

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.48/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2020-21)

Andi Savithri Giri 4/233, 49, 16 th Street, Venkateswara Nagar, Kottivakkam, Chennai-600 041. PAN:ATCPG 6057C (अपीलार्थी/Appellant)	Vs	The Income Tax Officer, Ward-1, Nagercoil. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Ms. B.Revathy, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	29.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	31.03.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 10477616476(1) dated 24.11.2022. The return was processed by the ADIT., CPC, Bengaluru for relevant assessment year 2020-21 and intimation u/s. 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") was issued vide order dated 24.12.2021.

2. The only issue in this appeal of the assessee is as regards to order of the CIT(A) confirming action of the Assessing Officer in disallowing claim of foreign tax credit (FTC) u/s.90 of the Act, amounting to Rs.48,94,792/- on the ground that the assessee filed belated return on 14.05.2021, as against due date for filing of return of income is 10.01.2021.

3. Brief facts are that the assessee is an individual and filed his return of income on 14.05.2021. The return of income was processed u/s.143(1) of the Act by issuing intimation dated 24.12.2021, in which denied claim of foreign tax credit claimed u/s.90 amounting to Rs.48,94,792/-. The assessee moved a rectification application u/s.154 of the Act for allowing foreign tax credit, but the CPC passed rectification order denying claim of foreign tax credit vide order dated 29.07.2022. The assessee admitted taxable income of Rs.1,99,36,500/-, which was assessed by CPC as it is and income includes the income earned in USA and Canada for Rs.1,77,54,349/-. The assessee claimed foreign tax credit of Rs.48,94,792/- as tax relief u/s.90 of the Act being taxes paid in USA and also paid Rs.22,08,284/- as balance tax liability in India. The

assessee filed Form No.67 for claiming of foreign tax credit on 31.03.2021 belatedly providing requisite details of Foreign Tax Credit claimed in the return of income for assessment year 2020-21, but before processing return of income and even before filing of return of income on 14.05.2021. The return of income was processed on 24.12.2021 by CPC u/s.143(1) of the Act. The assessee has filed appeal against rejection of rectification order and the CIT(A) confirmed action of the Assessing Officer and dismissed assessee's appeal in disallowing foreign tax credit by observing in para 5.4 & 5.5 of his order as under:-

"5.4 The appellants case has been considered and it is observed as per Rule 128 (9) of the Income tax Rules, the statement in Form 67 (statement of Income from a country of a specified territory outside India and foreign tax credit) shall be furnished on or before the due date specified for furnishing the return of income u/s 139(1) of the IT. Act. In the instant case, it is observed that the appellant has filed the return of income on 14.05.2021 but did not file Form No.67 along with the return of income. The appellant has filed Form No. 67 on 31.03.2021 electronically whereas the due date for filing the return of income and the filing of Form No.67 was 10.01.2021 as required u/s 139(l) of the IT. Act. The CPC did not allow relief of Rs.48,94,792/- claimed u/s 90/90A of the IT. Act pursuant to Article 25 under India and USA DTAA Treaty for Avoidance of Double Taxation.

5.5 It is observed from the above facts that the appellant has riled the return of income belatedly on 14.05.2021 much after the due date of 10.01.2021 as required u/s 139(1) of the IT. Act and filed Form No.67 on 31.03.2021. Therefore, the CPC has correctly denied the foreign tax credit claimed by the appellant u/s 90/90A of the I.T. Act read with Rule 128(9) of the IT. Rules, The appellant has also submitted that the delay in submission of Form No.67 was due to the reasons beyond control i.e. because of his illness due to Covid-19. However. the appellant has submitted the records of his medical illness from which it is observed that his date of admission in Apollo Hospital, Chennai was 24.10.2020 and he was discharged from the hospital on 01.11.2020, whereas the last date for filing of the return along with Form No.67 was 10.01.2021. Therefore, the appellant has not been able to provide a satisfactory explanation for non filing of Form No.87 on or before the due date of filing the return u/s 139(1) of the IT. Act as required as per Rule 128(9) of the IT. Rules. Hence, the decision of non-granting of foreign tax credit u/s 90/90A of the IT. Act by the CPC in its order u/s 154 of the IT. Act is upheld. The grounds of appeal filed by the appellant are hereby dismissed.”

Aggrieved, the assessee is in appeal before us.

4. We have heard rival contentions and gone through facts and circumstances of the case. The admitted facts are that the assessee filed return of income on 14.05.2021 declaring total income of Rs.1,99,36,500/-, which includes income of

Rs.1,77,54,349/- earned in USA & Canada. The assessee claimed an amount of Rs.48,94,792/- as tax relief u/s.90 of the Act being taxes paid in USA, apart from taxes paid in India amounting to Rs.22,08,284/-. The main reason for disallowance by CPC u/s.143(1) and subsequently u/s.154 of the Act and also by the CIT(A) is that the assessee has not furnished statement in Form No.67 or return of income u/s.139(1) of the Act within due dates. Admittedly, the assessee has filed Form No.67 before filing return of income and filed on 31.03.2021, providing requisite details of foreign tax credit claimed in the return of income for the assessment year 2020-21 filed on 14.05.2021. The return of income was processed by CPC only on 24.12.2021 determining total income at Rs.1,99,36,500/-, which is declared as income by the assessee. The return of income for assessment year 2020-21 was although belatedly, but the assessee has filed Form No.67 before filing of return of income and even at the time of processing of return of income for the relevant assessment year 2020-21, the same was available with the Assessing Officer / CPC. Once the assessee has filed Form No.67, which is available with the Assessing Officer at the time of processing of return and entire

details of foreign tax credit claimed are available, the Assessing Officer should not have denied claim of foreign tax credit to the assessee. This issue is also supported by various decisions of co-ordinate Benches of the Tribunal and particularly, the ITAT., Bangalore Benches in the case of Shri Shashidhar Seetharam Sharma Vs. ITO in ITA No.708/Bang/2022 vide order 19.09.2022. In view of the above, we direct the Assessing Officer to allow foreign tax credit amounting to Rs.48,94,792/- and accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 31st March, 2023

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member
चेन्नई/Chennai,
दिनांक/Date: 31.03.2023
DS

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अद्येषित/Copy to:

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