

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1812/Del/2023
Assessment Year: 2018-19

Vikash Daga,
D-022, The Belaire,
Golf Course Road,
DLF V,
Gurgaon,
Haryana – 122 002.

Vs DCIT,
Circle 3(1),
Gurgaon.

PAN: ADIPD4214E

(Appellant)

(Respondent)

Assessee by	:	Shri Sanjeev Kachhal, CA
Revenue by	:	Shri Sumesh Swani, Sr. DR
Date of Hearing	:	24.01.2024
Date of Pronouncement	:	18.04.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 08.05.2023 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.NFAC/2017-18/10084687 arising out of the appeal before it against the order passed u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961

(hereinafter referred as ‘the Act’), by the ITO, National Faceless Assessment Centre, Delhi (hereinafter referred to as the Ld. AO).

2. The ground raised by the assessee read as under:-

“1. On the facts and circumstances of the case, the final assessment order passed by the learned Assessing Officer under Section 143(3) of the Act is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in passing the order without considering the foreign tax credit merely due to a procedural lapse of filing of Form 67 is clear violation of the principle of natural justice.

3. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has grossly erred in upholding the disallowance of FTC and confirming the additional tax liability of Rs. 25,66,714/- as per following details:-

<i>Amount Disallowed</i>	<i>Nature of Disallowed</i>
<i>Rs. 43,07,8557-</i>	<i>Form 67 for AY 2018-19 has not been furnished before the due date as provided under section 139(1) in compliance to rule 128(9)</i>

4(i) On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making the disallowance of Rs. 43,07,855/-on account of foreign tax credit claimed by the assessee in respect of taxes paid in the USA and availed the relief from the double taxation as per the treaty between India and USA just due to the delayed submission of the Form 67 during the pendency of the assessment proceedings.

(ii) That the above said disallowance has been made despite the submissions and explanation along with the evidences brought on record justifying the claims made by the assessee.

(iii) That the above disallowance has been made ignoring the settled position of law that the foreign taxes paid by the assessee, shall be allowed as a credit against the Indian Tax, payable by a resident Indian to give him relief from double taxation on the same income.

(iv) On the facts and circumstances of the case, neither the Ld. AO nor the CIT (A), NFAC has not disputed the allowability of the foreign tax credit under 128 of Income Tax as the assessee has fulfilled all of the remaining conditions for claim of Foreign Tax Credit (FTC) . They have only disallowed the credit only on the ground that form 67 has not been filed on or before the due date of filing of return of income as per rule 128 (9) of the income tax rules, 1962

5. The Ld. AO has also grossly erred in computation of Federal Tax Credit of Rs. 29,04,684 in his order as the Federal Taxes paid on dividend and paid by way of challans have not been considered in this computation.

6. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in charging the interest under section 234A, 234B and 234C of the Income Tax Act.

7. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

3. Heard and perused the record. The controversy in short is that disallowance was made by the AO of Rs. 43,07,855/-on account of foreign tax credit claimed by the assessee in respect of taxes paid in the USA and availed as relief from the double taxation as per the treaty between India and USA. However, there was delay in submission of the Form 67 as the same was submitted during the pendency of the assessment proceedings.

4. Admittedly in regard to the issue for AY 2019-20 **in ITA No. 2536/DEL/2022 vide order dated 14/06/2023** the controversy has been settled to rest by the coordinate bench, in assessee’s own case. We consider it advantageous to reproduce the relevant part of the order dated 14/06/2023 (supra), here in below;

“3. Briefly stated the facts of the case are that the assessee being an individual Indian citizen filed his return of income on his global income that was taxable in India. The revised return of income was e-filed on 05.02.2019 declaring total income of Rs.13,07,98,810/- which included income earned in USA and claimed foreign tax credit of Rs.43,07,855/- u/s. 90 of the Act. The return was processed u/s.143(1) of the Act wherein the demand of Rs.1262070/.was created for which the assessee filed a rectification application u/s.154 of the Act which was denied by CPC Bangalore.

4. The assessee agitated the matter before the CIT(A) but without any success.

5. Before us the Counsel for the assessee vehemently stated that the return of income was filed on 05.02.2019 as form 67 could not be submitted due to technical issues the same was submitted technically on 16.02.2021 but since form 67 was not submitted alongwith the return of income, the foreign tax credit was denied.

6. The Counsel prayed for allowing the credit for foreign tax.

7. Per contra the DR strongly supported the findings of the lower authorities.

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. In the light of the aforesaid, there is nothing to distinguish the facts in the present assessment year and to decide anything on first principle basis. Thus, following the aforesaid decision for AY 2019-20 (supra), the grounds are decided in favour of the assessee.

6. In the result, the appeal filed by the assessee is allowed. The AO shall take into consideration the Form 67 filed by the assessee and complete the assessment in accordance with the law.

Order pronounced in the open court on 18.04.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 18th April, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi