

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B”, BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.223/Bang/2023 : Asst.Year 2020-2021

Sri.Sandeep Patwari D0113, Amber Block, Brigade Lakefront Near Graphite Signal Bangalore – 560 048. PAN : BPDPS6989F.	v.	The Deputy Commissioner of Income-tax, Circle 5(3)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Navaneeth N.Kini, CA

Respondent by : Sri.Sunil Kumar Singh, CIT-DR

Date of Hearing : 15.05.2023	Date of Pronouncement : 15.05.2023
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 22.02.2023 passed u/s 250 of the Income-tax Act, 1961 (“the Act” for short). The relevant assessment year is 2020-2021.

2. The solitary issue raised is whether the CIT(A) is justified in confirming disallowance of claim of Foreign Tax Credit (FTC).

3. The brief facts of the case are as follows:

The assessee is an individual employed with Qualcomm India Private Limited. For the assessment year 2020-2021, the return of income was filed on 30.03.2021 disclosing income from salary, house property, capital gains, interest and dividend. The total income disclosed in the return of

income was a sum of Rs.1,17,07,500. According to the assessee, the assessee had offered to tax in India, salary earned abroad amounting to Rs.63,23,362 and paid taxes on the same (Rs.21,47,702). The assessee had claimed FTC of Rs.14,02,442 u/s 90/91 of the Act on the taxes paid abroad.

4. The assessee received intimation u/s 143(1) of the Act dated 25.11.2021, wherein the foreign tax credit (FTC) of Rs.14,02,442 was not granted. The assessee filed rectification u/s 154 of the Act on 14.12.2021. The rectification order u/s 154 of the Act dated 26.04.2022 was passed not granting the claim of the assessee.

5. Aggrieved, the assessee filed an appeal before the first appellate authority. The CIT(A) confirmed the order of rectification and held that the assessee has not filed Form No.67 before the prescribed time limit. Therefore, it was concluded by the CIT(A) that Form No.67 filed belatedly is nonest in law and the provisions of Rule 128 of the I.T.Rules are mandatory in nature.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the assessee has offered foreign income to tax in India amounting to Rs.63,23,362 and had paid taxes on the same in India amounting to Rs.21,47,702. Therefore, it was submitted that the denial of credit for foreign tax of Rs.14,02,442 paid overseas is incorrect. The learned AR placing reliance on the Bangalore Bench order of the Tribunal

in the case of Ms.Brinda Ramakrishna v. ITO in ITA No.454/Bang/2021 (order dated 17.11.2021) submitted that Rule 128 of the I.T.Rules is only directory and cannot be taken as mandatory.

7. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

8. We have heard rival submissions and perused the material on record. The solitary issue raised is whether the CIT(A) was justified in confirming the disallowance of FTC claimed. The sole reason for denying the benefit of FTC was that Form No.67 has been filed belatedly after the due date of filing of the return u/s 139(1) of the Act. The assessee had filed Form No.67 along with documentary evidence and acknowledgement for the same dated 30.03.2021 is on record (Exhibit B4 before the CIT(A)). From the income tax return filed along with the computation of income, it is evident that the foreign salary of Rs.63,23,362 has been included in the total income and tax on the said income has been paid at Rs.21,47,702. The assessee has claimed FTC for the taxes paid abroad amounting to Rs.14,02,442. The Bangalore Bench of the Tribunal on identical facts in the case of Ms.Brinda Ramakrishna v. ITO (supra) had held that filing of Form 67 is a procedural / directory requirement and not a mandatory requirement. It was held that violation of the procedural norm does not extinguish the substantive right of

claiming the credit of FTC. The relevant finding of the Bangalore Bench of the Tribunal, reads 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. In view of the aforesaid order of the Bangalore Bench of the Tribunal, we hold that the assessee is entitled to the benefit of FTC. It is ordered accordingly.

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

Order pronounced on this 15th day of May, 2023.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 15th May, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)NFAC, Delhi.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.