

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B " JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 507/JP/2023
निर्धारणवर्ष / AssessmentYear :2021-22

Shri SudershanChitlangia C-396, Hans Marg, Jaipur-302017	बनाम Vs.	The ACIT Circle-6, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AICPC 7229 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Abdulkadir Jawadwala, CA
राजस्व की ओरसे / Revenue by : Shri Anup Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 26/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 26/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 14-06-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2021-22 wherein the assessee has raised the following grounds of appeal.

1. Re: Denial of relief u/s 90 of the Income-tax Act, 1961 ('Act') vis-à-vis credit for Foreign Taxes paid of Rs. 8,03,635:

1.1 The Assessing Officer ['AO']/ Centralised Processing Centre, Bengaluru ['CPC'] erred in denying the relief claimed under section 90 of the Act vis-à-vis credit for foreign taxes paid of Rs. 8,03,635, which action has been upheld by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [CIT(A)/NFAC"].

1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the AD / CPC erred in denying the relief claimed u/s 90 for the credit of foreign taxes paid of Rs. 8,03,635 on the ground that the Appellant has not filed Form-67 within the due date of filing of return of income: prescribed u/s. 139(1) of the Act without appreciating the fact that the same was furnished alongwith the revised return of income and hence the action of the CIT(A) upholding the Order of the AO / CPC is incorrect, erroneous and not in accordance with the law.

1.3 The Appellant submits that the AO/ CPC be directed to grant the relief u/s. 90 vis à-vis the credit of foreign taxes paid of Rs. 8,03,635 and accordingly compute the total income and taxes thereon.

2 Re: Interest u/s. 224A of the Act has been levied in excess:

2.1 The AD / CPC has erred in levying excessive interest u/s. 234A of the Income-taxAct, 1961.

2.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, excessive interest has been levied u/s. 234A and hence the action of the AO /CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.

2.3 The Appellant submits that the AD/CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly

3 Re: Interest u/s. 234B of the Act has been levied in excess:

3.1 The AO / CPC has erred in levying excessive interest w/s. 234B of the Income-taxAct, 1961.

3.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, excessive interest has been levied u/s. 234B and hence the action of the AD /CPC upheld by the CIT(A) in this regard is incorrect. erroneous and not in accordance with the law

3.3 The Appellant submits that the AD/CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.

4 Re: Interestu/s. 234C of the Act has been levied in excess:

4.1 The AO / CPC has erred in levying interest of Rs. 45,457 instead of Rs. 4,870 u/s.234C of the Income-tax Act, 1961.

4.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, no further interest is leviable u/s 234C (over and above the interest u/s. 234C of Rs. 4,870/- computed and paid by the Appellant at the time of filing its return of income) and hence the action of the AO/CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.

4.3 The Appellant submits that the AO / CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.”

2. As regards the grounds of appeal relating to charging of interest u/s 234A, 234B and 234C are concerned, the Bench feels that it is not required to adjudicate upon the same as the interest is mandatory and the assessee will get the consequential relief, if any.

3. The solitary ground of the assessee relates to denial of relief u/s 90 of the Income Tax vis a vis credit for foreign taxes paid amounting to Rs.8,03,635/- by the ld. CIT(A). In this case, it is noted that the ld. AO vide order dated 10-01-2023 passed the rectification order passed u/s 154 of the Act and thus disallowed a sum of Rs.8,03,635/- being foreign tax credit/ relief u/s 90 of the Act.

4. Being aggrieved by the order of the AO, the assessee carried the matter before the ld. CIT(A) who dismissed the appeal of the assessee with following narration.

Page 9 – “ I also find that the appellant has claimed foreign tax credit/ relief u/s 90 of Rs.8,03,635/- in his revised income filed on 29-03-2023. Relevant portion of revised return is available at pages 9 to 11.

Page 12 - Since the appellant did not claim / mention foreign tax credit / relief u/s 90 of Rs.8,03,635/- in his original return file on 30-12-2021, the AO’s action of non-allowance foreign tax credit / relief u/s 90 of Rs.8,03,635/- vide order u/s 143(1) and u/s 154 is justified inasmuch as no claim in this regard is made in original return filed by the appellant. Considering above, I find no error of the AO’s action in omitting to grant foreign tax credit. Accordingly, the order of the AO passed u/s 154 of the I.T. Act stand confirmed.

5. In the result, the appeal of the appellant is treated as “Dismissed.”

5. The ld. AR of the assessee in support of the grounds so raised has relied upon the following evidences/decision :

S. No.	Particulars	Page No.
1.	Original return of income filed on 30 Dec. 2021	1-38
2.	Revised Return of income filed on 29 th Mar 2022	39-76
3.	Form No. 67 filed on 29 th Mar 2022	81-100
4.	Intimation dated 13 th Oct. 2022 issued u/s 143(1) of the Income Tax Act, 1961	81-100
5.	Order dated 10 th Jan. 2023 passed u/s 154 of the Income Tax Act, 1961	101-121
6.	Order dated 14 th June 2023 passed by the CIT(A), NFAC	122-133
7.	Decision of the Jaipur Bench of te ITAT in the case of Sanjeev Agarwal vs DCIT reported in [2022] 152 taxmann.com 67 (Jaipur Trib)	134-147

8.	Decision of Bangalore Bench of ITAT in the case of Brinda Ramakrishan Vs ITO reported in[2022] 135 Taxmann.com 358 (Bang-Trib)	148-152
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The ld. AR of the assessee submitted that the ld. AO has erred in not allowing the credit, whereas the finding of the ld. CIT(A) is that as the assessee has not claimed the foreign tax credit in original return of income, he has simply on that ground rejected the claim of foreign tax credit which is incorrect. In support of the ground, he has relied upon the judicial precedent on the issue.

6. Per contra, the ld. DR representing the revenue has relied upon the finding of the ld. AO and based on that set of facts ld. CIT(A) is not in error not considering the pleas of the assessee as the same is not emanating from the return of income filed by the assessee. Based on these arguments the ld. DR supported the orders of the lower authority.

7. We have heard both the parties and perused the materials available on record. It is not imperative to repeat the facts of the case as the similar issue was decided by this ITAT Jaipur Bench vide its order dated 27-09-2023 in IT(IT)A No. 12/JP/2023 for the assessment year 2021-22 in the case of Juan Miguel Guerrero

Ferrer vs DCIT wherein the relevant observation as made by this bench is reproduced as under:-

5. We have heard the Id. Counsels of both the parties. We have also perused the material placed on record and also judgments cited by the respective parties. Under this ground of appeal, the assessee has filed Form 67 for claiming relief under section 90 of the IT Act. The said form was filed by the assessee on 28.12.2022 and the Income Tax Return was filed as on 08.09.2021 claiming relief under section 90/90A of the IT Act of Rs. 37,41,228/-. It is an undisputed fact that the assessee has got salary from his employer in Spain and due tax has been deducted by the employer. As per Article 15 of Double Taxation Avoidance Agreement (DTAA) with country Spain, the tax payable by assessee in that country is eligible for relief under section 90 of the Income Tax Act, 1961 to the assessee. The said relief was denied by the revenue authorities on the ground that the return for the year under consideration was filed by the assessee on 08.09.2021. However, the form 67 was filed on 28.12.2022 and not along with the return of income filed on 08.09.2021. Since according to revenue the said form 67 was filed after the due date of filing the return of income for the year under consideration, therefore, the assessee was rightly found not eligible for the credit of that amount.

6. We find that the case of assessee is fully covered by the recent decision of the ITAT Jaipur Bench, adjudicated exactly on similar issue in the case of Ritesh Kumar Garg vs. ITO in ITA No. 261/JP/2022 dated 15.09.2022, wherein the claim of Foreign Tax Credit (FTC) was allowed by observing in para 5.1 to 6 as under :-

“ 5.1. After having meticulously gone through the facts of the present case, we are of the view that there is no dispute that assessee is entitled to claim relief under section 90 of the IT Act but the disallowance was confirmed on the sole ground that the relevant form 67 prescribed under section 128(8) was not filed within the time stipulated under sub rule 9 of Rule 128. It is important to mention here that section 90 of the Act provides that Government of India can enter into Agreement with

other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. In this regard Article 22 of India Finland DTAA provides for credit for foreign taxes. The relevant portion of sub clause (2) of Article 22 is reproduced below :-

" 2. In India double taxation shall be eliminated as follows :-

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Finland, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Finland. Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Finland."

And since as per section 90 of the Act read with Article 22 sub clause (2) provides that Finland Income Tax paid shall be allowed as a credit against the Indian Tax but limited to proportion of Indian tax. In my view, neither section 90 nor DTAA provides that FTC shall be disallowed for non compliance with any procedural requirements. Since FTC is assessee's vested right as per Article 22(2) of the DTAA read with section 90 and thus same cannot be disallowed for non compliance of procedural requirement that is prescribed in the Rules.

5.2. In my view, section 295 sub section (1) of the Act provides powers to the CBDT to prescribe Rules for various purposes. Section 295 sub section (2) sub clause (ha) gives power to the Board to issue Rules for FTC. The relevant extract is as follows :-

" (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :-

.....
(ha) the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under this Act;"

Thus, in this way the Board has power to prescribe procedure for granting FTC. Therefore, in my view the procedure prescribed in Rule 128 should be interpreted in this context. Therefore, Rule 128 is a procedural provision and not a mandatory provision. The said rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed under section 139(1) of the Act. However, the said Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee under section 90 of the Act would be denied. In case the intention of the Act or Rule was to deny the FTC, then in that eventuality either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. Thus filing of Form 67, in my view, is a procedural/directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. While reaching to this conclusion, we draw strength from the decision of Hon'ble Supreme Court of India in the case of Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner, (1992) Supp (1) Supreme Court Cases 21 wherein the Hon'ble Supreme Court has held as under :-

" The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be

substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

Apart from the above decision, I further rely upon the decision of Hon'ble Supreme Court in the case of Sambhaji & Ors. vs. Gangabai & Ors., (2008) 17 SCC 117 (SC) wherein it was held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. According to Hon'ble Supreme Court, the procedures are handmaid and not the mistress. It is a lubricant and not a resistance. Thus, a procedural law should not ordinarily be construed as mandatory. The procedural law is always subservient to and is in aid to justice. Even otherwise, since there are no conditions prescribed in DTAA that FTC can be disallowed for non compliance of any procedural provision, therefore, the provisions of DTAA override the provisions of the Act. As the assessee has vested right to claim the FTC under the tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision.

5.3. Even otherwise, the said Form 67 filed by the assessee before the tax authorities was available before the AO when the intimation under section 143(1) of the Act dated 25.11.2021 was passed. Therefore, in such circumstances, in my view, there were no reasons with the tax authorities for making disallowance when the said Form 67 was very much available with the AO at the time of framing the assessment order. While reaching to this conclusion, I further strengthen my view by relying upon the decision in the case of Brinda Rama Krishna vs. ITO 135 taxmann.com 358 wherein the Coordinate Bench of the Bangalore Tribunal had directed

the Revenue to allow relief of FTC under section 90 of the Act, wherein Form 67 was filed after the prescribed due date. The ratio of the said decision in the case of Brinda Rama Krishna vs. ITO (supra) was further followed in another case decided by the Coordinate Bench of the Bangalore Tribunal in the case of 42 Hertz Software India Pvt. Ltd. vs. ACIT in IT Appeal No. 29 of 2021. On the contrary, I respectfully with all humility disagree with the view taken by the Visakhapatnam Bench of the Tribunal in the case of Muralikrishna Vaddi (supra) while relying upon the decision of Hon'ble Supreme Court and also of the decisions of Coordinate Benches of the Tribunal in the cases of Brinda Rama Krishna vs. ITO (supra) and 42 Hertz Software India Pvt. Ltd. vs. ACIT (supra). Therefore, considering the totality of facts and legal position as discussed above, I am of the view that assessee is entitled for the credit of FTC under section 90 of the Act. Thus, I, accordingly direct the AO to allow the relief of FTC under section 90 of the Act in the case of assessee.

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

'We, therefore, following the coordinate bench decision referred herein above, wherein case laws cited was considered and reliance was placed on the judgment of the Hon'ble Supreme Court, allow the claim of Foreign Tax Credit (FTC) in favour of the assessee. The AO is accordingly directed to allow relief to the assessee. The order of the Id. CIT (A) is set aside.'

Since the issue raised by the assessee (supra) is similar to the case of Juan Miguel Guerrero Ferrer vs DCIT(supra), therefore, the decision taken therein shall apply mutatis mutandis in the case of the assessee also as the claim of the assessee is

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duly supported by the revised return of income filed on 29.03.2022 and the form no. 67 is also filed on that date. Thus the AO is accordingly directed to allow relief to the assessee based on the revised return and form no 67 filed by the assessee.

The order of the Id. CIT (A) is set aside.

8. In the result, the appeal of the assessee is allowed as indicated hereinabove.

Order pronounced in the open court on 26/10/2023

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 26 /10/2023.

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri SudershanChitlangia, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT , Circle-6, Jaipur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 507/JP/2022}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar