

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आ.अ.सं.2967/मुं/2023 (नि.व. 2020-21)
ITA No.2967/MUM/2023 (A.Y.2020-21)

Prashant Kurani
A5-1001. A4,
Castle Mill Compound,
Thane - 400601
PAN: AAAPK8762F

..... अपीलार्थी /Appellant

बनाम Vs.

The Assistant Director of Income Tax,
Centralised Processing Center,
Income Tax Department,
Bengaluru,
Karnataka - 560500

..... प्रतिवादी /Respondent

Assessee by : Shri Ninad Patade
Revenue by : Shri H.M. Bhatt

सुनवाई की तिथि/ Date of hearing : 27.12.2023
घोषणा की तिथि/ Date of pronouncement : 31.01.2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-57, Mumbai (in short ' the CIT(A)'), dated 30.6.2023, for the Assessment Year 2020-21.

2. Shri Ninad Patade appearing on behalf of the assessee submitted that the assessee is a salaried employee. During the period relevant to assessment year under appeal, the assessee had served in China. The assessee received salary in China and had also paid tax thereon. The assessee filed his original return of income on 30.12.2020. The assessee in order to claim foreign tax credit furnished Form No.67 on 27.3.2021. While filing the original return of income, the assessee inadvertently failed to disclose salary income received in China. The assessee filed revised return of income on 29.3.2021 including salary income received in China. The revised return of the assessee was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'the Act') vide intimation dated 15.12.2021. While processing the assessment, the Revenue failed to give Foreign Tax Credit. The assessee filed rectification petition u/s 154 of the Act with a request to allow credit of foreign tax paid. The same was rejected by the CPC vide order dated 3.8.2022.

2.2 Aggrieved against the order dated 3.8.2022 passed u/s 154 of the Act, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee solely on the grounds that Form No.67 filed by the assessee was not in accordance with Rule 128 of the Income Tax Rules, 1962 (in short 'the Rules'). As per the Rules, the assessee was required to file Form No.67 to claim foreign tax credit, on or before the due date for filing return of income u/s. 139(1) of the Act.

3. The Learned Authorised Representative of the assessee (in short 'the Ld. AR') submitted that the assessee has furnished Form No.67 to claim Foreign Tax Credit before filing revised return of income disclosing salary income received in China. The Ld. AR has placed reliance on the decision of the Tribunal in the case of Yogesh Dnyandeo Kinage Vs Assistant Director of Income Tax, CPC in ITA No.1478/Mum/2023 for the assessment year 2018-19, decided on 10.8.2023, wherein on similar facts, the assessee had furnished Form No.67 after the elapse of the due date for filing of return of income u/s. 143(1) of the Act. The Tribunal directed the Assessing Officer to

grant foreign tax credit to the assessee on the basis of Form No.67 furnished by the assessee after due verification.

4. Per contra, Shri H. M. Bhatt, representative of the Department (in short 'the Ld. DR') vehemently defended the impugned order. The Ld. DR submitted that as per Rule 128, the assessee was required to furnish Form No.67 on or before the due date for filing of return of income u/s. 139(1) of the Act. The assessee has failed to comply the same, hence, the CIT(A) has rightly dismissed the appeal of assessee. The Ld. DR prayed for upholding the impugned order and dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The short issue in appeal before us is that form No.67 furnished by the assessee was not considered for grant of Foreign Tax Credit on the ground that it was filed belated. Rule 128(9) of the Income Tax Rules, 1962 mandates to furnish form No.67 before the due date specified for furnishing return of income under section 139(1) of the Act. The assessee furnished Form No.67 after the said due date but before filing revised return of income. The defect in filing Form no.67 after the due date as specified under section 139(1) is merely a procedural defect and hence rectifiable. Our this views is supported by the decision in the case of Sonakshi Sinha Vs. Commissioner of Income Tax (Appeals) [142 taxmann.com 414, Mumbai. Trib]. The said decision has been followed by the coordinate bench in the case of Yogesh Dnyandeo Kinage (supra).

6. Taking into consideration the facts of the case and the decisions referred above, we deem it appropriate to restore this issue to the file of AO to consider Form No.67 and allow the benefit of Foreign Tax Credit to the assessee, in accordance with law.

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

Order pronounced in the open court on Wednesday the 31st day of January 2024.

Sd/-
(SHRI GAGAN GOYAL)
लेखाकार सदस्य / ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 31.01.2024
Mini, Sr. PS

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलकर्ता/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai