

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No:- 2639/Del/2022  
(Assessment Year: 2020-21)**

Vasudha Dalmia, 27, Akbar Road, New Delhi 110001.	Vs.	Dy. Commissioner of Income Tax, Circle Int. Tax 1(1)(1), Delhi.
<b>PAN No: AAHPD1822G</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Arijit Chakravarty, Adv.  
**Revenue by** : Shri Sanjay Kumar, Sr. DR

**Date of Hearing** : 05.10.2023  
**Date of Pronouncement** : 09.10.2023

**ORDER**

**PER N.K. BILLAIYA, AM**

This appeal by the assessee is preferred against the order of the CIT(A)-42, Delhi, dated 06.09.2022 pertaining to A.Y. 2021-22.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the denial of the credit of Foreign Tax Credit for the delay in filing of Form 67.

3. Briefly stated the facts of the case are that the assessee filed her return of income on 04.01.2021 showing total income of Rs. 77,29,670/-. The return was processed U/s 143(1) of the Act. On 26.02.2021, the assessee revised her return by declaring income of Rs. 1,66,00,310/- and claimed relief U/s 90 for Rs. 17,04,600/- for Foreign Tax Credit (FTC) in respect of taxes paid in USA. The revised return was also processed but claim of FTC was disallowed. The assessee filed an application U/s 154 which was rejected by the CPC. The assessee preferred an appeal before the CIT(A) but without any success.

4. We have given a thoughtful consideration to the factual matrix hereinabove. The only reason for denying the FTC was the delay in filing Form 67.

5. This Tribunal in the case of **Bhaskar Dutta 147 taxmann.com 481** had considered his similar situation and held as under:

*"12. Undisputedly, assessee's claim of foreign tax credit was rejected both by CPC and first appellate authority, firstly, on the ground that it was not filed within the period prescribed under rule 128 and secondly, the issue being a debatable one, cannot be a subject matter of rectification under section 154 of the Act. At the outset, we will address the issue of limitation in filing Form 67. No doubt, as per the extant Rule, Form 67 in support of claim of foreign tax credit is to be filed within the due date of filing of return of income under section 139(1) of the Act. The due date of filing of return for the impugned assessment*

*year was 31-10-2020. It is a fact that the assessee filed the original return of income before the due date. However, Form 67 was filed along with the revised return of income was filed on 31-5-2021. It is a fact that to prevent spread of COVID-19 Pandemic, the Government imposed various restrictions. Taking note of the difficulties faced by litigants in complying with the legal requirement of filing petitions/suites/applications/appeals/other proceedings due to COVID-19, Hon'ble Supreme Court took suo motu cognizance and vide order dated 20-3-2020 extended the period of limitation in filing petitions/suites/applications/appeals etc. till 8-3-2021. On 8-3-2021, Hon'ble Supreme Court passed an order bringing to end the extension of limitation. However, due to recurrence of COVID-19 and drastic surge in number of COVID cases across the country, the Hon'ble Supreme Court again, vide order dated 10-1-2022, restored its earlier order extending the period of limitation and observed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purpose of limitation and all persons shall have a limitation period of 90 days from 1-3-2022 to comply with legal requirements. Thus, in view of the aforesaid decision of Hon'ble Supreme Court, it has to be concluded that the assessee has filed Form 67 within the extended period of limitation as per the order of Hon'ble Supreme Court. That being the case, assessee's claim of foreign tax credit has to be allowed.*

*13. Even, otherwise also, the assessee has a strong case on merit as well. In case of Brinda Ramakrishnan (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 the issue which is the view set out above. I am also of the view possible on the issue which is the view lot 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 (*supra*), the co-ordinate Bench while seized of an identical issue, held as under:

"10. 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 v. 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.

11. The learned authorised representative submitted that honourable Supreme Court was seized of the matter where in the same sub-section 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.

12. 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 Raman 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 6-9-2022. 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 (supra), however, we are inclined to agree with the view expressed in the decisions cited by learned counsel appearing for the assessee.*

*16. In view of the aforesaid, we direct the Assessing Officer to allow foreign tax credit to the assessee. Ground is allowed."*

6. As no distinguishing decision has been brought to our notice. Respectfully following the decision of the Co-ordinate Bench (Supra), we direct the AO to allow the Foreign Tax Credit to the assessee. Appeal of the assessee is accordingly allowed.

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

Order pronounced in the Open Court on 09.10.2023

**Sd/-**  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Dated: 09 /10/2023.  
Pooja/-

**Sd/-**  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.10.2023
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	
Date of dispatch of the Order	