

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं/ **ITA No. 45/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2021-22)

Income Tax Officer, Venigandla Krishna,
Ward-12(1), Vs. Hyderabad
Hyderabad [PAN : BGKPV3694J]

अपीलार्थी/ Appellant प्रत्यर्थी/ Respondent

निर्धारित द्वारा/ Assessee by: NONE
राजस्व द्वारा/ Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/ Date of hearing: 21/02/2024
घोषणा की तारीख/ Pronouncement on: 27/02/2024

आदेश / ORDER

PER LALIET KUMAR, J.M:

Challenging the order dated 20-12-2023 passed by the learned Addl/JCIT(Appeals)-6, Mumbai, Revenue preferred this appeal for the AY. 2021-22.

2. Facts in brief are that assessee is an individual, having income from India and abroad. He has filed the income tax returns by declaring income from all sources. Assessee filed Form 67 after the due date of filing income tax return and claimed the relief under section 90/9A of the of the Income Tax Act, 1961 (for short "the Act") amounting to

Rs. 59,07,195/-. During the course of assessment proceedings, Assessing Officer disallowed the Foreign Tax Credit (FTC) claimed by the assessee and finalized the assessment. Aggrieved by such a finding of the Assessing Officer, assessee preferred appeal before the CIT(A).

3. Learned Addl/JCIT(A) after considering the facts of the case, allowed the appeal of assessee, directing the jurisdictional Assessing Officer to allow the FTC as per Form 67 filed by the assessee and claimed in his ITR for the said year, by stating as under:

"5.2 A perusal of the appellant's ITR and computation of income for A.Y. 2021-22 as well as Form No. 67 filed by the appellant on 31/01/2022 available on the Department's system, it is seen that even though the said Form No. 67 was not filed before filing of his ITR on 31/12/2021, the appellant filed the same on 31/01/2022, which is well before the processing of appellant's ITR on 13/10/2022. The credit of foreign tax paid in United states of America was denied to the Appellant as Form 67 was considered as not been filed.

5.3 Since the appellant filed the Form No. 67 on 31/01/2022, (date of order 31/10/2022) well before the processing of the ITR, the denial of Foreign Tax Credit by CPC was not called for. It is worthwhile to mention that on similar set of facts, while deciding the appeal in the case of YogeshDnyandeoKinagevs ADIT, CPC,the Hon. Mumbai "Bench of ITAT in ITA No. 1458/Mum/2023 dated 10.08.2023 held as under:

"the decision of the Mumbai Bench of the Tribunal in the case of SonkashiSinha Vs. Commissioner of Income Tax (Appeals): [2022] 142 taxmann.com 414 (Mumbai - Trib.) wherein it was held as under:

"12. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In

such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128(9) of the Income-tax Rules, 1962 provides that the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) Ltd. (Supra) wherein following its earlier order in the case of Ms.Brinda Rama Krishna (supra) it was held that "one of the requirements of rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns and that this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67. Same view is also taken by a coordinate division bench in VinodkumarLakshmipathi v. CIT(A) [IT Appeal No. 680/Bang/2022, 6-9-2022]. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for nonadherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the Honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the Act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the

assessment, though not in accordance with rule 128 (9) of The Income-tax Rules, which provided that such form shall be filed on before the due date of filing of the return of income. Accordingly, ground number 20 of the appeal of the assessee is allowed. "

13. In the aforesaid case it was held by the Tribunal that the Appellant would be eligible to foreign tax credit where Form No. 67 is filed before the completion of assessment for the relevant assessment year. In the present case also Form No. 67 has been filed by the Appellant before the processing the return of income under Section 143(1) of the Act. Therefore, respectfully following the decision of the Mumbai Bench of the Tribunal in the case of Sonakshi Sinha (supra), we remand the issue raised in present appeal back to the file of Assessing Officer with the direction to grant foreign tax credit to the Appellant as per the aforesaid decision after verification. Ground No. 1 raised by the Appellant is allowed for statistical purposes"

5.4 Respectfully following the decision of the Hon. ITAT Mumbai supra, the Jurisdictional AO is directed to allow the Foreign Tax Credit as per Form No. 67 filed by the appellant and claimed in his ITR for the said year."

4. Challenging the said decision of the learned Addl/JCIT(A), Revenue is in this appeal before the Tribunal.

5. At the outset, learned DR argued that Addl/JCIT(A) erred to observe that the assessee has not complied with the basic conditions to claim the FTC relief u/s. 90 of the Act as the assessee failed to file Form 67 r.w. Rule 128(9) which provides that it should be filed on or before the due date of filing the return of income as prescribed u/s. 139(1) r.w. Rule 12(3) of Income Tax Rules, 1962. He further argued that the decision of the Addl/JCIT(A) is ultra virus to the notification issued by the CBDT Notification No. 9/2017, dated 19/09/2017.

6. When the matter is called, neither the assessee nor any authorised representative entered appearance.

7. We have heard learned DR and perused the material on record. On a careful consideration of the contentions raised by learned DR, we are of the considered opinion that this issue is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in the case of Natco Pharma Limited vs. DCIT, in ITA No. 470/Hyd/2022, dt. 31/07/2023, wherein the identical issue has been decided as under:

“10. Learned AR submits that filing of Form 67 in accordance with rule 128 of the tax rules is only a procedural requirement to enable the tax authorities to verify the FTC available to the assessee, but it does not take away altogether the right of the assessee to claim the FTC.

11. Insofar as this issue is concerned, this is no longer res integra and we find that the Bangalore Bench of the Tribunal in the case of M/s.42 Hertz Software India Pvt.Ltd vide ITA No.29/Bang/2021 order dated 07/03/2022 for the assessment year 2017-18, decided an identical issue and held that FTC cannot be denied to the assessee, where the assessee filed FTC in Form 67, although belatedly since filing of such Form 67 is not mandatory but directory in nature. Relevant observation of the Tribunal from para 6 onwards reads as under:-

“6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms.Brinda Kumar Krishna vs. ITO in ITA no.454/Bang/2021 by order dated 17/11/2021”.

12. A Co-ordinate Bench of this Tribunal in the cases of Shridhar Madhav Diwan vs. DCIT in ITA No. 102/Hyd/2023, dated 24/05/2023 and Purushothama Reddy Vankireddy vs. ADIT in ITA No. 526/Hyd/2022, dated 05/12/2022, followed the same and held the issue in favour of the assessee. These

decisions are applicable to the facts of the case and while respectfully following the said view, we hold the issue in favour of assessee.”

8. Respectfully following the said decision of the Co-ordinate Bench of the Tribunal, we deny the contentions of learned DR and while rejecting the plea taken by the Revenue, dismiss the grounds raised.

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

Order pronounced in the open court on 27th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad,
Dated: 27/02/2024

TNMM

Copy forwarded to:

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3. Pr.CIT,1 Hyderabad.
3. DR, ITAT, Hyderabad.
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