

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदु व्वू छारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.161/Viz/2022

(निर्धारणवर्ष/ Assessment Year : 2019-20)

Asst. Commissioner of Income  
Tax, Circle-3(1),  
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. M/s. SSNR Projects Private  
Limited,  
Visakhapatnam.

PAN: AARCS 2464 C

(प्रत्यर्थी/ Respondent)

C.O. No. 29/Viz/2023

(In आयकरअपीलसं./ I.T.A. No.161/Viz/2022)

(निर्धारणवर्ष/ Assessment Year : 2019-20)

M/s. SSNR Projects Private  
Limited,  
Visakhapatnam.  
PAN: AARCS 2464 C  
(Cross Objector / Respondent in  
appeal)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यर्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. Asst. Commissioner of  
Income Tax, Circle-3(1),  
Visakhapatnam.

(Appellant in appeal)

Sri Samuel Nagadesi

Dr. Aparna Villuri, Sr. AR

05/02/2024

28/02/2024

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

The captioned appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre, Delhi [CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1043719856(1), dated 4/7/2022 arising out of the intimation passed U/s. 143(1) of the Income Tax Act, 1961 [the Act] for the AY 2019-20.

2. Briefly stated the facts of the case are that the assessee has filed its return of income on 31/10/2019 admitting a total income of Rs.12,81,68,235/-. The assessee claimed foreign tax credit of Rs. 2,83,87,928/- while filing the return of income but has not filed Form-67 as prescribed under Rule 128(9) of the IT Rules, 1962. Thereafter, the return was summarily processed by the CPC Bangalore wherein the CPC disallowed the assessee's claim of relief U/s. 90 / 90A of the Act with regard to foreign tax credit. Subsequently, the assessee filed the Form-67 online but the CPC Bangalore did not consider the same and passed the intimation U/s. 143(1) of the Act on 13/02/2021 wherein the Ld. AO invoked the provisions of Rule 128(9) of the IT Rules, 1962 and disallowed the foreign tax credit amounting to Rs. 2,83,87,928/- for non-filing of Form-67 before the due date of filing of the return of income U/s. 139(1) of the Act. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT (A)-NFAC. On appeal, the Ld. CIT(A)-NFAC discussed the

issue at length vide paras 6.1, 6.2 & 6.3 of his order and directed the Ld. AO to accept Form 67 with regard to the relief sought by the assessee and allowed ground raised by the assessee. While granting relief to the assessee, the Ld. CIT(A)-NFAC relied on various decisions as mentioned in paras 6.2 and 6.3 of his order. Aggrieved by the order of the Ld. CIT(A)-NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The Ld. CIT(A) erred in deleting the disallowance of claim U/s. 90 of the IT Act to the tune of Rs. 2,83,87,928/- for AY 2019-20 even though the assessee had not filed Form-67.*
- 3. The Ld. CIT(A) erred in observing the eligibility of the claim U/s. 90 of the Act with reference to the Rule 128(9) of the IT Rules wherein it was clear that the Form 67 shall be the return of income under sub-section (1) of section 139 of the Act.*
- 4. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal."*

3. In this appeal, the only issue raised by the Revenue vide its grounds of appeal is with respect to the allowance of Foreign Tax Credit where the assessee has filed Form-67 belatedly. At the outset, the Ld. DR while fully supporting the order of the Ld. AO relied on the decision of this Bench of the Tribunal in the case of

Muralikrishna Vaddi vs. ACIT in ITA No. 269/Viz/2021 (AY 2018-19), dated 14/6/2022. The Ld. DR vehemently argued that since Form-67 was filed belatedly, the Foreign Tax Credit should not be allowed to the assessee.

4. Per contra, the Ld. AR argued that debatable disallowances cannot be made through intimation U/s. 143(1) of the Act. It was further submitted by the Ld. AR that the assessee filed its return of income on 31/10/2019 being the extended due date for filing of return of income for the AY 2019-20 by claiming Foreign Tax Credit of Rs. 2,83,87,928/-. Further, the Ld. AR submitted that the assessee has filed its Form-67 on 17/2/2021. The Ld. AR further submitted that Form-67 even though filed belatedly, it was filed before the passing of intimation U/s. 143(1) of the Act by the CPC, Bangalore. The Ld. AR referred to the Intimation U/s. 143(1) of the Act wherein the date of order is mentioned as 13/3/2021. It was further submitted that there was a delay in obtaining the Foreign Tax Credit Certificate from Nepal Tax Authorities and hence the assessee could not file Form-67 within the time as prescribed under Rule 128(9) of the IT Rules, 1962. The Ld. AR further submitted that Article 23 of the DTAA between India and Nepal provides relief to the taxes paid outside India.

The Ld. AR relied on the Notification issued by the Central Board of Direct Taxes [CBDT] dated 18/8/2022. The Ld. AR therefore pleaded that filing of Form-67 is only a procedural aspect and can be considered as a directory in nature and not mandatory for claiming the Foreign Tax Credit. He therefore pleaded that the order of the Ld. CIT(A)-NFAC be upheld.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. In the instant case, admittedly the return of income for the AY 2019-20 was filed on 31/10/2019 being the extended due date for filing of the return of income for that assessment year. In the impugned Intimation U/s. 143(1) of the Act passed on 13/3/2021 and the written submissions filed by the Ld. AR, we find that Form-67 was submitted on 17/2/2021. There is no dispute on the fact that Form-67 has been filed before the generation of Intimation U/s. 143(1) of the Act. It is pertinent to mention here that under the similar facts and circumstances, recently the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. The Principal Commissioner of Income Tax – 8, Chennai and others in W.P.No.5834 of 2022 and

W.M.P.Nos.5925 and 5927 of 2022, dated 06.10.2023 has held as under:

- "8. ....
9. ....
10. *According to the learned counsel appearing for the respondent, the procedure under Rule 128 is mandatory and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income tax and claimed the benefits of FTC. However, the petitioner would submit that it is not mandatory. The Rule cannot make anything mandatory and it can be directory in nature, that too before the Assessment, the claim to avail the benefits of FTC is filed. Therefore, it would be the amounts to due compliance under the Act. The petitioner referred to the Judgment of the Hon'ble Supreme Court in the case of 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, wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.*
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."*

6. In the instant case, Form-67 was filed on 17/2/2021 while the intimation U/s. 143(1) was passed on 13/3/2021. The facts of the case decided by the Hon'ble Madras High Court (supra) are squarely applicable to the facts of the instant case. We therefore respectfully following the decision of the Hon'ble Madras High Court (supra), find no infirmity in the order of the Ld. CIT(A)-NFAC and accordingly the grounds raised by the Revenue deserves to be dismissed. The case relied on by the Ld. DR in the case of Muralikrishna Vaddi vs. ACIT (supra), the facts are distinguishable and hence not considered.

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

8. With respect to C.O. No. 29/Viz/2023, we find that the assessee has raised seven grounds in its cross objections. Ground No.1 & 2 raised by the assessee are supportive in nature to the decision of the Ld. CIT(A)-NFAC. The other five grounds are

legal in nature and since the appeal is adjudicated in favour of the assessee, these grounds are not adjudicated.

9. In the result, appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is disposed of as mentioned herein above.

Pronounced in the open Court on 28<sup>th</sup> February, 2024.

Sd/-

(दुव्वुऱार.एलरेडडी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 28.02.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s. SSNR Projects Private Limited, D.No. 51-8-40, Behind BOC Limited, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530013.
2. राजस्व/The Revenue –Asst. Commissioner of Income Tax, Circle-3(1), Income Tax Office, Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam