

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI SAKTIJIT DEY, VICE-PRESIDENT**

**ITA No. 2537/Del/2022
Assessment Year: 2020-21**

Rita N. Patwardhan, C-3,
Waje Apartment, Tilak Wadi,
Saharanpur Road, Nashik.

PAN: CYGPP2489G
(Appellant)

Versus DCIT, Circle 1(1)(1),
International Taxation,
New Delhi.

(Respondent)

Assessee by : None
Revenue by : Sh. Sanjay Kumar, Sr. DR

Date of hearing : 24.07.2023
Date of pronouncement: 24.07.2023

ORDER

Captioned appeal by the assessee is directed against order dated 31.08.2022 of learned Commissioner of Income-tax (Appeals)-42, Delhi pertaining to assessment year 2020-21.

2. The effective grounds raised by the assessee are as under :

"1. The learned CIT(A), Delhi-2 erred in law and on facts in confirming disallowance of relie of Rs.2,04,463/- for foreign Tax Credit u/s. 90 of the ITA, 1961, made by the learned DCIT, CPC, Bangaluru; on account of delay in submitting

Form 67 which was submitted after filing of return but before the return was processed by CPC u/s 143(1).

2. The learned I.T. Authorities ought to have appreciated that requirement of filing Form 67 are procedural in nature and cannot override provision of Tax Treaties between two countries.”

3. Briefly, the facts are, the assessee is a non-resident individual. In the assessment year under dispute, the assessee had filed her return of income declaring total income of Rs.18,28,790/-. In the said return of income, the assessee claimed relief of Rs.2,04,643/- under section 90(2) of the Income Tax Act, 1961 on account of foreign tax credit (FTC). However, the requisite declaration in Form No. 67 for claiming FTC was not filed by the assessee along with the return of income but subsequently filed on 23.11.2021. While processing the return of income filed by the assessee in terms of section 143(1) of the Act on 24.12.2021, the Central Processing Centre (CPC) did not allow FTC on account of delay in furnishing Form No. 67. Though the assessee filed an application under section 154 of the Act seeking rectification of the intimation, however, the said application was rejected. Being aggrieved with the order passed under section 154 of the Act, the assessee preferred an appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) while

deciding the issue held that use of word 'shall' in Rule 128 makes filing of Form 67 along with return of income mandatory. Referring to CBDT Notification No. 100/2022 dated 18.08.2022, learned Commissioner (Appeals) observed that the relaxation provided in filing of Form 67 before the end of the assessment year will apply prospectively w.e.f. 01.04.2022. Thereafter, relying upon a decision of ITAT in case of Muralikrishna Vaddi vs. ACIT in ITA No. 269/Viz/2021 dated 14.06.2022, learned Commissioner (Appeals) rejected assessee's claim.

4. When the appeal was called out, none appeared on behalf of the assessee to represent the case. Record reveals that the service of notice on the assessee is sufficient, both, through postal mode as well as email. In view of the aforesaid, we proceed to dispose of the appeal *ex parte qua* assessee after hearing learned Departmental Representative and based on materials available on record.

5. We have heard learned Departmental Representative and perused materials on record. The short issue arising for consideration is whether non-furnishing of Form No. 67 along with return of income would disentitle the assessee from claiming FTC, even though Form

No. 67 was furnished subsequently before completion of assessment. The facts on record reveal that prior to processing of return of income under section 143(1) of the Act by the CPC, the assessee had furnished form No. 67. Therefore, if at all, there is a breach of condition, it is purely a technical breach, hence, has to be ignored once the assessee furnished the requisite Form before processing of the return. Though, learned first appellate authority has held that the use of word 'shall' in Rule 128 makes the filing of form No. 67 in time mandatory, however, we are not convinced. Had it been the case, the CBDT would not have issued Notification No. 100/2022 (supra) granting relaxation in the matter of filing of Form No.67, even, assuming that such Notification will apply prospectively. We further find, while deciding identical nature of dispute in case of Bhaskar Dutta vs. DCIT, ITA No. 1869/Del/2022, the Tribunal in order dated 11.01.2022 has held as under :

“13. Even, otherwise also, the assessee has a strong case on merit as well. In case of *M/s.Brinda Ramakrishnan vs. ITO*, supra, the Tribunal while dealing with an identical issue has held as under:

“16. I have given a careful consideration to the rival submission. 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 the 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 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, 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 Departmental Representative in this regard."

14. Further, in case of Sonakshi Sinha Vs. CIT (supra), the coordinate Bench while seized of an identical issue, held as under:

"010. We have also put before the learned authorised representative decision of the honourable Supreme Court in civil appeal number 1449 of 2022 in case of PCIT versus Wipro Ltd dated 11 July 2022 as to why the condition of filing form number 67 on or before the due date of filing of the return of income should not be considered as mandatory in nature.

011. The learned authorised representative submitted that honourable Supreme Court was seized of the matter where in the same subsection twin conditions were mentioned, the honourable High Court and lower appellate authorities considered, one of the condition as mandatory and one of the condition as directory. He submitted that here section 90 or 91 does not lay down any condition of filing any form. The requirement of filing of the form is provided under rule 128 of The Income Tax Rules. Therefore, here, the situation is quite different. He submitted that these conditions have been

considered by the coordinate bench in case of Brinda Ramakrishna.

012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income 012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) Ltd v. ACIT [2022] 139 taxmann.com 448 (Bangalore - Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358 (Bang - Trib) it was held that "one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns and that this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmipathi V CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be

purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.”

15. The ratio laid down in these decisions, in our view, are not only logical but just interpretation of the statutory provisions keeping in view the provision, contained under Section 90 and 91 of the Act. Though, we are conscious of a contrary view taken by the Tribunal in the case of Murlikrishnan vs. ACIT (supra), however, we are inclined to agree with the view expressed in the decisions cited by learned counsel appearing for the assessee.

6. The ratio laid down in the aforesaid decision squarely applies to assessee's case. Thus, respectfully following the decisions of the coordinate Bench, as discussed above, we direct the Assessing

Officer to factually verify Form 67 furnished by the assessee and allow assessee's claim of FTC. Grounds are allowed.

7. In the result, appeal is allowed.

Order pronounced in the open court on 24/07/2023.

Sd/-

(G.S. PANNU)
PRESIDENT

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated:24.07.2023

*aks/-