

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2669/Del/2022
Assessment Year: 2017-18

Samir Sood, G-10, Maharani Bagh, Delhi 110065 PAN AAVPS 5830 M	vs.	The NFAC-CIT Appeal, Delhi 110002
(Appellant)		(Respondent)

For Assessee:	Shri Manoj Kumar, CA
For Revenue :	Shri S.L Anuragi, Sr. DR

Date of Hearing :	01.06.2023
Date of Pronouncement :	18.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of NFAC, New Delhi dated 26.08.2022 for AY 2017-18.

2. The grounds of assessee are as follows:-

1. The Appellate Order of the NFAC /CIT(A) is bad and erroneous both on facts and in law.

2. On the facts and in the circumstances of the case and in the law, the NFAC /CIT(A) has erred in sustaining the assessment order and in denying the Foreign Tax Credit (FTC) of Rs 1,14,217/- for default in filling Form 67 under Rule 128 even pointing out that Form 67 was notified on 19.09.2017 while appellant has filed its return of the income on 03.08.2017 disclosing all the facts and figures relating to foreign tax credit in Income Tax Return. The NFAC/CIT (A) Ought to have consider the fact that at the time of filing of Tax return ,Form 67 was not notified. Hence it cannot disentitle the appellant for FTC which is a substantial benefit, and the tax credit cannot be denied.

3. On the facts and in the circumstances of the case and in the law, the NFAC /CIT(A) has erred in denying FTC of Rs 1,14,217/ to the appellant ignoring the law that subordinate legislation cannot override the provisions of the statue. The NFAC /CIT(A) ought to have considered that the provisions of Rule 128 are procedural in nature and cannot override the substantial right of the appellant granted under section 90.

4. On the facts and in the circumstances of the case and in the law, the NFAC /CIT(A) has erred in denying FTC of Rs 1,14,217/ to the appellant by ignoring the law that provisions of DTAA and Article 25 of the DTAA with USA cannot be overridden by Rule 128 and Form 67.

5. On the facts and in the circumstances of the case and in the law, the NFAC /CIT(A) has failed to provide proper opportunity of hearing and passed the order in haste which is against the law of natural justice.

6. The appellant craves leave to add, alter, rescind, modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

3. The Id. AR submitted that the NFAC /CIT(A) has erred in sustaining the assessment order and in denying the Foreign Tax Credit (FTC) of Rs 1,14,217/- for default in filling Form 67 under Rule 128 even pointing out that Form 67 was notified on 19.09.2017 while appellant has filed its return of the income on 03.08.2017 disclosing all the facts and figures relating to foreign tax credit in Income Tax Return. The NFAC/CIT (A) Ought to have consider the fact that at the time of filing of Tax return ,Form 67 was not notified. Hence it cannot disentitle the appellant for FTC which is a substantial benefit, and the tax credit cannot be denied. The Id. AR also submitted that the NFAC /CIT(A) has erred in denying FTC of Rs 1,14,217/ to the appellant ignoring the law that subordinate legislation cannot override the provisions of the statue. The NFAC /CIT(A) ought to have considered that the provisions of Rule 128 are procedural in nature and cannot override the substantial right of the appellant granted under section 90. He vehemently pointed out that the NFAC /CIT(A) has erred in denying FTC of Rs 1,14,217/ to the appellant by ignoring the law that provisions of DTAA and Article 25 of the DTAA with USA cannot be overridden by Rule 128 and Form 67 and therefore matter needs to be restored to the file of Id. CIT(A) for adjudication of grounds of assessee raised by the assessee in form no. 35 as per requirement of sub section (6) of section 250 of the Act.

5. Replying to the above, the Id. Senior DR supported the orders of the authorities below and submitted that the assessee has not comply with the requirement of filing form 67 within prescribed time limit therefore the assessee was rightly held not entitled for foreign tax credit (FTC). However, in all fairness, the Id. Senior DR candidly submitted that the Department has no serious objection if the matter is restored to the file of Id. CIT(A) if it is found necessary, just & proper.

6. On careful consideration of above submission and from perusal of the decision part para 5 of first appellate order, we note that the Id. CIT(A) has dismissed appeal of assessee on account of non-prosecution by the appellant without adjudicating the ground raised by the assessee in form 35 as per requirement of sub section (6) of

section 250 of the Act. Therefore the matter is restored to the file of Id. CIT(A) for afresh adjudication after allowing due opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.07.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 18th July, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi