

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 135/Del/2023  
Asstt. Year 2020-21

Neha Kapoor C/O C.S. Anand, Advocate, 104 Pankaj Tower 10 LSC, Savita Vihar, New Delhi PAN BIOPK2958N	Vs.	ITO, Ward 70(1), New Delhi,
(Appellant)		(Respondent)

Assessee by:	Shri C.S. Anand, Advocate
Department by:	Ms. Smita Singh, Sr. DR
Date of Hearing:	08.08.2023
Date of pronouncement:	29.08.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 16.11.2022 of the Ld. Commissioner of Income Tax, (Appeals), NFAC Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2020-21.

2. The assessee has raised the following grounds of appeal:-

- “1. *That on the peculiar facts of the case and in law, the Foreign Tax Credit claimed at Rs.161528/- ought to have been allowed to the assessee.*
2. *That the assessee's claim of Foreign Tax Credit at Rs.161528/- should not have been rejected, simply on the ground that Form 67 was not filed on or before the due date specified for furnishing the ITR under sub-section (1) of section 139.*

*Note: Assessee had filed Form 67 on 26.03.2021 i.e. before and of the assessment year.*

3. *That the assessee's claim of Foreign Tax Credit at Rs.161528/- deserves to be allowed in the light of the CBDT Notification No. 100/2022/F.No.370142/35/2022-TPL dt.18.08.2022, through which sub rule (9) has been substituted.*

*Note: Time limit for filing Form 67 and the Certificate/Statement has been extended upto the end of the assessment year.”*

3. Briefly stated, the assessee filed her return for AY 2020-21 on 30.12.2020 declaring income of Rs. 15,17,460/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**) and intimation was issued as per which Foreign Tax Credit (**“FTC”**) of Rs. 1,61,528/- of the assessee’s United States of America income was not considered even though Form 67 was filed. The assessee filed a revised return on 26.03.2021. The revised return was also processed and intimation was issued on 24.12.2021 under section 143(1) of the Act but the claim of FTC was not allowed.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). It was, interalia submitted that the assessee filed rectification petition under section 154 of the Act on 07.01.2022 which was rejected by the Ld. Assessing Officer (“AO”) on 02.06.2022 on the ground that the assessee failed to furnish Form 67 on or before the due date for furnishing the return prescribed under section 139(1) of the Act which is mandatory according to Rule 128(9) of the Income Tax Rules, 1962 (**“Rules”**). It was also submitted that under section 90 of the Act r.w. Article 25(2)(a) of the India-USA DTAA claim of FTC cannot be disallowed for non-compliance of procedural requirement prescribed under the Rules. The Rule nowhere provides that if Form 67 is not filed within time, relief sought by the assessee under section 90 of the Act would be denied. Reliance was placed on the decision of Hon’ble Apex Court in Mangalore Chemical and Fertilizers Ltd. vs. Deputy Commissioner, 1992 Supp (1) Supreme Court Case 21 in support of the proposition that filing Form 67 being procedural requirement is not

mandatory and violation thereof will not extinguish the substantial right of the assessee to claim FTC.

5. The contentions raised by the assessee did not convince the Ld. CIT(A) who denied relief to the assessee by observing, interalia as follows in para 4.2.9 of his order as under:-

*“4.2.9 I have carefully considered the claim of the appellant and the case laws relied upon. Admittedly Form 67 has been filed beyond the due date and because of this the appellant is not eligible for the Foreign Tax Credit. It is true that DTAA should take, precedence over domestic laws, but that is relevant for determining the eligibility of FTC claim and not with regard to procedural requirements. The Income Tax provisions clearly stipulate the procedure and timeline for making a claim CPC has followed the rule which is mandatory and hence non furnishing of Form No-6Z before the due date-u/s, 139(1) of the Act is a stringent requirement for the said claim. Thus the AO had correctly passed order u/s 154 of the Act rejecting claim for credit of foreign tax u/s 90.”*

6. Dissatisfied, the assessee is in appeal before us and all the grounds relate thereto.

7. The Ld. AR submitted that the issue is covered in favour of the assessee by the decision of Bangalore Bench of the Tribunal in the case of Ms. Brinda Rama Krishna vs. ITO in ITA No. 454/Bang/2021 rendered on 17.11.2021. A copy thereof is placed at page 1-9 of the Paper Book. The Ld. DR relied on the order of the Ld. AO/CIT(A).

8. We have considered the submissions of the parties and perused the records. It is evident that the solitary ground of denial of the claim of the assessee for FTC is delay in filing Form 67. It is an admitted position that the assessee filed Form 67 on 26.03.2021 alongwith the revised return before the end of the relevant AY 2020-21 which is in conformity with the CBDT notification No. 100/2022 amending Sub Rule 9 of Rule 128 of the Rules. Various coordinate benches of the Tribunal have held that filing Form 67 is a procedural/directory requirement and is not a mandatory requirement. We, therefore, disagree with the view of the Ld. CIT(A) on the

point and reproduce below the decision in the case of Miss Brinda Rama Krishna (supra) in which facts are identical:

*“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. Respectfully we follow the decision (supra).

10. Accordingly, we hereby direct the Ld. AO to allow the impugned credit of FTC to the assessee in the light of the decision in the case of Ms. Brinda Rama Krishna (supra).

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

**Order pronounced in the open court on 29<sup>th</sup> August, 2023.**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 29/08/2023

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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