

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 1100 & 1101/Bang/2023

Assessment Years : 2017-18 & 2019-20

Shri Narendra Nath Ratnakaram, L-1-19, Paramount Raghavendra, 42/6, Varthur Road, Bangalore North, Kundalahalli S.O, Bangalore – 560 037. PAN: AEEPR8524A	Vs.	The Deputy / Assistant Commissioner of Income Tax, Circle – 5(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Adam Kajabee, CA
Revenue by	:	Dr. Nischal, Addl. CIT (DR)

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	22-03-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of order passed by NFAC dated 19.12.2022 for A.Y. 2017-18 and 20.12.2022 for A.Y. 2019-20.

At the outset, we note that the issue raised by assessee in both the appeals pertains to non-granting of foreign tax credit to the assessee as per article 25(2)(a) of the DTAA; between India and USA r.w.s. 90 of the IT Act. Therefore the grounds raised by assessee for A.Y. 2017-18 are reproduced as under:

“1. On the facts and circumstances of the case, the order of The Learned CIT (Appeals) is erroneous and against the provisions of the Income Tax Act and Prejudicial to the Appellant.

2. The Learned CIT (Appeals) has erred by passing order U/s. 250 without giving reasonable opportunity of being heard to Appellant which results in tax demand and is unlawful.

3. The Learned CIT (Appeals) has erred in understanding Section 90 of the Act read with Article 25(2)(a) of the DTAA which provides that withhold tax paid in USA shall be allowed as a credit against the Indian tax but limited to proportion of Indian tax.

4. The Learned CIT (Appeals) failed to analyse the provisions of law that neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements.

5. The Learned CIT (Appeals) failed to appreciate the fact that claim of FTC is assessee's vested right as per Article 25(2)(a) of the DTAA read with Section 90 and same cannot be disallowed for non-compliance of procedural requirement.

6. Though the appellant had specifically mentioned the judgement of Brinda Rama Krishna Vs ITO ITAT Bangalore ITA No. 454 Bang 2021 as a part of facts and grounds, the Learned CIT (Appeal) had failed to neither comment on the judgement nor specifically rejected.

7. *The Learned CIT (Appeal) when passing the order has ignored the law laid down by 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- "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 with respect to the wordings "*

8. *The Learned CIT(A) ignored the provisions of the Act and Rule 128(9) that it is direction to file Form 67 on or before the due date of filing the return of income and the Rule or the act nowhere provides that in case Form 67 is not filed within stated time frame, the relief u/s 90 of the Act would be denied.*

9. *The Learned CIT(A) was incorrect in interpretation of law by ignoring that, either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act like there are many sections in the Act which specifically deny deduction or exemption or relief in case the return is not filed within prescribed time namely in section 80AC, 80-IA(7), 10A(5) and 10B(5) and such language is not used in Rule 128(9), therefore, such condition cannot be read into Rule 128(9) and exemption cannot be denied due to non-filing or delay in filing Form 67.*

10. *The Learned CIT (Appeals) has ignored the Judgement of the SMC Bench of ITAT, Bangalore in the case of Brinda Rama Krishna Vs ITO ITAT Bangalore ITA No. 454 Bang 2021 it was held that.*

a. Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67.

b. filing of Form No.67 is not mandatory but a directory requirement and

c. DTAA overrides the provisions of the Act, and the Rules cannot be contrary to the Act.

The Appellant prays to consider his submissions before passing the order in this appeal to meet ends of justice and erase the tax demand assessed by the Learned Assessing Officer.

Among and other grounds that would be urged at the time of hearing the appellant craves leave to amend, alter, delete such grounds, and add such additional grounds, adduce, and explain such additional evidence as facts and circumstances of the appellant's case.

The appellant humbly submits that the appeal be admitted, and the matter be adjudicated in fair and judicious manner and opportunity of being heard be afforded to meet the ends of justice.

PAYER

The Appellant prays that the addition of tax liability on account of delay in filing form 67 is Rs. 25,230/- including interest to be deleted.”

