

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 266/Bang/2024
Assessment Year : 2018-19

Mediratta Manav, K-504, Purva Fountain Square, Varthur Main Road, Marathahalli, Bangalore. PAN – AGZPM 3194 N	Vs.	The Dy. Commissioner of Income Tax, Circle-3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Navaneeth N Kini, C.A
Revenue by	:	Shri Muthu Shankar, Addl. CIT (DR)

Date of hearing	:	16.04.2024
Date of Pronouncement	:	19.04.2024

ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. CIT (A), Madurai dated 08/01/2024 in DIN No. ITBA/APL/S/250/2023-24/1059481213(1) for the assessment year 2018-19.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in denying the claim of Foreign Tax Credit on the reasoning that the Form No. 67 was not filed within the due date.

3. In the present case, the assessee has claimed foreign tax credit u/s 90/91 of the Act amounting to Rs. 91,046/- in the return of income but the same was denied in the intimation u/s 143(1) of the Act as Form 67 was not filed within the due date i.e. 31/08/2018. On appeal, the Id. CIT(A) also upheld the intimation generated u/s 143(1) of the Act.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us submitted that this Tribunal in the case of M/s 42 Hertz Software India Pvt. Ltd., Vs. ACIT in ITA No. 29/Bang/2021 for the assessment year 2017-18 vide order dated 07-03-2022 has granted the benefit of foreign tax credit by observing that Form 67 is only directory in nature and not mandatory. Accordingly, the Id. AR prayed before us that the delay in filing the Form 67 should not be the reason for denial of foreign tax credit claimed u/s 90/91 of the Act.

6. On the other hand, the Id. DR vehemently supported the order of authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that this Tribunal in the case of **42 Hertz Software India Pvt. Ltd. cited (Supra)** involving identical facts and circumstances has decided the issue in favour of the assessee. The relevant extract is reproduced as under:

“4. 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.

5. On the contrary, the Ld.DR submitted that fulfillment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue

authorities were justified in refusing to FTC. We have perused the submissions advanced by both sides in light of records placed before us.

6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms.Brinda Kumar Krishna vs.ITO in ITA no.454/Bang/2021 by order dated 17/11/2021.

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P.) Ltd. reported in (2021) 432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly the grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

8. The facts of the case on hand are identical to the facts on the order above discussed, therefore, respectfully following the same, we are not inclined to uphold the findings of the authorities below.

9. Before parting, we note that the Id. CIT(A) while dismissing the claim of the assessee has made reference to the order of the Tribunal in the case of Muralikrishna Vaddi Vs. ACIT/Dy.CIT [2022] 142 taxmann.com 32 (Visakhapatnam Trib.). In this regard, we note that the facts are distinguishable from the facts of the case on hand as there was a delay of 2 years and no plausible reason was furnished by the assessee for filing the delay in Form 67 along with the return of income, whereas in the present case, the delay in filing the Form 67 was only of 5 months, which is not

inordinate, therefore, we are reluctant to place reliance on the order of the ITAT(Visakhapatnam Trib.) as discussed above. Accordingly we direct the AO to allow the claim of the assessee after due verification as per the provision of law. Hence ground of appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 19th day of April, 2024

Sd/-

(BEENA PILLAI)

Judicial Member

Bangalore,

Dated, 19th April, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

Sd/-

(WASEEM AHMED)

Accountant Member

By order

Asst. Registrar, ITAT, Bangalore