

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.380/DEL/2024
(Assessment Year: 2020-21)**

Gurcharan Singh,
12/161, Malviya Nagar,
New Delhi – 110 017.

vs.

ITO, Ward 7 (1),
Delhi.

(PAN : AAKPS0492G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Aggarwal, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 01.04.2024
Date of Order : 04.04.2024

ORDER

This appeal by the assessee is directed against the orders of the Id. Addl.CIT/JCIT (A)-5, Chennai dated 24.01.2024 for the assessment year 2020-21.

2. The sole issue in this case is denial of Foreign Tax Credit (FTC) of Rs.6,20,920/- by the CPC while processing the ITR filed by the assessee under section 143 (1) of Income-tax Act, 1961 (for short 'the Act') resulting in a tax demand of Rs.7,96,410/- and the reason being Form 67 was not filed along with the ITR before the time limit u/s 139 (1) of the Act but was submitted only on 30.10.2023 which is subsequent to the issue of notice u/s 250 on 18.10.2023.

3. Upon assessee's appeal, Id. CIT (A) although noted that case laws are in favour of the assessee but proceeded to deny the same by observing as under:-

“ In order to ascertain the correctness of claims made, a notice u/s.250 was issued on 18/10/2023 which was responded on 25/11/2023. The contents of the written submission, facts of the case, the case laws relied upon and the compliance to the rules laid down u/r.128 of the Income tax Rules, 1962 are carefully considered. It is an admitted fact that Form nO.67 has not been filed by the Appellant before the time limit specified u/s.139(1) for AY 2020-21 and such omission is attempted to be justified by the Appellant on the pretext that filing of Form NO.67 is not mandatory relying on certain judgements of the Tribunal. With due respect to the judicial authorities who had rendered in favour of the tax payers like that of the Appellant, it is brought on record that filing of Form no.67 is mandatory to claim the benefit of Foreign Tax Credit.

4.3 Taxes are paid in an alien nation, the particulars of which can never be verified by the Income tax Authorities. It is for such reason that Form no.67 which consists of 4 parts has a verification column, affirming that the claim of the FTC to the best of the knowledge and belief of the Appellant is true and correct. Providing credit of FTC in the absence of such verification is not logical while the authorities erred in failing to comprehend that the claims are otherwise not verifiable. Further, Rule 128 incorporates the word "Shall", which imply that filing of Form no.67 before the time limit u/s.139(1) [now extended to 139(4)] is directory/mandatory. Having failed to file the same, the CPC was correct in denying the credit of FTC paid abroad.”

4. Against the above order, assessee is in appeal before the ITAT, I have heard both the parties and perused the records.

5. Ld. Counsel for the assessee submitted that Form NO.67 was duly submitted during the course of assessment. Hence, referring to several case laws in this regard, he pleaded that the issue may be decided in his favour.

6. Per contra, Id DR for the Revenue relied upon the orders of the authorities below.

7. Upon careful consideration, I find that the identical issue was considered by the ITAT, Mumbai Bench in the case of Rohini Hattangadi vs. CIT (A) in ITA No.1896/Mum/2022 dated 02.12.2022 and the Tribunal had dealt with the issue as under :-

“11. Having heard the rival submissions and perused the material on record. It is pertinent to look into Rule 128 of the I. T. Rules for our perusal. The relevant extract is cited for ease of reference:

“Foreign Tax Credit.

128. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a 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, in the manner and to the extent as specified in this rule.

...

(9) 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 subsection (1) of section 139, in the manner specified for furnishing such return of income.

12. From the above mentioned Rule 128, it is evident that the assessee has to file Form 67 on or before the due date of furnishing the return of income as per section 139(1) of the Act, which the statement specifies as mandatory and not directory as per the word ‘shall’ used in the said provisions. It is evident that the assessee has filed Form 67 belatedly after the due date for filing of return u/s. 139(1) and, hence, the lower authority have rejected the claim of the assessee. Though the decision cited by the Id. Departmental Representative (Id. DR for short) in Muralikrishna Vaddi, Visakhapatnam (supra) by the co-ordinate bench has held that delay in filing of Form 67 disentitles the assessee to claim FTC as the said

procedure is mandatory, we are inclined to peruse the decisions of the tribunal cited by the assessee in the case of Ms. Brinda Ramakrishna (supra). On similar facts, the co-ordinate bench has considered the delay in filing of Form No. 67 as only a procedural defects and has also considered the decision of the Hon'ble Supreme Court in Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner (1992 Supp (1) Supreme Court Cases21) and Sambhaji and Others vs. Gangabai and others [2008] 17 SCC 117 (SC), which laid down the proposition that procedural law should not be construed as mandatory and should only aid the claim of substantive right.

13. Furthermore, the said decision of the tribunal has also relied on various decisions, which held that provisions of DTAA override the provisions of the Act, as far as it is beneficial to the assessee. The Tribunal has held that delay in filing Form No. 67 should not by, in anyway, deny the claim of FTC enumerated in the DTAA and the intention of the legislation in the said case has to be construed in a manner which benefits the assessee. The A.O. is hereby directed to allow the FTC claim of the assessee and to grant refund in accordance with the law.

14. By respectfully following the above cited decision, we hereby allow the appeal filed by the assessee.”

8. I find that the above decision fully covers the issue in the present case.

Hence, following the precedent as above, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

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

Order pronounced in the open court on this 4th day of April, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 4th day of April, 2024

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**