

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.482/Bang/2023
Assessment Year: 2017-18

Sumedha Limaye E-1202, Earl's Court Brigade Metropolis Whitefield Road Mahadevpura Post Bangalore 560 048 PAN No.AAOPL5271C	Vs.	Deputy Commissioner of Income- tax Circle-3(3)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Navaneeth N. Kini, A.R.
Respondent by	:	Shri Subramanian S., D.R.

Date of Hearing	:	13.09.2023
Date of Pronouncement	:	13.09.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 3.5.2023 for the assessment year 2017-18.

2. The assessee is an individual employed with Intel Technology India Pvt. Ltd. during the assessment year with income from salary, house property, capital gains, interest and dividend. During the assessment year 2017-18, the assessee has filed return of income on 29.7.2017 with total income of Rs.1,23,07,800/- and paid tax of Rs.40,60,492/- claimed foreign tax credit of Rs.1,17,118/- u/s 90/91 of the Income-tax Act,1961 [the Act' for short]. He received intimation u/s 143(1) of the Act on 30.3.2019, wherein the foreign tax credit of Rs.1,17,118/- was disallowed. Further, even though he had claimed the foreign tax credit in the income tax return, the same

was not acknowledged as claimed in the column as provided by Taxpayer in Return of Income in the intimation u/s 143(1) of the Act. The assessee filed an e-Nirvan application on 23.4.2019, with CPC, seeking rectification of mistake apparent from record, for which resolution was passed on 1.3.2021 stating that “You are requested to furnish details in support of your claim of Relief u/s 90 regarding foreign tax credit to this office.”

3. The Id. CIT(A) observed that the Notification No.9 laid down the manner of filing Form 67 as follows:

“Online filing of Form 67:

1. All assessee's who are required to file return of income electronically under section 139(1) as per rule 12(3) of the income tax rules 1962. are required to prepare and submit form 67 online along with the return of income if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India. by way of deduction or otherwise. in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

Preparation and Submission of Form 67

- 2. Form 67 shall be available to all the assessee's login. The assessee is required to login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File Prepare and Submit Online Forms (Other than ITR)". Select form 67 and assessment year from the drop down. Instructions to fill the form are enclosed along with the form. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.*
- 3. Submission of Form 67 shall precede filing of return of income.”*

3.1 Thus, the Id. CIT(A) observed that what can be clearly discerned from a plain reading of the sec 90 & Rule 128 is that where an assessee paid tax in any country or specified territory outside India, he can claim a credit for the same. The credit is allowed in the year in which assessee offers such income to tax. The credit shall be lower of the tax payable on such income

under the Income-tax Act and foreign tax paid on such income. If the amount of foreign tax exceeds the amount of tax payable as per the provisions of the DTAA, such excess shall be ignored while calculating the Foreign Tax Credit (FTC). Rule 128 of the Income-tax Rules, 1962 provides norms for allowing FTC to a taxpayer. As per the said rule, to claim the foreign tax credit, the assessee shall furnish a statement of income offered to tax for the previous year and foreign tax which has been deducted or paid on such income. Such statement shall be furnished electronically in Form No. 67 on or before the due date for furnishing the return of income under section 139(1), i.e. original return of income.

3.2 He observed that in the instant case, the assessee has failed to file its Form 67 before the due date prescribed under sec 139(1) of the Act. Even though it is contended that FTC was claimed in the return, admittedly Form 67 has NOT been filed before the due date of filing return as mandated under section 139 (1) of the Act. In fact, till now, Form 67 has not been filed. The ld. CIT(A) concluded that since the assessee has not complied with the mandatory condition as mentioned in the sub-rules (8) & (9) of Rule 128 of the IT Rules and the delay in submission of Form 67 does NOT stand condoned, the assessee cannot be granted credit of the FTC as claimed. Hence, the computation of tax as made by the CPC vide intimation u/s 143(1) of the Act is, therefore, is fully confirmed by the ld. CIT(A). Against this assessee is in appeal before us.

4. The assessee has raised following grounds of appeal:

"1. Foreign tax credit has been disallowed on the grounds that form 67 has neither been filed within the due date nor filed as on date.

WHEREAS:

- 'a) The disallowance is for AY 2017-18.*
- b) Form 67 was prescribed vide Rule 128.*

- c) *Rule 128 was inserted by Eighteenth Amendment to Income Tax Rules, 2016 w.e.f. 01.04.2017 i.e., the said rule is relevant from the AY 2018-19.*
- d) *The procedure for filing form 67 with the requirement that it shall precede filing of return of income, was issued vide notification no. 9 dated, 19-Sep-2017.*
- e) *The return was filed on 29-Jul-2017, the due date for filing the return was 05-Aug-2017 and form 67 was notified on 19-Sep-2017.*

Under the above circumstances neither the form 67 was required to be filed nor possible to be filed within the due date.

2. Delete consequential interest u/s 234B and 234C arising out of disallowance of foreign tax credit of Rs. 1,17,118/-."

5. We have heard the rival submissions and perused the materials available on record. In this case, the ld. CIT(A) has disallowed foreign tax credit on the ground that Form 67 is not filled within the due date and not filed as on date. Rule 128 was inserted by Eighteenth Amendment to Income Tax Rules, 2016 w.e.f. 01.04.2017 i.e., the said rule is relevant from the AY 2018-19. CBDT prescribed the procedure for filing form 67 online vide notification no. 9 dated, 19-Sep-2017. The due date for filing the return was 05-Aug-2017 and assessee filed the return on 29-Jul-2017. There is no way assessee could have filed form 67 within the due date for filing the return of income.

5.1 Being so, in our opinion, it is appropriate to remit this issue to the file of ld. AO with a direction to the assessee to file Form 67 so as to claim foreign tax credit as held by the Coordinate Bench of this Tribunal in the case of Ms. Brinda Ramakrishna in ITA No.454/Bag/2021 dated 17.11.2021. Accordingly, the issue raised by the assessee is remitted to the file of ld. AO for reconsideration. However, the ld. AO shall ensure that there shall not be double claim on this count.

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

Order pronounced in the open court on 13th Sept, 2023

Sd/-
(Madhumita Roy)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 13th Sept, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.