

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.: 1454/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2019-20

Dr. Venkataramani Sumantran,
Plot No.67, 19th Street,
Venkateshwara Nagar,
Kottivakkam,
Chennai – 600 041.

The Assistant Commissioner of
Income Tax,
vs. Central Circle 3(3),
Chennai.

PAN: AAKPS 5105J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Nagarajan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.02.2024

घोषणा की तारीख/Date of Pronouncement

: 19.02.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-20, Chennai in ITA No.163/CIT(A)/2023-24 dated 17.10.2023. The return of income was processed and intimation u/s.143(1) of the Income Tax Act, 1961 (hereinafter the 'Act') was issued by the Asst. Director of Income Tax, Central Processing Center (CPC), Bengaluru for the assessment year 2019-20 vide order dated 17.03.2021.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance on foreign tax credit of Rs.1,97,939/- claimed by the assessee for the reason that Form No.67 was filed only on 29.11.2019 with a delay of 29 days from the extended due date of filing of original return of income being 31.10.2019.

3. At the outset, the Id.counsel for the assessee submitted that this issue now stands covered in favour of assessee by the decision of Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. PCIT & others in W.P.No.5834 of 2022 and W.M.P Nos.5925 & 5927 of 2022, dated 06.10.2023, wherein the Hon'ble Madras High Court has held that submitting Form No.67 is directory and not mandatory and even if it is submitted before the assessment, the claim has to be allowed and the Hon'ble High Court relying on the decision of Hon'ble Supreme Court in the case of CIT vs. G.M. Knitting Industries (P) Ltd., in Civil Appeal Nos.10782 of 2013 and 4048 of 2014, dated 24.06.2015 held as under:-

“11.The law laid down by the Hon'ble Apex Court in Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was

filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order.

12. Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore the impugned order is liable to be set aside.

13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order.”

4. As the issue is covered, we set aside the order of AO and that of the CIT(A) and remand the matter back to the file of the AO for allowing the claim after verification of facts regarding payment of

foreign tax. Accordingly, the appeal of the assessee is allowed for statistical purposes with the above direction.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 19th February, 2024 at Chennai.

Sd/-

(मंजुनाथा. जी)
(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 19th February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |