

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2025/Del/2022, A.Y. 2019-20

Sh. Rajat Agarwal E-384, Greater Kailash-II, New Delhi-110048 PAN : AAGPA1259H (APPELLANT)	Vs.	Asst. Director of Income Tax- Centralized Processing Centre Bengaluru, Karnataka (RESPONDENT)
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Assessee by	Sh. Vineet Garg, Adv.
Revenue by	Sh. B.K.Singh, Sr. DR

Date of hearing:	03.04.2023
Date of Pronouncement:	13.04.2023

ORDER

PER ANUBHAV SHARMA, JM:

1. The appeal has been preferred by the Assessee against the order dated 29.06.2022 of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Order No. ITBA/NFAC/S/250/2022-23/1043654268(1) arising out of an appeal before it against the order dated 22.05.2021 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ADIT(CPC), Bengaluru (hereinafter referred as the Ld. AO).
2. Heard and perused the record.
3. The facts of the case are that the ADIT (CPC), Bengaluru while processing the return u/s. 143(1) dated 19/03/2021 did not allow relief

u/s.90/90A amounting to Rs.4,40,901/- for AY 2019-20 which was claimed by the assessee in his return of income. The assessee had filed rectification request on 07.04.2021 against the intimation order. The ADIT- CPC passed the rectification order on 22.05.2021 by not giving relief /s.90/90A. Against this, the appellant filed an appeal on 14.08.2021. During the course of appellate proceedings hearing notices u/s.250 issued to the appellant and in response appellant filed written submission, wherein the appellant had stated that:

“1. The assessee had e filed return of Income for the Assessment Year 2019-20 on 30/08/2019 vide acknowledgement number 989567030300819 declaring Income of Rs.4,49,71,330/-. The ITR was processed under section 143(1) of the Income-tax Act, 1961 (hereinafter, the Act) electronically at returned income on 19/03/2021. The assessee had claimed relief u/s 90/90A amounting to Rs.4,40,901/-, which was rejected and demand of Rs.5,76,740/- was raised in the intimation. The assessee had not filed the Form 67 before filing the return of income. On realizing the same, the assessee filed Form 67 in support of claim of foreign tax credit on 07/04/2021 and then filed rectification request on 07/04/2021 against the intimation order. The Ld. Asstt. Director of Income Tax, CPC (ADITCPC) passed rectification order dt. 22/05/2021 by not giving relief u/s 90/90A amounting to Rs.4,40,901/-.”

4. Ld. CIT(A) has sustained the assessment considering the CBDT Circular dated 19.09.2017.

5. The assessee is in appeal raising following grounds :-

“1. The Ld. CIT(A) has erred on facts and in law in dismissing the ground of appeal concerning the illegal action of the Ld. ADIT-CPC in amending the return of income filed by the assessee while processing the same u/s 143(1).

2. The Ld. CIT(A) has erred on facts and in law in confirming the action of the Ld. ADIT- CPC (Ld. ADIT) of not giving relief claimed u/s 90/90A of Foreign Tax Credit (“FTC”) of Rs.4,40,901/- in the intimation processed under Section 143(1) and rectification order u/s 154 of the Income- tax Act, 1961 (‘Act’).

3. The appellant denies its liability to tax as upheld by the Id. CIT(A) as determined and computed by the learned ADIT-CPC and the manner in which it has been so determined or computed.

4. *The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.*

5. *The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time up to the final decision of the appeal."*

6. As the matter was heard it was pointed out on behalf of the assessee that the Bangaluru Bench in the case of **Brinda Rama Krishna** has observed that filing of Form 67 is not mandatory but directory requirement. Ld. CIT(A) has however, not followed the same without making any distinction on facts and law but merely observing that the same has not attained finality.

7. Ld. DR however supported the findings of Ld. Tax Authorities below submitting that the requirement of Rule 128 is mandatory.

8. In regard to issue involved if the judgment of Bangalore Bench in ITA no. 454/Beng./2021 in Ms. Brinda Rama Krishna vs. ITO decided on 17.11.2021 considered it comes up that the Bench has taken note of the Board Circular no. 9 dated 19.09.2017 and held in para no. 16 as follows :-

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can

be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

9. Ld. CIT(A) in the case in hand however, has not followed the aforesaid judgment observing in para no. 7.1 :-

"7.1 With due respect to the aforesaid decision, it is not known as to whether the aforesaid decision of Bangalore ITAT in case of Brinda RamaKrishna has attained finality or not. However, Rule 128(8) clearly says that credit of any foreign tax shall be allowed on furnishing the documents specified i.e. verified Form 67 [statement of foreign income offered to tax & tax deducted or paid on such income] and statement specifying nature of income and tax deducted or paid thereon."

10. The Bench is of considered opinion that Ld. first Appellate Authority being Subordinate to the Tribunal was supposed to follow the principles of law set down and without citing any proposition of law of binding nature contradictory could not have ignored the judgment on observation that it is not known as to whether the aforesaid decision has attained finality or not.

11. Thus, the Bench is inclined to decide the grounds raised in favour of the assessee. **Consequently, the appeal of assessee is allowed.**

Order pronounced in the open court on 13th April, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 13 .04.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI