

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1340/Mum/2023  
(Assessment Year :2020-2021)**

Shri Rahul Ranjit Bhat 3E Sundatta Apartment 10A, Mount Pleasant Road Mumbai – 400 006	Vs.	Asstt. Director of Income Tax Central Processing Centre Bangaluru-560 500
<b>PAN/GIR No.AIKPB1897N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Samir Saraiya
Revenue by	Smt. Mahita Nair
<b>Date of Hearing</b>	<b>22/08/2023</b>
<b>Date of Pronouncement</b>	<b>31/08/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 28/03/2023 passed by NFAC for the A.Y.2020-2021.

2. In the grounds of appeal assessee has challenged the denial of credit for foreign taxes of Rs.11,22,862/- on the ground that, Form 67 had not been filed on or before the due date of filing return of income as per Rule 128(9) of the Income Tax Rules, 1962 in the adjustment made u/s.143(1).

3. The brief facts are that assessee had filed return of income for A.Y.2020-21 on 14/01/2021 which was the due date u/s. 139(1) in view of the CBDT notification for extending the date of filing of return during Covid period upto 15.02.2021, declaring income of Rs.1,32,92,670/-. The assessee was resident of USA till 2006; and during the A.Y. 2020-21, assessee had earned income of US\$144,336 from Green Leaf Fund based in USA. Though assessee has declared full income including the income earned from the US in his return of income filed in India, but omitted to take credit for the taxes paid on US income of US\$15,744/- i.e. INR 11,22,862/-. In the return filed u/s. 139(1), assessee could not furnish Form 67 to claim the credit for US taxes as required under Rule 128 of the IT Rules amounting to Rs.11,22,862/-. Thereafter, assessee immediately filed revised return on 27/03/2021 and claimed credit for US taxes and filed Form 67 alongwith revised return. However, the CPC Bangalore vide order dated 16/12/2021 did not allow relief u/s.90/90A for the credit of taxes paid in US and instead raised a demand of Rs.18,210/-.

4. Before Id. CIT(A), assessee submitted that due to Covid Pandemic there was severe destructions in communication as well as procuring certificate of taxes and due to this fact assessee could not submit form No.67 before the due date u/s.39(1). The revised return which was processed u/s. 143(1), the foreign tax relief was again denied on the ground that claim was belated and

the relevant form was filed late. The ld. CIT (A) after quoting relevant provisions under Rule 128 and the CBDT notification observed as under:-

“5.6.....

*From the provisions of Sec 90 of the IT. Act, it is very clear that the central government enters into an agreement with foreign government for granting of relief in respect of income on which the tax has been paid in both the country. The Sec 90 also provides that central government entered into an agreement with foreign government for granting relief in respect of tax on income paid in both the countries and also to make provisions as may be necessary for implementing the agreement. Rule 128 of the I.T. Rule has been inserted in the IT Rules, 1962 to implement the agreement. Thus, the tax relief provided in Sec 90 is made expressly subject to the rules made in that behalf. The rule making authority has provided certain conditions in Rule 128 which included filing of statement in Form No. 67 on or before the due date of filing of return of the respective assessment year. A further amendment has been made in sub-rule 9 of Rule 128 vide notification No. G.S.R 636(E) dated 18.08.2022 and it is provided that the statement in Form No. 67 shall be furnished on or before the end of the assessment year and the return of income has been furnished in the time specified u/s 139(1) or 139(4) of the I.T. Act. The statutory memorandum has explained that this amendment is applicable to all the claims of foreign tax credit furnished during FY 2022-23 Thus, the Rule 128 of the I.T. Act Rule has been prescribed to implement the agreement entered into by the central government and foreign government u/s 90 of the IT. Act*

*Provisions of Sec 90 expressly provide that foreign tax credit allowed in respect of tax paid on the income in both the countries is subject to the procedure laid down by the central government for implementing the agreement entered into between the central government and the foreign government. The Rule 128 has been inserted in I.T. Rule 1962 by way of notification published in official gazette by the central government. Thus, the procedure prescribed in Rule 128 is mandatory and it has to be followed when the foreign tax credit is to be allowed.*

*When a rule is made to implement the provision of section itself, the rule so made is mandatory and not directory. This view has been taken in various judicial decisions.*

*5.7 As discussed above, the appellant filed return of income for AY 2020-21 on 14.01.2021. The appellant omitted to claim credit for the US taxes in the original return of income for AY 2020-21. The appellant filed a revised return for A.Y 2020-21 on 27.03.2021 in which the taxes paid on US income of US \$ 15744 was claimed. The appellant filed form no.67, as prescribed under Rule 128 of the IT Rules on 27.03.2021 and claimed foreign tax relief of Rs. 11,22,862/- Thus, the appellant failed to furnish form no.67 to claim foreign tax credit on or before the due date of filing of return w/s. 139(1) of the Act. Therefore, the appellant has not followed the Rule 128 -prescribing filing form no.67 on or before the due date of filing the return of income for relevant assessment year. Therefore, the denial of foreign tax credit of Rs.11,22,862/-by the AO, CPC in the order u/s 143(1) is justified.”*

5. After hearing both the parties and on perusal of facts of material placed on record it is not in dispute that assessee had declared its income earned from US in his return of income. It is further not in dispute that US income was subject to tax on such income as stated above. In the original return of income which was filed, assessee could not furnish form 67 as required under the Rule 128. Thus, assessee was otherwise entitled for credit of tax paid in US once the US income has been declared and shown in the return of income filed in India in terms of Section 90 of the Act. The tax relief provided u/s. 90 have been made subject to Rules and accordingly, Rule 128 provides for filing of statement in form No.67 on or before the due date of filing of return of the respective years. The assessee had furnished the form No.67 in his revised return filed within the statutory time limit which is

also not in dispute. Once the revised return has been filed and the same has been accepted by the ld. AO, then the revised return is superseded by the original return of income and therefore, it has to be reckoned that any claim or relief allowable in terms of due date prescribed u/s. 139(1) same shall consequently will follow once the revised return has been accepted and his reckoned as the return of income. Thus, there cannot be a concept of delay in filing of form No.67 or that it has not been filed within the due date of Section 139(1). Now the amendment has been made in sub-Rule 9 of Rule 128 vide notification dated 18/08/2022 wherein it has been provided that the statement in form No.67 shall be furnished on or before the end of the assessment year and the return of income has been filed in the time specified u/s.139(1) or 139(4). Though this provision has been brought from the subsequent year, however, rationale can be drawn that the statute never intended to deny any credit for foreign taxes paid once the foreign income has been shown and declared in the return of income filed in India. The revised return can be filed u/s. 139(5) only if the person has furnished the return u/s. 139(1) u/s. 139(4) and if he discovers any omission or any wrong statement, then statute provides to furnish revised return within the time limit prescribed therein and once the revised return has been filed which has been accepted, then it has to be treated as return filed within due date. Thus, the authorities below have erred in law and on facts in denying the foreign tax. Accordingly, we direct the ld. AO to allow the credit of foreign tax.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced on 31<sup>st</sup> August, 2023.

**Sd/-**  
**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 31/08/2023  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**