

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश एम. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JUDICIAL MEMBER

आयकर अपील सं. / ITA NO. 747/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2020-21

Ashish Sood, C/o Shri Tejmoan Singh Advocate, # 527, Sector 10-D Chandigarh-160011	बनाम	The DCIT, Circle-1(1), Chandigarh
स्थायी लेखा सं. / PAN NO: APUPS7142C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tejmoan Singh, Advocate  
राजस्व की ओर से / Revenue by : Smt. Amanpreet Kaur, Sr. DR  
सुनवाई की तारीख / Date of Hearing : 16/04/2024  
उद्घोषणा की तारीख / Date of Pronouncement : 23/04/2024

### आदेश / Order

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by the Assessee who is an individual taxpayer and his residential status is that of a 'resident' in India, before this Hon'ble Tribunal under section 253 of the Income Tax Act, 1961 as amended from time to time.

2. The Assessee is aggrieved by DIN and order No. ITBA/APL/S/250/2023-24/1058258773(1) dt. 28/11/2023 for A.Y. 2020-21 which was passed by CIT(A)-6, Chennai, Tamilnadu in appeal no. NFAC/2019-20/10074913 under section 250 of the Income Tax Act, 1961. The aforesaid first appeal of the Assessee before the first appellate authority constituted under Income Tax Act, 1961, by virtue of the aforesaid order dt. 28/11/2023 was dismissed. Therefore the present second appeal under section 253 of the Income Tax Act, 1961, before us against the aforesaid order dt. 28/11/2023.

### Factual Matrix

3. The Assessee had for the A.Y. 2020-21 had filed return of income under section 139(1) of the Income Tax Act, 1961 on **21/09/2020** under

acknowledgment no. 569299010210920 declaring the total income as Rs. 1,65,39,120/- wherein total tax paid is shown as Rs. 4,93,295/-.

4. In computation of total income (revised) an amount of Rs. 7,70,863/- is claimed as eligible deductible under section 90/91 of the Income Tax Act, 1961 as amended from time to time. In support of such eligible deductible claim under section 90/91 of the Income Tax Act, 1961, the reliance is placed on Form No. 67 ( Rule 128) which is provided for under the Rule 128 of the Income Tax Rules which is titled as [" statement of income from a Country or specified territory outside India and Foreign Tax Credit"] **dt. 18/10/2021**. In the said Form 67 in Column 5 name of the Country is shown as:- " U.S.A", source of income as :- " Others", specific details as:- Shares of Foreign entity, income from outside India as:- Rs. 34,19,156/-. Foreign Tax Credit claimed as :-Rs. 7,70,863/-, tax payable on such income under normal provisions in India shown as:- Rs. 11,60,845/-, Article number of Double Taxation Avoidance Agreement as:- 25(2)(a). The total Foreign Tax paid as :-Rs. 7,70,863/- is thus claimed.

5. Be it noted that it is the amount of total Foreign Tax paid as Rs. 7,70,863/- which is in dispute between the Assessee and the respondent the department of Income Tax herein.

6. The Assessee in paper book filed before this Hon'ble Tribunal has placed reliance on document titled Global Stock Plan Services substitute form W-8 BEN & Other accompaniments which too were filed before the respondent CIT(A), along with copy of Form No. 67 dt. **18/10/2021**. The broad caption in index of paper book Column 1(c) the description of document is 'copy of Form No. 67 filed on 18/10/2021 along with annexures' (page 12 to 23 of PB). We have minutely perused the same. It is required to be noted and appreciated that Form No. 67 alongiwth annexure was filed on 18/10/2021 on portal before the AO which was duly uploaded much before the assessment order / intimation of AO **dt. 24/12/2021** under section 143(1) of the Income Tax Act, 1961, as

amended from time to time. In brief the income tax return was filed on the portal on 21/09/2020 claiming deductible amount of Rs. 7,70,863/- under section 90/91, the Form No. 67 alongwith its accompaniments was filed and uploaded on portal on **18/10/2021** and the assessment order / intimation of AO is dt. **24/12/2021** demanding **Rs. 9,77,330/- as tax payable**. In this order / intimation of AO under section 143(1) the Foreign Tax Credit (FTC) which was claimed of Rs. 7,70,863/- was denied. The first appellate authority CIT(A) too in the impugned order as aforesaid dt. 28/11/2023 has denied the claim of the assessee on account of FTC of Rs. 7,70,863/- on the ground that the same is not deductible under section 90/91 and has in turn confirmed the tax demand of Rs. 9,77,330/- as demanded by AO vide order / intimation dt. 24/12/2021 under section 143(1) of the Income Tax Act, 1961 as amended from time to time (corresponding income from outside India Rs. 34,19,156/-) the order of CIT(A) dt. 28/11/2023 in para 4 & 5 is reproduced below for sake of convenience and ease:

*"4. Decision*

*4.1 The Appellant is aggrieved by the denial of foreign tax credit of Rs.9,77,330/-, which according to CPC is not available when form 67 has not been filed before the time limit specified u/s.139(1). A notice was issued to the Appellant to establish the fact on filing of form no.67 to claim relief of taxes u/s.90. In response, to the same, the Appellant, vide letter dated 07/11/2023 submitted that the relief u/s.90 cannot be denied for the belated filing of form 67 and relied on the decision of ITAT, Chandigarh Bench rendered in ITA No.740/Chandi/2022.*

*4.2 The facts of the case and the compliance to the rules laid down u/r. 129(8) 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 TaxCredit.*

*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 129(8) 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.*

5. Conclusion: Accordingly, the grounds of appeal of the Appellant is DISMISSED."

## **Grounds of appeal**

7. The Assessee being aggrieved by the aforesaid order of CIT(A) dt. 28/11/2023 has interalia raised following grounds of appeal before us, which grounds of appeal are reproduced below:

*"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of the Foreign Tax Credit duly claimed in the return of income vide Form 67 while processing the return under section 143(1) vide intimation dated 24.12.2021 resulting in a tax demand of Rs. 9,77,330/- which is illegal, arbitrary and unjustified.*

*2. That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of the Foreign Tax Credit for the reason that the Form 67 was uploaded late on 18.10.2021 but before the intimation under section 143(1) dated 24.12.2021 which makes the issue debatable and as such upholding the disallowance of the claim on a debatable issue is beyond the scope of Section 143(1) which makes the addition made arbitrary and unjustified.*

*3. That the Ld. Commissioner of Income Tax(Appeals) has erred in not following the decisions of the Hon'ble High Court of Madras and various Benches of Hon'ble ITAT including that of the Jurisdictional Tribunal which are in favour of the assessee in utter disregard of the judicial discipline which is illegal, arbitrary and unjustified.*

*4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

*5. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable."*

## **Record of physical personal hearing**

8. The physical personal hearing before the Tribunal took place on 16/04/2024 when both the parties appeared before us and were heard at length on merits of their respective cases. Paper book for physical personal hearing held on 16/04//2024 which was on record on the files of the Tribunal was minutely perused by us and so also all the papers and proceedings of the case including that of CIT(A) and AO under section 143(1) of the Income Tax Act, 1961.

9. During the course of the hearing the Ld. Counsel for the Assessee Shri Tejmoohan Singh repeated and reiterated the facts of the case and grounds of appeal on the basis of material available on the record including the paper book. He vehemently contended that impugned order of Ld. CIT(A) dt.

28/11/2023 is bad in law, illegal, arbitrary and ought to be set aside by this Hon'ble Tribunal as Form No. 67 and its accompaniments were duly uploaded on the portal on **18/10/2021** claiming FTC of Rs. 7,70,863/- and whereas order of assessment / intimation under section 143 (1) is dt.**24/12/2021**. It was therefore incumbent upon the AO including CIT(A) to have considered the said Form No. 67 and its accompaniments under section 90/91 of the Income Tax Act, 1961 as allowable deductible amount on account of DTAA between India and U.S.A under Article 25(2)(a) but the same was not considered at all and ignored totally and no plausible reasons are given by the authorities below despite they exercising powers as quasi-judicial authorities. He contended that the assessment proceedings under section 143(1) before the AO and the first appellate proceedings before CIT(A) are quasi-judicial in nature and once the document like Form No. 67 under section 90/91 of the Income Tax Act and Rules are provided much before the assessment order / intimation under section 143(1) / first appeal order U/S 250 as the case may be, it is incumbent on part of lower authorities both i.e.; AO and Ld. CIT(A) to at least peruse the same and upon due verification given benefit of FTC but in the instant case both the authorities below have ignored the said FTC. The exercise of quasi-judicial power by Ld. CIT(A) is totally arbitrary, capricious, illegal, bad in law, in as much as he has stretched himself by observing in the impugned order dt. 28/11/2023 that **"taxes are paid in an alien nation, the particulars of which can never be verified by the Income Tax Authorities"**. The Ld. Counsel contended that merely because claim of FTC cannot be verified by the Income Tax Authorities is too farfetched and illogical to deny FTC to the Assessee herein. Upon a query by the Bench the Ld. DR brought to our notice that there is a set procedure / Standard Operating Procedure(SOP) in CBDT's International Tax Division which is a competent authority to make due verification of FTC once a proper request / requisition is received by them from the field officers PAN India. There is thus a due process for verification of FTC. Upon further a deeper query was raised by

the Bench then why observation of Ld. CIT (A) that “taxes **are paid in an alien nation, the particulars of which can never be verified by the Income Tax Authorities**”. Ld. DR replied very fairly that it ought not to be so. Due verification is done and that wrong message should not go to the assessee the tax payer. The AO and superior officers of the Income Tax Department are at full and complete liberty to send such request / requisitions for verification of FTC.

10. The Ld. Counsel Shri Tejmohan Singh for the Assessee then brought to our notice that the requirement of Rule 128 (9) of Income Tax Rules, 1962 are directory in nature and are not mandatory in character. He then invited our attention to the following judgments:

- *BachaspatimayumUmakanta Sharma Vs. DCIT in ITA No. 740/Chd/2022 dt. 18/04/2023*
- *Ms. Brinda Rama Krishna Vs. ITO reported in 193 ITD 840 (BangaloreTrib)*
- *42 Hertz Software India (P) Ltd. Vs. ACIT reported in 139 taxmann.com 448 (Bangalore Trib)*
- *Sonakshi Sinha Vs. CIT(A) reported in 142 taxmann.com 414 (Mumbai Trib)*
- *AnujBhagwatiVs. DCIT in ITA No. 1844/Mum/2022 dt. 20/09/2022*
- *NirmalaMurliRelwaniVs. ADIT in ITA No. 2094/Mum/2022 dt. 01/12/2022*
- *DuraiswamyKumaraswamy Vs. PCIT reported in 460 ITR 615 (Madras)*

10.1 The Ld. Counsel for the Assessee also assailed the impugned order of the Ld. CIT (A) dt. 28/11/2023 on the ground that by the notice under section 250 of the Act, dt. 23/10/2023 of Ld. CIT (A), the assessee was called upon to file counter arguments and grant of opportunity to submit objections which read as under:

#### ANNEXURE

*“Counter Arguments and grant of opportunity to submit objections*

*For the AY 2020-21, it is an admitted fact that form 67 was filed beyond the due date specified u/s.139(1). Therefore, credit of tax paid abroad was denied by the CPC-ITR-BLR and unless condoned by the Pr. CIT having jurisdiction over your case, credit cannot be extended. Therefore, you are requested to submit a condonation petition u/s.119(2)(b) of the Act before the Pr.CIT. As Appellate authority, the undersigned is not competent to condone the delay in filing Form no.67 and therefore the adjustment undertaken by the CPC u/s.143(1)(a)(ii) is proposed to be upheld.*

10.2 The Ld. Counsel then submitted that the aforesaid counter arguments were duly replied by the written submission dt. 07/11/2023 but unfortunately in the impugned order dt. 28/11/2023 there is not even a whisper on it and instead it diametrically different decision then which was proposed / perceived has

come. Had a specific objection in line with the impugned order dt. 28/11/2023 was called for perhaps the assessee would have met those objections. He then contended that the impugned dt. 28/11/2023 is illegal and bad in law.

11. We have perused all the above judgments carefully. In case of Sonakshi Sinha (supra) the issue was whether assessee would be eligible for FTC when Form No. 67 was filed before the completion of the assessment even though submission of the said form was not in accordance with un amended Rule 128 (9). The Hon'ble Tribunal in para 12 has held as under:

*"012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that 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 sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) [Ltd v. ACIT](#) [2022] 139 taxmann.com 448 (Bangalore - Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358 (Bang- Trib) it was held 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 and that 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. Same view is also taken by a coordinate division bench in VinodkumarLakshmi pathi V CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.*

12. In the present case the return of income was filed on **21/09/2020** under section 139(1) of the Income Tax Act, 1961 for the A.Y. 2020-21 but Form No. 67 and its accompaniments were uploaded on the system on 18/10/2021 claiming FTC whereas order of assessment / intimation under section 143(1) is dt.**24/12/2021**. The AO had about two months time to verify its material particulars but he choose not to do so. He infact ignored it completely. Further even before Ld. CIT(A) this Form No. 67 and its accompaniments were on record even then no verification of its material particulars were done so, he too infact ignored it completely on the ground that **taxes are paid in an alien nation, the particulars of which can never be verified by the Income tax Authorities** and on other untenable grounds as recorded. These facts herein are very peculiar than the facts of the cases cited at bar by the Ld. Counsel for the Assessee.

12.1 The Ld. Counsel finally placed reliance on the judgments of Hon'ble Madras High Court in case of DuraiswamyKumaraswamyVs. PCIT (supra) wherein in para 11, 12 & 13 it is held as follows:

*"11.The law laid down by the Hon'ble Apex Court in Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order.*

*12. Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore the impugned order is liable to be set aside.*

*13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order."*

## Conclusions and Findings

13. We are of the considered view that in view of nearly settled position of law expounded by several Benches of the ITAT in the authorities cited aforesaid we need not further expound much on proposition of law whether provisions of Rule 128(9) as it stood then i.e; prior to 01/04/2022 of Income Tax Rules, 1962 are mandatory or directory in nature as there is a consistent view by and large that Rule 128(9) as it stood then i.e; prior to 01/04/2022 are directory in nature and does not permit disallowance of FTC which view is now further fortified by the view taken by Hon'ble Madras High Court as aforesaid.

13.1 In so far as the objection of Ld. Counsel for the assessee that the impugned order is contrary to the notice dt. 23/10/2023 of Ld. CIT(A) is concerned (supra), we are of the considered opinion that the impugned order is indeed volte-face and agree with the submissions of the Ld. Counsel for the assessee. The Ld. CIT(A) ought not to have taken such a volte-face to the objections as given in his own notice. The order is indeed in breach of principles of natural justice, an approach wholly untenable in law.

13.2 We also observe in the impugned order that Ld. CIT(A) has said that Form No. 67 consists of 4 part when admittedly it consists of two parts i.e; Part A and Part B. We therefore are of the considered view that there is total non application of mind in this regard. We state that Rule 128(9) w.e.f 01/04/2022 reads as under:

*"(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 end of the assessment year relevant to the previous year** in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:*

*Provided that where the return has been furnished under sub-section (8A) of section 139, 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) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished."*

**(emphasis supplied)**

Whereas prior to 01/04/2022 Rule 128(9) read as under:

“(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 sub-section (1) of section 139**, in the manner specified for furnishing such return of income.”

**(emphasis supplied)**

13.3 We are therefore of the considered opinion that there is a legislative mandate now w.e.f 01/04/2022 whereby for purposes of Form No. 67 there is now infact an extension of time on or before the end of assessment year relevant to the previous year whereas prior to the amendment the time limit for furnishing Form No. 67 was upto on or before the due date specified for furnishing of return of income under sub section 1 of Section 139. There are catena of judgments including the judgments relied upon by the Ld. Counsel for the Assessee (supra) that the condition is directory in nature and not mandatory and Rule does not permit disallowance. Be that as it may the legislative intent for furnishing of Form No. 67 stands further extended. It is the substance of form which is of importance and not the form itself.

13.4 We are also of the considered view that Ld. CIT(A) erred in holding as under:

“ Further Rule 129(8) incorporates the word “ Shall” which imply that filing of Form No. 67 before the time limit under section 139(1) [now extended to 13(4)] is directory / mandatory.”

The correct Rule is 128(9) and not Rule 129(8). The word “Shall” is interpreted as directory in view of the several pronouncements as above (supra). By using the both expression directory / mandatory an impression is created that the Ld. CIT(A) is attempting to blow hot and cold by using both the terminology directory / mandatory in the impugned order, which shows that order is passed in mechanical manner.

13.5 The Ld. CIT(A) by having held that “ that it is brought on record that filing of Form No. 67 is mandatory to claim the benefit of Foreign Tax Credit” but in fact there is no material whatsoever on record to substantiate the said finding of Ld. CIT(A). The order of Ld. CIT(A) therefore is bad in law.

13.6 We also hold that it was incumbent upon both the authorities below to have at least Peruse the Form 67 and its accompaniments which were on record of both the authorities AO/ CIT (A) despite well settled law that condition of time limit for filling/submission are directory in nature in view of the authorities above (Supra). Therefore their non-consideration has rendered the Provision of Section 90/91, the DTAA between India and USA totally nugatory and Otiose.

### **Order**

14. In the foregoing we are of the considered view that the impugned order of CIT(A) dt. 28/11/2023 deserves to be set aside. While setting aside the impugned order this Tribunal remits / remand the matter back to the file of the Ld. CIT(A) to give due appreciation / credit to the U.S.A income of the Assessee and FTC of Rs. 7,70,863/- as claimed on 18/10/2021 after due verification Preferably within a period of ten weeks from date of receipt of copy of this order.

14.1 Before parting finally, we express that taxes paid by the Assessee is not paid in alien nation but in U.S.A and that there is a DTAA between India and U.S.A. The claim of FTC is made under Article no. 25(2) (a) of Indo U.S.A DTAA. The claim of the assessee against FTC are verified by him under a verification clause in Form No. 67 (Rule 128) which is dt. 18/10/2021 much prior to AO's order / intimation under section 143(1) which is dt. 24/12/2021 i.e; prior to finalization of assessment / intimation. The demand of tax payable of Rs. 9,77,330/- ought not to have been made even without looking into the Form 67 and its accompaniments which were uploaded on portal on 18/10/2021 i.e; two months prior to intimation order of AO dt. 24/02/2021 under section 143(1) of the

Income Tax Act, 1961. The beneficiaries of Indo U.S.A DTAA have received a wrong message which approach should be avoided for all taxes paid outside India otherwise provisions of Section 90/91 would become redundant and otiose. Be it noted nothing prevented the Income Tax Department to do due verification of FTC while carrying out ad judgment and adjudication both at original stage (AO) as well as at first appellate stage (CIT(A)) in a manner as spelt out by Ld. DR during the course of hearing held on 16/04/2024.

15. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23/04/2024

Sd/-

**विक्रम सिंह यादव**  
**( VIKRAM SINGH YADAV )**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**  
**AG**

Sd/-

**परेश एम. जोशी**  
**( PARESH M. JOSHI )**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar