

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.1031/PUN/2023

निर्धारण वर्ष / Assessment Year : 2022-23

Milind Moreshwar Pimpalkhare, 8, Amod, Nirmal Baug, Opp City Pride, Satara Road, Sahakar Nagar, Pune 411 009 Maharashtra PAN : ABHPP2656F	Vs.	DDIT, CPC, Bengaluru
Appellant		Respondent

Assessee by

Shri Nikhil Pathak

Revenue by

Smt. Neha Deshpande

Date of hearing

12-10-2023

Date of pronouncement

13-10-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order dated 25-07-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2022-23.

2. The only raised herein is against the denial of Foreign Tax Credit (FTC) to the assessee.

3. Briefly stated, the facts of the case are that the assessee, at the material time, was working as salaried employee with Bolashak-Atyrau LLP, Kazakhstan. He earned gross salary of Rs.79,53,339/- from his foreign employer, on which deduction of tax at source in

Kazakhstan was made for a sum of Rs.7,95,334/-. For the year under consideration, the assessee had a status of resident of India. He filed his return on 30-12-2022 declaring salary received from his Kazakhstan employer and also claimed credit for foreign tax. The return was processed u/s.143(1) of the Act denying the benefit of the FTC. The assessee moved rectification application u/s.154 of the Act in this regard, which came to be dismissed. No succour was provided in the first appeal on the ground that the assessee filed requisite Form No.67 as prescribed under Rule 128 beyond the due date prescribed u/s.139(1) of the Act. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Heard the rival submissions and scanned through the relevant material on record. Admittedly, the assessee had a status of resident during the year under consideration. Salary of Rs.79,53,339/- was received from his employer in Kazakhstan on which deduction of tax at source was made at Rs.7,95,334/-. The benefit of TDS has been denied on the premise that the assessee furnished his return beyond the period prescribed u/s.139(1) of the Act. Again, there is no dispute that the assessee filed his return on 30-12-2022, after uploading Form No.67 on 29-12-2022 and that such return is belated u/s.139(4) of the Act.

5. Section 295 of the Act empowers the Board to make Rules. Clause (ha) of section 295(2) empowers the Board to make rules regarding the procedure for granting of relief or deduction of any income-tax paid in any country outside India against the income-tax payable under this Act. Pursuant to the insertion of the clause (ha) by the Finance Act, 2015 w.e.f. 01-06-2015, the Income-tax (18th Amendment) Rules, 2016 were brought into force w.e.f. 01-04-2017, inserting Rule 128 dealing with the FTC. Sub-rule (1) of Rule 128 provides that the assessee, being a resident, shall be allowed credit for the amount of any foreign tax paid by him in country outside India by way of deduction or otherwise, in the year in which the corresponding income is offered to tax in India. Undoubtedly, the salary earned by the assessee from the Kazakhstan employer pertains to the year under consideration, which was included in his return of income for the year. Sub-rule (8) of Rule 128 provides that credit of any foreign tax shall be allowed on furnishing the statement of income in Form No.67, detailing the income offered to tax and the corresponding foreign tax deducted; and the Certificate or Statement, *inter alia*, from the person responsible for deduction of tax at source specifying the nature of income and the amount of TDS thereon. Prior to the Income-tax (27th Amendment) Rules, 2022, with retrospective effect from 01-04-2022, the requirement under rule 128(9) was to furnish Statement in Form

No.67 as per sub-rule (8)(i) and the Certificate or Statement as per sub-rule (8)(ii), on or before the date for furnishing the return of income u/s.139(1) of the Act. It is this provision which has been invoked by the Id. CIT(A) for refusing the FTC on the premise that the assessee furnished the return belatedly u/s.139(4) of the Act and not u/s.139(1). However, it is material to note that sub-rule (9) of Rule 128 has been substituted by the Income-tax (27th Amendment) Rules, 2022, the relevant part of which 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 end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139”. The substitution of sub-rule (9) has been given a retrospective effect from 01-04-2022, namely, the assessment year commencing from 1.4.2022. The assessment year under consideration is 2022-23, which is obviously governed by the newly substituted Rule 128(9). On an analysis of the new rule, it becomes palpable that the assessee needs to fulfill twin conditions, viz., file Form No.67 and Certificate or the Statement on or before the end of the assessment year relevant to the previous year

in which the income has been offered to tax; and furnish return within the time stipulated u/s.139(1) or 139(4). The assessee furnished the return on 30-12-2022, which is a belated return u/s.139(4) of the Act. Thus, the second condition of furnishing the return u/s.139 stands satisfied. The first requisite condition is that Form No.67 along with the Certificate or the Statement needs to be furnished on or before the end of the assessment year. The assessment year under consideration is 2022-23, which will end on 31.3.2023. The assessee furnished Form No.67 on 29-12-2022 which is well before the time. The dual requirements on this count are to furnish the statement in Form No.67 as per rule 128(8)(i) and also Certificate or Statement referred to in Rule 128(8)(ii). The assessee placed on record the evidence of filing of Form No.67 on 29-12-2022. He further submitted that this Statement refers to certain “download attachments”. His contention was that the Certificate or Statement under Rule 128(8)(ii) actually accompanied Form No.67. However, it could not be authentically proved that the relevant Certificate or Statement as per clause (ii) of sub-rule (8) of Rule 128 was also furnished along with Form No.67 before 31-03-2023. Under these circumstances, I am of the considered opinion that it would be in the fitness of the things if the impugned order is set-aside and the matter is restored to the file of the AO for examining whether the claim of the assessee of having

furnished the Certificate or Statement as per Rule 128(8)(ii) along with Form No. 67 is correct or not? If the same is found to be correct, then the benefit of tax paid by the assessee in Kazakhstan should be allowed because all other requisite conditions have been found above to have been fully satisfied. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.

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

Order pronounced in the Open Court on 13th October, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13th October, 2023

Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
SMC, Pune / DR, ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	12-10-2023	Sr.PS
2.	Draft placed before author	12-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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