

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 173/DEL/2024

Assessment Year: 2018-19

Isha Mago, B-604, Sukhsagar Apartment, IP Extension, Patparganj, Delhi-110092. PAN- AUIPM6876E	<u>Vs</u>	Asstt. Director of Income-tax, Central Processing Centre,
APPELLANT		RESPONDENT
Assessee represented by	Shri Ashu Dalima, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	20.03.2024	
Date of pronouncement	04.04.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 20.11.2023, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. That the Ld. CIT(A) erred in law and on facts in confirming the IT order not allowing the foreign tax credit of Rs 664166 on the ground that assessee has filed Form -67 beyond the due date in respect of claim of foreign tax credit.

2. That the Ld. CIT(A) erred in law and on facts in confirming the denial of Foreign Tax Credit by the Ld. AO on the ground that the Assessee has filed Form-67 beyond the due date in respect of the claim of foreign credit.

3. That the Ld. CIT (A) erred in law and on facts in confirming the IT order confirming the filing of Form 67 been mandatorily to be filed within the time allowed u/s 139(1) of the act ignoring the fact that the filing of the Form 67 was a procedural requirement and the same could have been filed at any time before the passing of the IT order.

4. That the Ld. CIT(A) erred in law in on facts in wrongly not allowing credit of Indian TDS tax of Rs. 10,522 without giving any reason for denial of credit of Indian TDS to the Appellant.

5. That the order of Ld. CIT (A) and of Ld. AO is bad in law and against the facts of the case.

6. That the Ld. CIT(A) erred in law and on fact in confirming the AO order dismissing the credit of Foreign Tax to assessee ignoring the fact that in assessment u/s 143(1) an addition can be made which is disputable in nature.”

2. The solitary grievance of the assessee is with regard to disallowance of foreign tax credit amounting to Rs. 6,64,166/-. It is noticed that the CPC vide intimation u/s 143(1) of the Income-tax Act, 1961 (the “Act”), disallowed the assessee’s claim of foreign tax credit on the ground that in this case Form-67 was filed late along with the return, beyond the due date for filing the return u/s 139(1) of the Act. Aggrieved against it the assessee appealed to the learned CIT(A), who also affirmed the action of the CPC. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee at the outset submitted that the issue in question is squarely covered in favour of the assessee by earlier decisions of the Tribunal. In support of his contention, learned counsel filed copies of orders of ITAT in the cases of *Vikas Daga vs. ACIT* [ITA no. 2536/Del/2022 (A.Y. 2019-20) – order dated 14.06.2023]; and *Eastman Industries Ltd. vs. ACIT* [ITA nos.

2990, 2991 & 2992/Del/2022 (A.Y. 2018-19, 2019-20 & 2020-21) – order dated 16.08.2023].

4. Learned DR opposed the submissions and relied on the orders of authorities below.

5. I have heard rival submissions and perused the material available on record. Learned DR could not controvert the fact that the issue in question is squarely covered in favour of the assessee by earlier decisions of the Tribunal in the cases referred to by the learned counsel for the assessee.

5.1 It is noticed that in the case of *Vikas Daga vs. ACIT (supra)*, the Tribunal has adjudicated identical issue, holding as under:

“8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs.1887114/-. In our considered opinion filing of form 67 is a procedural / directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act.”

5.2 It is also noticed that under similar facts and circumstances the ITAT Delhi Bench ‘B’ in the case of *Eastman Industries Ltd. vs. ACIT (supra)* has adjudicated identical issue, observing as under:

“7. Since in the present case the claim of the assessee was denied on this technical aspect without going into the merits of the FTC, therefore, we deem it fit to restore the issue to the files of the AO. The AO is directed to decide the claim of foreign tax credit as per the provisions of the law after admitting / accepting form -67. This common grievance is also allowed for statistical purpose.”

5.3 Therefore, respectfully following the binding precedent, I set aside the orders of authorities below and restore the matter to the file of AO with direction to verify the assessee's claim in respect of foreign tax credit as per the provisions of the law after admitting / accepting form -67 and decide the issue in accordance with law. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 4th April, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**