2. Brief facts of the case are as under:

2.1 The assessee is a resident individual and salaried employee who had earned dividend from a foreign company during the A.Ys. under consideration. It is submitted that the foreign company had withheld the relevant taxes in USA. The assessee while filing the return of income during the relevant years under consideration claimed the foreign tax credit of Rs. 23,328/- for A.Y. 2017-18 and Rs. 32,392/- for A.Y. 2019-20. It is submitted that, inadvertently Form 67 was not filed along with the return of income in respect of FTC claim.

The CPC while processing the returns for the years under consideration, disallowed the FTS u/s. 90 of the act, in the absence of Form 67.

2.2 The assessee filed rectification u/s. 154 along with the request to consider Form 67, which was rejected on the ground that, Form 67 was to be filed by assessee on or before the due

date of furnishing of the return of income prescribed u/s. 139(1) of the act.

2.3 Aggrieved by the orders of the Ld.AO u/s. 154 of the Act, the assessee preferred appeal before the Ld.CIT(A).

The Ld.CIT(A) upheld the order of the Ld.AO, decided u/s. 154 of the act.

2.4 Aggrieved by the order of the NFAC/CIT(A), the assessee filed appeal before this *Tribunal*.

3. At the outset, the Ld.AR submitted that there is a delay of about 298 days for A.Y. 2017-18 and 294 days for A.Y. 2019-20 in filing the present appeals before this *Tribunal*.

The assessee has filed condonation petitions dated 14.06.2023 and 16.06.2023 for A.Ys. 2017-18 and 2019-20 respectively seeking the delay to be condoned.

It was submitted in the affidavit that assessee was suffering from health issues due to which he could not approach the representative to file the appeals within the due date.

3.1 The Ld.AR submitted that in view of the above, the assessee could not file the appeals before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 298 / 294 days in filing these present appeals before this *Tribunal*. The reason for the delay in filing the present appeals were due to reason beyond the control of the assessee.

He thus prayed for the delay to be condoned.

3.2. The Ld.DR though objected, however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeals.

We have perused the submissions advanced by both sides in the light of records placed before us.

3.3. It is noted that there is no malafide intention on behalf of assessee in not filing the present appeals within limitation. It is noted that, there is no malafide intention on behalf of assessee in not filing the present appeals within time. In our opinion, sufficient and reasonable cause has been made out by the assessee for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions, wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

- 1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

3.4. Considering the above observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals.

Accordingly, the delay in filing the present appeals stands condoned.

Coming to the merits of the appeals, we have considered the submissions advanced by both sides in light of records placed before us.

4. On merits of the case, there is no dispute that assessee is entitled to claim FTC u/s. 90 of the act r.w. article 25(2)(a) of India US DTAA.

5. Rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed u/s. 139(1) of the act. However, the rule nowhere provides that if the Form 67 is not filed within the stipulated time, the relief as sought by the assessee u/s. 90 of the act is to be denied. Filing

of Form 67 is a procedural / directory requirement and is not a mandatory requirement. It was submitted by the Ld.AR that violation of procedural norms does not extinguish the substantive right of claim of FTC. Assessee has placed reliance on the decision of *Hon'ble Supreme Court* in case of *Sambhaji and Others vs. 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. *Hon'ble Supreme Court* further emphasised that the procedures are handmade 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 thus submitted that filing of Form 67 as per the provisions of section 90 r.w. Rule 128(9) is a procedural law and cannot control the claim of FTC. Further there is no condition prescribed in the DTAA to disallow the FTC for non-compliance of any procedural provision. Even otherwise the provisions of DTAA override the provisions of the act and assessee has a vested right to claim the FTC under the tax treaty which cannot be disallowed for merely delay in compliance of a procedural provisions.

6. In our considered opinion, assessee has resorted to the provisions of section 154 for rectification by filing Form 67 which is the correct procedure to be adopted in the present facts of the case and we do not find any merit in disallowing the claim of assessee to consider the Form 67 subsequently filed with the application u/s. 154 of the act. We, therefore, direct the Ld.AO

to consider the claim of assessee in the light of Form 67 i.e. filed along with application u/s. 154 of the act.

Accordingly, the grounds raised by assessee in both the appeals stands allowed.

In the result, both the appeals filed by the assessee for A.Ys. 2017-18 and 2019-20 stands allowed.

Order pronounced in the open court on 22nd March, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd March, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore