

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

**Before Shri George George K, Vice-President &
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.34/Bang/2024 : Asst.Year 2020-2021

Uma Maheshwar Rao Vedavelli Flat 101 A Block, Sai Mitra Meadows. 1 st A Cross Kaggadasapura C.V.Raman Nagar Post Bangalore – 560 093. PAN : ACGPV2295Q.	v.	The Assistant Director of Income-tax, CPC Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Monish Sawkar, Advocate
Respondent by : Sri.Subramanian.S, Addl.CIT-DR

Date of Hearing : 07.03.2024	Date of Pronouncement : 07.03.2024
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ORDER

Per George George K, Vice-President :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 06.11.2023 passed u/s.250 of the Income-tax Act, 1961 ("the Act" hereinafter). The relevant assessment year is 2020-2021.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the denial of Foreign Tax Credit (FTC) claimed u/s.90 of the Act, amounting to Rs.43,015.

3. The brief facts of the case are as follows:

The assessee an individual filed his return of income for the assessment year 2020-2021 on 31.12.2020 within the due

date prescribed u/s.139(1) of the Act. The assessee had claimed FTC amounting to Rs.43,015 u/s.90 of the Act. However, the requisite Form 67 was filed only on 24.01.2022 beyond the prescribed time limit on 10.01.2021 u/s.139(1) of the Act. The CPC while processing the return u/s 143(1) of the Act on 24.12.2021, did not grant the credit for FTC since the requisite Form 67 was not filed by the assessee within the due date prescribed u/s.139(1) of the Act. Therefore, the assessee filed the rectification application u/s.154 of the Act. The CPC disposed of the same on 20.06.2022, wherein the credit of FTC was not granted, for the reason that there was delay in furnishing Form 67.

4. Aggrieved by the order of the CPC passed u/s.154 of the Act, the assessee filed appeal before the first appellate authority. The CIT(A) dismissed the appeal of the assessee. The CIT(A) held that Form 67 has to be filed within the due date prescribed u/s.139(1) of the Act. Further, the CIT(A) held that there is no mistake apparent from record in the order passed by the CPC u/s.154 of the Act, warranting interference by him.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book enclosing therein copy of the ITR, computation of income for the relevant assessment year, copy of the intimation issued u/s.143(1) of the Act, copy of Form 67 filed on 24.01.2022 and the case laws relied on. The

learned AR submitted that the issue in question is squarely covered by the following judicial pronouncements:-

- (i) Duraiswamy Kumaraswamy v. PCIT [TS-5818-HC-2023 (Madras)-O]
- (ii) Brinda Rama Krishna v. ITO(2022) 193 ITD 840 (Bang.Tribunal)
- (iii) 42 Hertz Software India Pvt. Ltd. v. ACIT [TS-5736-ITAT-2022 (Bangalore)-O]
- (iv) Kazuya Watanabe v. ADIT [TS-6065-ITAT-2023 (Bangalore)O]
- (v) Shri Sunkesulapati Sumanth v. ITO [TS-5735-ITAT-2022 (Bangalore)-O]
- (vi) Shyamol Banerji v. DCIT [TS-5164-ITAT-2023 (Bangalore)-O]
- (vii) Sonia Sharma v. ITO [TS-5659-ITAT-2023 (Delhi)-O]
- (viii) Keval Niraj Hutheesing v. ITO [ITA No.559/Ahd/2022 – order dated 29.03.2023]

6. The learned Departmental Representative supported the orders of the CPC and the CIT(A).

7. We have heard the rival submissions and perused the material on record. The various orders of the Tribunal (cited supra), had categorically held that the requirement of filing Form 67 within the due date prescribed u/s.139(1) of the Act cannot be treated as mandatory. Further, it was held that it is to be treated as directory in nature. This is because Rule 128(9) of the Income-tax Rules, 1962 does not provide for

disallowance of FTC in case of delay in filing Form 67. On identical facts, the Ahmedabad Bench of the Tribunal in the case of Keval Niraj Hutheesing in ITA No.559/Ahd/2022 (order dated 29.03.2023) after considering the judicial pronouncements, had directed the AO to give credit for FTC after due verification of Form 67 filed. In the afore-mentioned case also, Form 67 was not filed before the processing the return u/s.143(1) of the Act, but was filed subsequently. The relevant finding of the Ahmedabad Bench of the Tribunal in the case of Keval Niraj Hutheesing (supra), reads as follows:-

“7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has paid the taxes on the income earned in United Kingdom in that country and assessee is asking for credit of the same while filing the return of income. The CIT(A) held that the assessee has not filed Form 67 before time allowed under Section 139(5) of the Act and therefore, Form 67 is non-est in law does not categorically discussed the assessee’s case as the assessee has already paid taxes in UK and as per Article 24(2) of the DTAA between India and UK the foreign income cannot be taxed twice. The decision of Bangalore Tribunal in case of Vinodkumar Lakshmipathi vs. CIT is dealing on the identical situation and the Tribunal has taken cognizance of the same in light of the decision of Hon’ble Supreme Court in case of Mangalore Chemicals & Fertilizers Ltd. vs. DCIT (1992 Supp (1) SCC 21) wherein it was observed as under:

“The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.”

The Tribunal further held that:

Further reliance was placed on the decision of the Hon'ble Supreme Court, in the case of Sambhaji and Others v. Gangabai and Others, reported in [2008] 17 SCC 117, wherein it has been held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. The procedures are handmaid and not the mistress. It is a lubricant and not a resistance. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. It was submitted that filing of Form 67 as per the provisions of section 90 read with rule 128(9) is a procedural law and should not control the claim of FTC.

12. It was further submitted that even in the context of 80-IA(7), 10A(5) etc, wherein there is specific provision for disallowance of deduction/exemption if audit report is not filed along with the return, various High Courts have taken a view that filing of audit report is directory and not mandatory. Reliance in this regard was placed on the following cases:

- ◆ CIT v. Axis Computers (India) (P.) Ltd. [2009] 178 Taxman 143 (Delhi)
- ◆ PCIT, Kanpur v. Surya Merchants Ltd. [2016] 72 taxmann.com 16 (Allahabad)
- ◆ CIT, Central Circle v. American Data Solutions India (P.) Ltd [2014] 45 taxmann.com 379 (Karnataka)
- ◆ CIT-II v. Mantec Consultants (P.) Ltd. [2009] 178 Taxman 429 (Delhi)
- ◆ CIT v. ACE Multitaxes Systems (P.) Ltd [2009] 317 ITR 207 (Karnataka).

13. It was submitted that as per the provisions of section 90(2) of the Act, where the Central Government of India has entered into a DTAA, the provisions of the Act would apply to the extent they are more beneficial to a taxpayer.

Therefore, the provisions of DTAA override the provisions of the Act, to the extent they are beneficial to the assessee. Reliance in this regard is placed on the following cases and circulars:

- Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)
- CIT v. Eli Lily & Co. (India) (P.) Ltd. [2009] 178 Taxman 505 (SC)
- GE India Technology Centre (P.) Ltd. v. CIT [2010] 193 Taxman 234 (SC)
- Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42 (SC) (Pgs. 106-109 of PB 2-Paras 25 & 26)
- CBDT Circular No. 333 dated 2/4/82 137 ITR (St.)

It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision.

14. The learned DR reiterated the stand of the revenue that rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to give FTC. He also submitted that the issue was debatable and cannot be subject matter of decision in sec.154 proceedings which are restricted in scope to mistakes apparent on the face of the record.

15. In his rejoinder, the learned counsel for the Assessee submitted that Form No. 67 was available before the AO when the intimation u/s. 143(1) of the Act dated 28-5-2020 was passed. He pointed out that the AO or the CIT(A) did not dismiss the Assessee application for rectification u/s. 154 of the Act on the ground that the issue was debatable but rather the decision was given that the relevant rule was mandatory and hence non-furnishing of Form No. 67 before the due date u/s. 139(1) of the Act was fatal to the claim for FTC.

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67; (ii) filing of Form No. 67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s. 154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s. 154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s. 154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard.

17. In the result, the appeal is allowed.”

8. Thus, the facts are identical in the present case as well and therefore, we direct the Assessing Officer to give credit for foreign tax as per Form 67 dated 05.04.2021 filed by the assessee prior to the filing of the appeal before the CIT(A) after due verification.”

8. In the light of the aforesaid judicial pronouncements, we direct the A.O. to give credit for FTC after due verification of Form 67.

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

Order pronounced on this 07th day of March, 2024.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
VICE-PRESIDENT

Bangalore; Dated : 07th March, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Bengaluru.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore