

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 742/Kol/2022
Assessment Year: 2020-21

Income Tax Officer, Ward-1(1), Asansol	Vs	Sandip Choubey Flat 11A, Abhilasha Apartment Rabindranagar Asansol - 713304 [PAN: AIIPC9579Q]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Ms. Aashi Agarwal, A/R
Revenue by :	Shri Vevekanda Madhu, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/10/2023
घोषणा की तारीख /Date of Pronouncement: 31/10/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the revenue against the order of the National Faceless Appeal Centre, (hereinafter the "Id. CIT(A)") dt. 19/10/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2020-21.

2. The Registry has pointed out that there is a delay of 2 days in filing the present appeal by the revenue. Petition for condonation of delay is placed on record by revenue explaining the reasons. On perusing the same, we are convinced that the revenue was prevented by sufficient cause from filing this appeal in time. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. The revenue has raised the following grounds of appeal:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC, Delhi is justified in allowing the appeal of the assessee for statistical purpose by directing the A.O to consider the claim of FTC of Rs. 3,66,855/- as per Rule 128(8) & (9) wherein it is stated that FTC shall be allowed only when Form No. 67 shall be furnished on or before the date on which the return is furnished by the assessee and it should be treated as mandatory. 2. That the appellant craves leave to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing.”

4. At the outset, the Id. Counsel for the assessee submitted that in view of the CBDT Circular No. 17/2019, dtd. 08/08/2019, this appeal of the revenue deserves to be dismissed for low tax effect as the tax effect involved in this appeal is less than Rs.50,00,000/-.

5. On the other hand, the Id. D/R submitted that though the tax effect is less than Rs.50,00,000/-, but the issue raised in this appeal falls under the exception mentioned in the CBDT Circular *supra* as the issues is regarding constitutional validity of Act or Rule.

6. We have heard rival contentions and perused the record placed before us.

7. We notice that the issue involved in this appeal is the claim of foreign tax credited of Rs. 3,66,855/- denied on the ground of belated submission of Form No. 67 which was mandatorily required to be filed before the filing of Income tax return. In absence of any submission by the Id. A/R, we find merit in the contention of the Id. D/R and are of the view that this appeal of the revenue does not deserve to be dismissed on account of low tax effect.

8. So far as the merits of the case are concerned, we find that the assessee was denied the foreign tax credit (FTC) of Rs.3,66,855/-. The assessee is a salaried employee of Pricewaterhouse Coopers Pvt. Ltd.

(PwC India) and was sent on short terms assignment to United States of America (U.S.A.) from 09/09/2018 to 18/03/2020. For this period, he worked in U.S.A., income tax of Rs.3,66,855/- was deducted and the same was claimed in the income tax return filed in India. As per the Rule 128 of Income-tax Rules, the assessee is required to file Form 67, which is a statement of income from a country or specified territory outside India and Foreign Tax Credit. This Form has to be filed before the due date of filing of return of income. The assessee was unable to file Form 67 before or along with the return of income due to technical glitches and necessary utility not available on the income tax portal and belatedly furnished it on 21/05/2021. Now, the short issue that remains is that where Form 67 is filed belatedly even though the credit amount of all foreign tax credit has been claimed in the Income tax return whether the assessee is eligible to claim such FTC.

8.1. We notice that this issue had come up for adjudication before us in various other cases wherein also, the decision of other Tribunals have been cited and it has been consistently held that filing of Form 67 is merely directory in nature and even if it is filed belatedly, the assessee deserves the FTC. We find support from the decision of the Co-ordinate Bench in the case of *Sonakshi Sinha vs. CIT in ITA No. 1704/Mum/2022; Assessment Year 2018-19; order dt. 20/09/2022* as well as the decision of the Tribunal in the case of *Satreena Consultants Pvt. Ltd., Kolkata v. ITO, Ward-11(1) in ITA 543/KOL/2022 | Assessment Year 2017-2018 order dt. : 21-02-2023*. We are thus inclined to hold that the ld. CIT(A) has rightly allowed the claim of FTC of Rs.3,66,855/-. Thus, no interference is

called for in the finding of the Id. CIT(A) and effective Ground raised by the revenue is dismissed.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 31st October, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 31/10/2023

Sd/-

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata