of the case are that, the assessee is a resident individual, who was employed with Shell India Market

Private Limited from 01.04.2018 to 30.11.2018 and from 01.12.2018 to 31.03.2019, he was employed with BG Exploration and Production India Limited. The appellant has been sent on a short term international assignment to Philippines for the period from 01.08.2017 to 30.11.2018, during which salary was received from Shell India Market Private Limited, after tax deduction at source. On the other hand, salary received towards services rendered in Philippines was taxed in Philippines as per their domestic tax laws. That apart, the appellant was in receipt of dividend income in Netherlands, which is offered to tax in Netherlands as per their domestic tax laws. Further, said income is also offered to tax in India being the country of residence. The assessee has filed return of income for the assessment year 2019-20 on 01.10.2019, although he supposed to have filed return of income on or before 31.08.2019. The assessee has claimed credit for tax paid in Philippines and Netherlands as per the provisions of DTAA and also E-filed form 67 on 30.09.2019 for claiming foreign tax credit of Rs. 36,25,781/-. The return of income filed by the assessee has been processed u/s. 143(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and while completing assessment, the ADIT, CPC

denied credit for foreign tax on the ground that, the assessee failed to submit Form no. 67 on or before due date for filing return of income u/s. 139(1) of the Act. The assessee carried the matter in appeal before the CIT(A). The Id. CIT(A), for the reasons stated in their appellant order dated 13.05.2022, rejected arguments of the assessee and upheld the findings of the AO in rejection of foreign tax credit on the ground that, the assessee ought to have filed Form 67 on or before extended due date of 31.08.2019. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee, submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in the case of Shri. Govindarajan Roopkumar vs ADIT in ITA No. 609/Chny/2021, where the Tribunal after considering relevant submissions of the assessee and also by following the decision of ITAT Bangalore Bench in the case of Ms. Brinda Ramakrishna vs ITO in ITA No. 454/Bang/2021, directed the AO to allow credit for tax paid in foreign countries on the ground that filing of Form no 67 on or before due date for filing return of income is directory in nature but not mandatory condition.

8. The Ld. DR, on the other hand supporting the order of the CIT(A), submitted that although the CBDT has issued a notification on 18.08.2022 and extended due date for filing Form no. 67 on or before extended due date for filing return of income u/s. 139(4) of the Act, but said notification does not apply to this assessment year, because the amendment of the taxation laws is effective from assessment year 2022-23 onwards. Therefore, submitted that the AO has rightly denied credit for tax paid in other countries and their order should be upheld.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per the provisions of section 90 of the Act, in order to get credit for tax paid in other countries, the assessee needs to file Form no 67 in electronic mode on or before due date for furnishing return of income u/s. 139(1) of the Act. The AO, CPC denied credit for tax paid in other countries in absence of necessary form 67 filed on or before due date for furnishing return of income. It was the argument of the assessee that, he has filed Form 67 on 01.10.2019, which is beyond due date prescribed u/s. 139(1) of the Act, but within

the extended due date for filing return of income u/s. 139(4) of the Act. He was further argued that, filing Form 67 in prescribed form is only a directory in nature, but not mandatory and thus, when the assessee has made available said form to the Assessing Officer at the time of assessment proceedings, he ought to have considered Form 67 filed by the assessee and allow credit for tax paid in other countries.

10. Having heard both the sides and considering relevant materials on record, we find that this issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai in the case of Shri. Govindarajan Roopkumar vs ADIT in ITA No. 609/Chny/2021, where under identical circumstances, the Tribunal by following the decision of ITAT Bangalore in the case of Ms. Brinda Ramakrishna vs ITO in ITA No. 454/Bang/2021, held that when the assessee has filed Form 67 on or before due date for filing return of income u/s. 139(4) of the Act, the AO ought to have considered said Form and allow credit for tax paid in other countries. The relevant findings of the Tribunal are as under:

"5. The Assessee filed a rectification application before the AO on 15.06.2020 & 25.02.2021 and submitted that credit for FTC as claimed in the return should be given. In the rectification order dated 10.03.2021, the AO upheld the action on the

ground that the Assessee has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.

6. On appeal by the Assessee, the CIT(A) vide Order dated 03.09.2021 confirmed the Order of AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is non-est in law. The CIT(A) also held that provisions of Rule 128 are mandatory in nature. The CIT(A) rejected the contention of the Appellant that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

7. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee submitted that disallowance of FTC is bad in law. He submitted that Section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 24 of India Australia DTAA provides for credit for foreign taxes. Article 24(4)(a) is relevant in the present context. Same is extracted below:

"4. In the case of India, double taxation shall be avoided as follows: (a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax;"

It was submitted by him that section 90 of the Act read with Article 24(4)(a) provides that Australian tax paid shall be allowed as a credit against the Indian tax but limited to proportion of Indian tax. Neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements. FTC is Assessee's vested right as per Article 24(4)(a) of the DTAA read with Section 90 and same

cannot be disallowed for non-compliance of procedural requirement that is prescribed in the Rules.”

11. We, further noted that CBDT has issued a notification on 18.08.2022 and explained the position of law as per Rule 128(9) of I.T. Rules, 1962 and clarified that Form 67 in prescribed form is required to be filed under Rule 128(9) of IT Rules, 1962 can be filed on or before extended due date for filing return of income u/s. 139(4) of the Act and said clarification has been made applicable from assessment year 2022-23. From the above, it is very clear that even in a case belated filing of Form 67, the AO should consider tax paid by the assessee in other countries when income pertains to said tax credit has been offered to tax in India as per domestic tax laws. Therefore, we are of the considered view that, the AO is completely erred in denying credit for foreign tax for non-filing of Form 67 within the due date specified u/s. 139(1) of the Act. The CIT(A), without appreciating facts simply sustained additions made by the AO and thus, we direct the AO to allow credit for foreign tax paid in other countries as per Form 67 filed by the assessee.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 28th February, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |