

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

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.474/Hyd/2023		
Assessment Year: 2020-21		
CES Limited, Hyderabad. PAN : AADCS4564P.	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao, C.A.	
Revenue by:	Ms. Sheetal Sarin, Sr. AR.	
Date of hearing:	19.03.2024	
Date of pronouncement:	22.03.2024	

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi invoking proceedings under section 154 of the Income Tax Act, 1961 (in short, "the Act") for the A.Y 2020-21 on the following grounds :

2. The grounds raised by the assessee reads as under :

“1. The Ld. CIT(A) erred in considering the fact that the Rectification order passed u/s 154 of the Income Tax Act, 1961, dated 03.06.2022 passed by the Ld. CPC, Bangalore is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The Ld. CIT(A) erred in considering the fact that the Ld. CPC, Bangalore ought to have appreciated the fact that the foreign tax credit as claimed by the assessee company was not considered in computation but the same was considered in Annexure TR (As computed) in the Rectification order u/s 154 which clearly states that there is an error while passing the rectification order dated 03.06.2022.

3. The Ld. CIT(A) ought to have appreciated the fact that the Ld. CPC, Bangalore has erred in making the disallowance of Rs. 64,39,196/- credits claimed u/s 90 of the IT Act on the reason of delay in filing of Form No. 67, which is against the provisions of law and against the decision of Jurisdictional ITAT.

4. The Ld. CIT(A) erred in considering the fact that the Ld. CPC, Bangalore ought to have appreciated that the assessee is eligible for claim of tax relief u/s 90 of the Act and the action of Ld. CPC in disallowing the same in the rectification order u/ s 154 is bad in law and unjustified.

5. The Ld. CIT(A) erred in considering the fact that the Ld. CPC, Bangalore ought to have given the tax credit to the assessee to the extent of the taxes paid in foreign country as the corresponding income has already been included in the Indian ITR filed.

6. The Ld. CIT(A) erred in considering that the Ld. CPC, Bangalore ought to have appreciated the fact that assessee has itself paid the tax of amount of Rs. 64,39,136/- and that the disallowance of the same by the A.O.(CPC) U/ s 143(1) of the IT Act would lead to double taxation which is against the provisions of law.

7. The Ld. CIT(A) erred in considering that the LD. CPC, Bangalore ought to have appreciated the fact that according to DTAA u/s 90 of Act 1961, it is allowed to get the credit of the taxes already paid on the income offered to tax in both the states (Country of source and country of residence).

8. *The Ld. CIT(A) ought to have considered that the Ld. CPC, Bangalore erred in not appreciating the fact that the US branch income was duly considered in the books of the CES Limited and offered to tax in India and necessary withholding taxes on the same income paid in US has been claimed as per DTAA and Section 90 of the Act.*

9. *The Ld. CIT(A) ought to have appreciated that the Ld. CPC, Bangalore erred in considering the fact that filing of Form 67 is not mandatory but directory in nature and disallowing the rightful claim of Foreign Tax Credit on the simple reason, being the assessee failed to file Form 67 within the due date, is bad in law and unjustified.*

10. *The Ld. CIT(A) ought to have recalled the settled position of law which clearly states that a benevolent provision of the IT Act cannot be denied to an assessee on the reason of technical defects, which benefit is otherwise allowable to the assessee.*

11. *The Ld. CIT(A) ought to have referred to the latest decision of the Hon'ble jurisdictional tribunal in the case of Baburao Atluri, where in the Hon'ble bench had clearly held that "requirement of filing Form No. 67 is only directory and not mandatory"*

3. Facts of the case, in brief, are that assessee is a company engaged in the business of Information Technology and Information Technology enabled services. Assessee company has filed its original return u/s 139(1) for the A.Y 2020-21 on 02.02.2021 by declaring total income Rs.10,51,37,110/- and a refund of Rs. 4,65,570/- Thereafter on 26.03.2021, the assessee has filed the revised return u/s 139(5) of the Act by declaring total income of Rs. 10,51,37,110/- and claimed a refund of Rs. 69,04,760/-. Later, the assessee has filed return in response to intimation order passed in respect of return filed on 26.03.2021 and has rectified the inconsistency in expenditure claimed u/s 37(1) in the return and filed rectified Return of Income U/s 154 on 25.04.2022 by admitting total income of Rs.10,51,37,110/- and claimed a refund of Rs. 69,04,760/-. The

rectified return filed on 25.04.2022 was processed by the CPC and a rectification order under section 154 of the Income Tax Act, 1961 dated 03.06.2022 was issued by determining the total income of the Assessee at Rs.10,51,37,120/-. The order also included a refund of Rs.4,55,560/-, but it erroneously disallowed tax relief claimed under section 90 of the Act amounting to Rs.64,39,196/- and incorrectly considered Fees payable under section 234F as Rs.10,000/-.

4. Feeling aggrieved by the order passed by the assessing officer u/s 154 of the Act, assessee filed appeal before the Ld. CIT(A), who granted partial relief to the assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. At the outset, ld.AR for the assessee contends that the disallowance of Rs.64,39,196/- under section 90 for Foreign Tax Credit is unwarranted, as they have declared the export turnover and filed Form-67 on 26.03.2021. Additionally, the assessee argued that the provisions of the India-US DTAA support their claim for the foreign tax credit. Further, the ld. AR for the assessee contended that the requirement to file Form No. 67 before the due date is not mandatory but directory. He further submitted that the credit for foreign tax paid cannot be denied based on procedural technicalities.

7. The ld. AR for the assessee filed the written submissions in support of its case. The relevant portion of the written submissions filed by the assessee is to the following effect :

“2. Disallowance u/s 90 – Foreign Tax Credit of Rs.64,39,196/-

2.1. In this regard, it is to submit that the Assessee Company during AY 2020-21 has total export turnover of Rs. 1,13,38,58,276/- (Copy of Audited Financial Statements is enclosed in paper book vide page No.99-108). It is also to submit that Assessee has offered net income of Rs. 10,51,37,110/- as per the Income tax Return filed for AY 2020-21 on 02.02.2021. (Copy of ITR Form and computation of Total Income for AY 2020-21 are enclosed in paper book vide page No. 3-98 and 127-130 respectively).

2.2. In respect of export turnover and claim of Foreign Tax Credit, Appellant hereby submits that they have paid taxes on the income earned outside India and has duly filed Form-67 on 26.03.2021 as per Rule 128 of Income Tax Rules, 1963. (Copy of Form 67 is enclosed in paper book vide page No.109-110) and Assessee has made claim of Foreign Tax Credit u/s 90 of the Act in the Income Tax return Filed for AY 2020-21. However, Ld. CPC, Bangalore in the order u/s 154 of the Act dated 03.06.2022 has disallowed the relief claimed U/s 90 of the Act amounting to Rs. 64,39,196/- as per serial no. 33 of the order. The Ld. CIT(A) also upheld the action of the AO-CPC on the ground that Form No. 67 has not been filed within the due dates mentioned u/s 139 of the Act.

2.3. It is to mention that the Present Appeal is against the order u/s 250 of the Act dated 15.09.2023 and the issue in the consideration is wrongful disallowance of claim of Foreign Tax Credit u/s 90 of the Act amounting to Rs.64,39,196/-.

2.4. In this regard it is to submit that the Ld. CIT ought to have considered the fact that claim made U/s 90 of the Act can never be denied when the Assessee has duly offered the Export turnover in its return of Income and thereby the Assessee is eligible to claim foreign tax Credit of Rs. 64,39,196/- . Moreover, the assessee has discharged the procedural requirement laid down in the Act of filing Form 67 as per the Rule 128 of the Income Tax Rules, 1963. (Copy of Form 67 is enclosed in paper book vide page No.109-110).

2.5. Further, it is also to mention that as per rule 128 of the Income Tax Rules, 1963 the Assessee being the resident of Indian country is allowed to claim a credit for the amount of foreign tax paid by the Assessee in country or specified territory outside India by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

2.6. It is also to mention that as the Assessee has already included the US branch income in the books of account and offered to tax in India and the necessary withholding taxes on the same income is paid in US and the same has been claimed as per DTAA as per section 90 of the Act.

2.7. The assessee further submits that the provisions of DTAA over rides the entire Income Tax Act and thus the claim made U/s 90 can never be disallowed. For your kind pursual the appellant hereby submits the relevant clause of double taxation agreement with USA is reproduced here:

INDIA US DTAA:

'2. (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States.'

3. Filing of Form No. 67 is not mandatory but a directory provision:

3.1. The Ld. CIT(A) in his order u/s 250 dated 15.09.2023 had denied the claim of Foreign Tax Credit (FTC) by the assessee company on the ground that the assessee has not filed Form No. 67 within the due dates mentioned u/s 139(1) of the Act. The Ld. CIT(A) ought to have appreciated the fact that one of the requirements of Rule 128 for claiming FTC is that Form No. 67 is to be submitted by the 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) provides that Form No. 67 should be filed on or before the due date of filing the return of income. However, nowhere it is stated that in case of delayed filing of Form No. 67, the foreign tax credit which is deducted from the assessee in a foreign country would be denied. The credit in respect of foreign tax cannot be denied to the assessee for the technicality of not filing the Form No. 67 within the due date of return u/s 139(1) of the Act.

3.2. The assessee is relying on the following case law delivered by the Kolkata Bench of the Tribunal in the case of "Mahua Bagchi vs ACIT, Circle-61, Kolkata" wherein it is stated that:

"After hearing rival contentions and perusing the material on record, we find that the assessee served abroad and some foreign tax to the tune of Rs. 1772,470/- was deducted in United Kingdom under DTAA between India and UK and provision of Section 90(2) of the Act. We also note that Rule 128 sub-Rule 9 provides that Form-67 should be filed on or before the due date of filing the return of income. However, we note that nowhere it is stated that in case of delayed filing of Form-67 by way of foreign tax credit which is deducted from the assessee in foreign country Le U.K. would be denied. Accordingly, we are of the considered view that the assessee is entitled to get this foreign tax credit of Rs. 17,72,470/- u/s 90 of the Act. We also note that the claim in respect of foreign tax was allowed in the order passed u/s 143(1) of the dated 28.03.2019 and was withdrawn by the AO by passing order u/s 154 of the Act when the assessee filed form 67 before the AO. In our opinion the credit in respect of foreign tax cannot be denied to the assessee for the technicality of not filing the form 67 within the due date of return u/s 139(1) of the Act. The case of the assessee finds support from the decision of Coordinate Benches in the case of Atanu Mukherjee Vs. /TO in ITA No. 439/KOU2022 for AY 2020-21 order dated 20.12.2022 and Sobhan La! Gangopadhyay Vs. ADIT in ITA No. 82/KOL/2022 for A Y 2020-21 order dated 09.05.2023. In the result, the appeal filed by the assessee is allowed."

8. In support of its case, ld. AR has relied upon the following case laws.

- 1) Vinodkumar Lakshmi pathi vs CIT(A) reported in (2022) 45 taxmann.com 235
- 2) Brinda Ramakrishna vs ITO – ITA No.454/Kol/2023
- 3) Suresh Kumar Doodi vs ACIT – ITA No.164/JP/2023
- 4) Purushothama Reddy Vankireddy vs ADIT – ITA No.526/Hyd/2022
- 5) Pakala Shailendra Prasad vs ITO - ITA No.210/Hyd/2023
- 6) Ashish Agarwal vs ITO – ITA No.337/Hyd/2023
- 7) Baburao Atluri vs DCIT – ITA No.108/Hyd/2023.

9. Per contra, ld.DR relied upon the orders of lower authorities.

10. We have heard the rival submissions and perused the material on record. We agree with the contentions put forth by the learned counsel for the assessee and hold that Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67, filing of Form No.67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and Rules cannot be contrary to the Act. Before me, ld. AR submitted that the case is already covered in favour of the assessee and filed the orders of Tribunal wherein the Tribunal gave decision in favour of assessee, including the order in ITA No.337/Hyd/2023. Further, the said decisions are not stayed or over-ruled by any of the higher Judicial Forums. In view of the above circumstances, I respectfully following the decision of the co-ordinate Bench of the Tribunal passed in the case of Ashish Agarwal Vs. ITO in ITA No.337/Hyd/2023 dt.26.09.2023, allow the appeal. Thus, the appeal of the assessee is allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 22nd March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd March, 2024.

TYNN/sps

Copy to:

S.No	Addresses
1	CES Limited, Hyderabad, C/o. P. Murali and Co., 6-3-655/2/3, Somajiguda, Hyderabad, Telangana - 500082
2	The Deputy Commissioner of Income Tax, Circle – 1(1), Hyderabad.
3	Prl.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order