

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 102/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shridhar Madhav Diwan, Vs. DCIT, Circle-12(1),
Hyderabad Hyderabad
[PAN No. AGVPD3196R]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri C.S. Subramaniam, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 22/05/2023
घोषणा की तारीख/Pronouncement on: 24/05/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 29/12/2022 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Shridhar Madhav Diwan ("the assessee") for the assessment year 2019-20, assessee preferred this appeal.

2. Grievance of the assessee in this appeal is that the foreign tax paid by him has not been given credit to, on the ground that the assessee furnished the statement in Form 67 with a delay. In this case, the assessee filed the return of income on 24/07/2019 whereas the due date was on 31/08/2019, but filed Form No. 67 on 26/10/2020. Foreign Tax Credit (FTC)

was, therefore, denied. So also the rectification request made under section 154 of the Income Tax Act, 1961 (for short "the Act") was dismissed.

3. Learned CIT(A) also recorded that the due date for filing the return under section 139(1) of the Act was 31/08/2019 and in accordance with Rule 128 of Income Tax Rules, 1962 (for short "the Rules"), in order to claim FTC, the mandatory requirement is that the taxpayer has to file the statement of foreign tax deduction in Form No. 67 on or before the due date. Learned CIT(A) accordingly dismissed the appeal and uphold the denial of FTC.

4. According to the learned AR, Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67 and, therefore, it has consistently been held by various Benches of the Tribunal that filing of Form No. 67 is a directory requirement, but not a mandatory one inasmuch as Article 25(2)(a) of India-USA Double Taxation Avoidance Agreement (DTAA) vests a right in the assessee to claim the credit thereof. He placed reliance on the decisions reported in Babu Rao Atluri Vs. DCIT in ITA No. 108/Hyd/2022, ITAT, Hyderabad 'B' Bench, Ms. Brinda Rama Krishna Vs. LTO, ITAT, SMC-B Bench, Bangalore, M/s. 42 Hertz Software India (P) Ltd Vs. ACIT, Sri Govindarajan Roopkumar Vs. ADIT, ITAT 'B' Bench, Chennai and Sanjay Patil Vs. A.O. Circle-3(2), ITAT, Surat in ITA No. 189/Srt/2021, dt. 18/05/2022. He also placed reliance on the order of the Co-ordinate Bench of this Tribunal in the case of Purushothama Reddy Vankireddy vs. ADIT (INTN Taxation)-1, in ITA No. 526/Hyd/2022, dt. 05/12/2022.

5. Per contra, Learned DR submitted that when the language employed in Rule 128(9) is clear in its purport in saying 'certificate or the statement shall be furnished on or before the date specified for furnishing the return of income under sub-section (1) of section 139', it is not open for the assessee to contend that it is not mandatory requirement.

She placed reliance on the view taken by the Visakhapatnam Bench of the Tribunal in the case of Murali Krishna Vaddi Vs. ACIT (2022) 142 taxmann.com 32.

6. We have gone through the record in the light of the submissions made on either side. It could be seen from the view taken in Murali Krishna Vaddi (supra), the decision of the Bangalore Tribunal in the case of M/s. 42 Hertz Software India (P) Ltd (supra), was brought to the notice of the Bench, but looking at the abnormal delay of more than two years without any valid and reasonable cause, the Bench held that such delayed filing of Form 67 was in compliance with Rule 128(9) of the Rules.

7. Coming to the decisions relied upon by the assessee it could be seen that in the case of M/s. 42 Hertz Software India (P) Ltd (supra), reliance was placed on the decision in Ms. Brinda Rama Krishna (supra) and all the other decisions were following of the same. In Ms. Brinda Rama Krishna (supra), the Bench considered the issue in the light of the provisions of DTAA, section 295(1) of the Act, the decisions of the Hon'ble Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner (1992 Supp (1) SCC 21), Sambhaji Vs. Gangabai (2008) 17 SCC 117 and a lot many decisions of the Hon'ble Apex Court including the case in Union of India Vs. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) etc. and reached a conclusion that since Rule 128(9) of the Rules does not provide for disallowance of FTC in the case of delay in filing Form No. 67 and such filing within the time allowed for filing the return of income under section 139(1) of the Act is only directory, since DTAA over rides the Act, and the Rules cannot be contrary to the Act.

8. We find from Article 25(2)(a) of the DTAA that where a resident of India derives income which, in accordance with the provisions of the convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of the resident an amount equal to the income tax paid, paid in the United States, whether directly or by

deduction. In view of this provision overriding the provisions of the Act, according to us, Rule 128(9) of the Rules has to be read down in conformity thereof. Rule 128(9) of the Rules cannot be read in isolation. Rules must be read in the context of the Act and the DTAA impacting the rights, liabilities and disabilities of the parties.

9. With this view of the matter, we are of the considered opinion that the decisions relied upon by the assessee are applicable to the facts of the case on hand while respectfully following the same, we allow the appeal, and direct the learned Assessing Officer to verify the details of the foreign tax paid by the assessee on the earnings at foreign source and take a view inconformity with the established law discussed above.

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

Order pronounced in the open court on this the 24th day of May, 2023.

Sd/-

(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 24/05/2023

TNMM

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Shridhar Madhav Diwan, C102, Jayabheri Orange County,
Nanakramguda, Near Wipro Circle, Financial District, Gachibowli,
Hyderabad.
2. DCIT, Circle-12(1), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD