

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, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1514/Chny/2023

निर्धारण वर्ष / Assessment Year: 2022-23

Income Tax Officer,
Non-Corporate Ward 19(4),
Chennai.

v. Smt. Chengam Durga,
No. 50, Kasi Estate, Ashok
Nagar, Jafferkhanpet,
Chennai – 600 083.

[PAN: ACHPD-0525-G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT
: Shri. K. R. Sudersan, CA

सुनवाई की तारीख/Date of Hearing

: 19.02.2024

घोषणा की तारीख/Date of Pronouncement

: 19.02.2024

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 16.10.2023 and pertains to assessment year 2022-23.

2. The revenue has raised the following grounds of appeal:

1. *The Order of the Ld.CIT(A) is contrary to facts and circumstances of the case.*

2. The Ld.CIT(A) erred in holding that filling of Form 67 cannot be treated as mandatory, rather it is directory in nature by placing reliance on decision of ITAT Bangalore in the case of Shri Brinda Ramakrishna Vs. ITO in ITA.No.454/Bang/2021 and the decision of the ITAT Brinda Ramakrishna Vs. ITO in ITA.No.454/Bang/2021 and the decision of the ITAT Jaipur in ITA No.71/JP/2023 dtd.10.05.2023.

3. The Ld.CIT(A) erred in allowing relief to the assessee by placing reliance on the decision of ITAT Bangalore in the case of Shri Brinda Ramakrishna Vs. ITO in ITA.No.454/Bang/2021 the decision of the ITAT Jaipur in ITA.No.71/JP/2023 dtd.10.05.2023 whereas it is settled law that power of condonation of the CBDT / Central Government cannot be taken away by any other person.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer restored."

3. The brief facts of the case are that, the appellant filed her return of income for the assessment year 2022-23 on 29.06.2022, declaring a taxable income of Rs. 17,39,720/-. The appellant has availed credit for the tax paid outside India as per DTAA between India with other countries, where the appellant derives income. The appellant filed Form no. 67 on 28.09.2022 before the Assessing Officer. The Assessing Officer processed return of income filed by the assessee and issued intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 26.10.2022 and denied credit for tax paid outside India, on the ground that the

assessee has not filed Form no. 67 on or before due dated prescribed under the Act. The assessee carried the matter in appeal before the first appellate authority and the Id. CIT(A), for the reasons stated in their appellate order, dated 16.10.2023 and also by following the decision of ITAT, Bangalore Bench in the case of Brinda Ramakrishna vs ITO in ITA No. 454/Bang/2021 dated 17.11.2021, held that filing of Form no. 67 for availing credit for taxes paid outside India is not mandatory in nature, but directory and further, when such Form has been filed on or before the Assessing Officer passes his assessment order, then the Assessing Officer ought to have given credit for taxes paid outside India, as per Form no. 67 filed by the assessee. Aggrieved by the Id. CIT(A) order, the revenue is in appeal before us.

4. The Id. DR, Shri. D. Hema Bhupal, JCIT, submitted that the Id. CIT(A) erred in upholding that filing of Form no. 67 is not mandatory, but rather it is directory in nature by placing reliance on the decision of ITAT, Bangalore Bench in the case of Brinda Ramakrishna vs ITO (supra), without appreciating fact that as per Circular issued by the CBDT, the assessee ought to have filed Form no. 67 on or before the end of

relevant assessment year. The Id. DR, further submitted that in case the appellant could not file Form no. 67, within the prescribed time, then remedy available to the appellant is to file petition before the CBDT for condonation of delay. But, there is no power with the Assessing Officer to allow credit for taxes paid outside India, if Form no. 67 is not filed on or before the due date. The Id. CIT(A), without considering relevant facts simply allowed relief to the assessee and their order should be reversed.

5. The Ld. Counsel for the assessee, on the other hand supporting the order of the Id. CIT(A) submitted that, the appellant has filed Form no. 67 much before the date when the Assessing Officer has passed his assessment order. Further, filing of Form no. 67 is not mandatory, but directory in nature and when such Form is available before the Assessing Officer when he passed assessment order, he ought to have given credit for tax paid outside India. The Id. CIT(A), after considering relevant facts has rightly allowed relief to the assessee and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee being a non-resident in India is required to pay tax in India on his/her global income, as per provisions of section 5 of the Act. But, as per section 90 of the Act, the assessee can claim credit for tax paid outside India, in case said income is included for the Indian Income-tax purpose, but so provided as per treaty or DTAA between Indian and other countries. In the present case, there is no dispute with regard to the fact that, the appellant has paid tax outside India on his income earned outside India and also included said income in India for Income-tax purpose. The assessee had also claimed credit for tax paid outside India. Although, the Assessing Officer has not disputed these facts, but denied credit for tax paid outside India, for non-filing of Form no. 67 on or before prescribed date. In our considered view, the Assessing Officer is erred in not allowing credit for tax paid outside India, even though the assessee has filed Form no. 67 before the Assessing Officer passes his assessment order. Further, filing of Form no. 67 is not mandatory but directory in nature and further, when such Form has been filed before the Assessing Officer passes his assessment order, in our considered view,

the Assessing Officer ought to have allowed credit for tax paid outside India. The Id. CIT(A), after considering relevant facts has rightly directed the Assessing Officer to allow credit for tax paid outside India as per Form no. 67 filed by the assessee. Therefore, we are of the considered view that, there is no merit in ground taken by the revenue and thus, we are inclined to uphold the findings of the Ld. CIT(A) and dismiss appeal filed by the revenue.

7. In the result, appeal filed by the revenue is dismissed.

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

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजूनाथा. जी)
(MANJUNATHA. G)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2024

JPV

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 | |