

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI**  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**Before Shri V. Durga Rao, Judicial Member &**  
**Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.305/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2017-18

Preetha Reddy,  
1A, Jhavar Plaza, Nungambakkam  
High Road, Chennai 600 034.  
**[PAN:AAEPR5656F]**

Vs. The Assistant Commissioner of  
Income Tax  
Central Circle 3(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT  
सुनवाई की तारीख/ Date of hearing : 27.03.2023  
घोषणा की तारीख /Date of Pronouncement : 31.03.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax (Central), Chennai-1, Chennai dated 30.03.2022 relevant to the assessment year 2017-18.

2. The appeal filed by the assessee is delayed by 284 days in filing the appeal and the assessee has filed a petition for condonation of delay in the form of an affidavit by stating as under:

“3. *I state and submit that my case has been handled by Mrs. K. Rajalakshmi who is a Chartered Accountant by profession and she has advised me after perusal of the order of PCIT (Central), Chennai-1. She was of the opinion*

*and belief that the commissioner had only set aside the assessment for being re-done after the verification of details and therefore we only need to submit the requisite details before the assessing officer when it is called for.*

4. *But when the case was posted for hearing it transpired that apart from setting aside the assessment for being re-done after verification of details, the Commissioner had also given a direction to deny foreign tax credit in as much as FORM 67 had not been filed before the due date of filing the return. As per the directions of my Chartered Accountant, I visited the office of Mr. G. Baskar, Advocate, who prepared and sent me the appeal papers on 08.03.2023 and the appeal had been filed immediately on 09.03.2023.*
5. *I submit that the delay in filing this appeal is neither wilful nor wanton but due to circumstances beyond my control. I would be put to grave loss and hardship if the delay is not condoned. A meritorious case would be lost, if the delay is not condoned. No prejudice will be caused to the Respondent herein by condoning the delay and the balance of convenience thus lies in favour of the Petitioner.*
6. *In view of the above, it is prayed that this Hon'ble Tribunal may be pleased to*
  - a. *condone the delay in filing the appeal of 283 days.*
  - b. *Admit, hear and dispose of the appeal in accordance with law and*
  - c. *Pass such further or other order or orders that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.*

From the above, it is a clear case of the assessee for the delay in filing the appeal was on the basis of the advice given by the Chartered Accountant Mrs. K. Rajalakshmi. Mrs. K. Rajalakshmi, CA also filed an affidavit, wherein, it was stated that she has advised the assessee that the Commissioner had only set aside the assessment for being re-done after verification of the details, we could submit the requisite details during the set aside assessment and no action was required to be taken on the order of the Id. PCIT. The Id. Counsel for the assessee has submitted that on the basis of the advice given by the CA, the assessee has not filed appeal. He also pointed out from para 14 of the 263 order passed by the

Id. PCIT that the Id. PCIT has directed the Assessing Officer to redo the assessment and submitted that the delay was only on the advice given by the CA is neither intentional nor wanton. By placing judgement in the case of Areva T & D India Ltd. v. JCIT 287 ITR 555 (Madras) and pointing out para 4 to 8, the Id. Counsel for the assessee prayed for condonation of delay in filing the appeal. He also relied on the judgement of the Hon'ble Madras High Court in the case of CIT v. Indian Gospel Fellowship Trust [2010] 194 Taxman 167 (Mad) and referred to para 16 to 19.

3. On the other hand, the Id. DR has submitted that the affidavits filed by the assessee as well as her CA are not correct and it is only an afterthought and the delay may not be condoned. He relied on the decisions in the case of M/s. Senthil Murugan Jewellers v. DCIT in I.T.A. No. 768/Chny/2020 dated 14.12.2022, in the case of Mrs. Preeti Madhok v. ITO in I.T.A. NO. 752/Chny/2020 dated 17.06.2022 and in the case of Smt. Jumma Khan Pathar Nisha v ITO in I.T.A. No. 983/Chny/2020 dated 23.05.2022.

4. We have heard both the sides, perused the petition for condonation of delay filed by the assessee. In this case, there is a delay of 284 days in filing the appeal before the Tribunal and the assessee has filed an affidavit, wherein, she has submitted that the Chartered Accountant has

advised not to file the appeal and it was subjudice before the Assessing Officer. The CA of the assessee has also filed an affidavit by stating that she has only advised the assessee not to file any appeal as it is only set aside to the Assessing Officer.

4.1 Similar case was subject matter in appeal in the case of Vijay Vishin Meghani v. DCIT [2017] 398 ITR 250 (Bom), wherein, the Hon'ble Bombay High Court has held that the plea that the assessee wrongly advised by his Chartered Accountant earlier not to file appeal, in view of fact that assessee produced affidavit of Chartered Accountant in support of his plea and the said affidavit was not contested by the revenue authorities, Tribunal was not justified in refusing to condone the delay in filing the appeal.

4.2 Therefore, considering the facts and circumstances of the present case, keeping in view of the decision of the Hon'ble Bombay High Court in the case of Vijay Vishin Meghani v. DCIT (supra) as well as the decisions relied on by the Id. Counsel for the assessee in the case of Areva T & D India Ltd. v. JCIT (supra) and CIT v. Indian Gospel Fellowship Trust (supra), we are of the considered opinion that the delay in filing of the appeal is liable to be condoned. The case law relied on by the Id. DR has no application to the facts of the present case. Thus, under

the above facts and circumstances, we are of the opinion that there is sufficient cause for the delay in filing the appeal before the Tribunal and thus, we condone the delay and admit the appeal for adjudication.

5. So far as merits of the case is concerned, in this case, the assessment was completed under section 143(3) of the Income Tax Act, 1961 ["Act" in short] dated 26.12.2019. Thereafter, on perusal of the assessment records for the assessment year 2017-18, the Id. PCIT has noticed that the assessee has claimed an amount of ₹.1,20,93,788/- towards relief under section 90 of the Act. As per section 90 read with Rule 128, an assessee being a resident shall be allowed a credit for the amount of any foreign tax paid by him as per Rule 128(8) of the Income Tax Rules. Moreover, there was no proof for filing Form No. 67 with documents on or before the due date of filing of return under section 139(1) of the Act for claiming foreign tax credit in the assessment records available except a TDS certificate issued by M/s. Medtronics Plc (Ireland). The Id. PCIT has further noted that the Assessing Officer has not considered the above aspects while passing the assessment order dated 26.12.2019 and thus, he was of the view that the assessment order was erroneous and prejudicial to the interests of Revenue. Accordingly, the Id. PCIT issued show-cause notice dated 04.03.2022 proposing to revise the

assessment. In response to the show cause notice, the assessee has filed written submissions vide letter dated 18.03.2022. After considering the submissions of the assessee and not convinced with the explanations of the assessee, the Id. PCIT has held that the assessment order dated 26.12.2019 passed by the Assessing Officer is erroneous and prejudicial to the interests of revenue. Accordingly, the Id. PCIT set aside the assessment order passed under section 143(3) of the Act dated 26.12.2019 and directed the Assessing Officer to determine the quantum of relief that could be availed under sections 90/91 of the Act and deny relief as Form 67 was not filed as required under Rule 128(8).

6. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Assessing Officer, during the course of assessment proceedings, examined all the details. He has pointed out from paper book page 30, the notice issued by the Assessing Officer under section 142(1) of the Act dated 29.11.2019 asking the assessee to furnish various details and evidences for the income received from M/s. Medtronics, etc. Further vide notice dated 15.12.2019, again the Assessing Officer asked the assessee the details. Detailed reply was submitted by the assessee vide her letter dated 16.12.2019, which was placed at paper book page 34, wherein, the

details and evidences of payment of tax outside India for which relief under sections 90/90A of the Act of ₹.1,20,93,988/- has been claimed was questioned and the assessee has furnished Irish Tax forms in Annexure -3. By considering all the details, the Assessing Officer passed the assessment order. Therefore, the assessment order passed by the Assessing Officer cannot be considered as erroneous order.

7. On the other hand, by referring to the CBDT Notification No. 9 dated 19.09.2017, the Id. DR has submitted that the as per sub-rule 9 of rule 128, 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. It was further submission that the Assessing Officer has failed to considered the above notification and therefore, the order passed by the Assessing Officer under section 143(3) of the Act dated 26.12.2019 is erroneous and prejudicial to the interest of Revenue.

7.1 The Id. DR further pointed out that the Assessing Officer has not asked the assessee to file Form No. 67, which is material document to grant exemption to the assessee. Therefore, the order passed by the

Assessing Officer is erroneous and prejudicial to the interest of Revenue. He also pointed from the order of the Id. PCIT that the assessee was not sure whether the tax has been paid under Indo US Treaty or Indo-Irish Treaty. Therefore, the Id. PCIT has rightly directed the Assessing Officer to deny the relief claimed as per Form 67, which was not filed within the due date as required by Rule 128(8) and CBDT notification No. 9 dated 19.09.2017 and strongly supported the order passed by the Id. PCIT.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee and the written submissions of the Id. DR. In this case, the Assessing Officer made detailed enquiry in respect of claim made by the assessee at ₹.1,20,93,988/- by way of calling for the details under section 142(1) of the Act on various occasions and after considering the details, the Assessing Officer has allowed the claim of the assessee. The Id. PCIT, by exercising the power conferred under section 263 of the Act issued a show-cause notice on the ground that the Assessing Officer has not examined the tax credit vis-à-vis sub-rule 8 of Rule 128 and Form No. 67 also not considered by the Assessing Officer. The assessee has filed a detailed reply before the Assessing Officer by stating that the assessee is entitled to claim tax credit and the Assessing

Officer, after examining the same granted the relief to the assessee. However, the Id. PCIT was not satisfied by the explanation given by the assessee. He has noted that in Form No. 67 dated 17.03.2022, the assessee has claimed foreign tax credit for an amount of ₹.1,20,93,788/- under Article 17 of the Indo-US Treaty in respect of income of ₹.3,42,50,321/- and for the tax paid of ₹.1,74,76,989 @ 50.70%. However, the assessee in her return of income has claimed tax credit under section 90 of the Act for an amount of ₹.1,20,93,788/- under the country code of Ireland with tax payer Identification No. 1583356PA. Thus, vide letter dated 21.03.2022, the assessee was asked to clarify whether the tax credit is claimed with reference to Indo-US Treaty or with reference to Indo-Irish Treaty. Besides, as per the Medtronic Statement for the year 2016 there is information about income from Medtronic Inc. to the tune of \$ 2,80,546 and US tax withheld of \$ 13,030. The assessee was asked to clarify about this also. Before the Id. PCIT, the assessee's A.R. represented that Medtronic Inc. has its legal headquarters in Ireland and that the income from Medtronic Inc. to the tune of \$ 2,80,546 is included in the income statement relating to Medtronic Plc. By considering the above submission, the Id. PCIT was of the opinion that admittedly, the assessee has not filed Form 67 within the due date as required by Rule 128(8) and CBDT Notification No.9 dated 19.09.2017.

As per Explanation 2 to Section 263 of the Act, an order passed allowing any relief without making inquiry into the claim, an order that has not been made in accordance with any direction or issued by the Board shall be deemed to be erroneous and prejudicial to the interests of Revenue. Therefore, the Id. PCIT directed the Assessing Officer to deny the relief as Form No. 67 was not filed as required under Rule 128(8).

8.1 We find that in this case, the Assessing Officer has made a detailed enquiry before concluding the assessment under section 143(3) of the Act. However, in so far as relief claimed as per Form No. 67 r.w. Rule 128(8) is concerned, the Assessing Officer has not examined. It is also a fact that the Assessing Officer has not followed the Notification No. 9 dated 19.09.2017 issued by the CBDT. However, we are of the opinion that the order passed by the Assessing Officer cannot be said that no enquiry was made, in fact, detailed enquiry was made. However, no enquiry was made in respect of Form No. 67 vis-à-vis rule 128(8). Therefore, it cannot be said that the assessment order was totally erroneous and prejudicial to the interest of Revenue. In our opinion, instead of setting aside the order passed under section 143(3) of the Act and directing the Assessing Officer "to determine the quantum of relief that could be availed under sections 90/91 of the Act and deny relief as

Form 67 was not filed as required under Rule 128(8)", the Id. PCIT should have been directed the Assessing Officer to call for the details and decide the issue in accordance with law. In our opinion, the Id. PCIT was not correct to direct the Assessing Officer to deny the relief claimed as per Form No. 67 on the ground that Form No. 67 was not filed in time is not correct. Therefore, we hereby modify the order passed by the Id. PCIT and direct the Assessing Officer to redo the assessment in accordance with law by affording reasonable opportunity of being heard to the assessee without influence of the order passed by the Id. PCIT in para 14.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 31<sup>st</sup> March, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 31.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.