

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2804/Del/2023

[Assessment Year : 2021-22]

Diwakar Aggarwal, 4, Shankarachaya Marg, Civil Lines, New Delhi-110009. PAN-AAEPA7812Q	vs	ITO, Ward-27(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri S.Krishnan, Adv.	
Respondent by	Shri Vivek Kumar Upadhyay, Sr.DR	
Date of Hearing	04.04.2024	
Date of Pronouncement	26.04.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 25.08.2023 for the assessment year 2021-22.

2. The assessee has raised following grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in not directing rectification of intimation u/s.143(1) dated 13.10.2022, wherein claim of Foreign Tax Credit u/s.90 had not been allowed to the Assessee.*
2. *On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in returning findings at Para 6 which were never subject matter of the intimation u/s.143(1) nor order u/s.154 dated 24.01.2023, and were never confronted to the Assessee during appeal.*

3. *On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in returning adverse inferences as to late filing of Form 67, without even enquiring into reasons thereof.*

4. *On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in holding that vide order u/s.154 dated 24.01.2023, the Assessee's application had been rejected, when at Pages 14 & 15 of the said order, the claim had been duly allowed, and only omitted to be considered in the computation.*

The Assessee seeks leave to add to, modify, forego, or otherwise alter all or any of the grounds of appeal as above.

3. The only grievance of the assessee is that the Assessing Officer (“AO”) while computing the tax liability, did not give benefit of section 90 of the Income Tax Act, 1961 (“the Act”) i.e. tax credit paid in the source country.

4. Ld. Counsel for the assessee in this regard submitted that Ld.CIT(A) erred in returning the finding that the AO has rejected the claim of the assessee. However, as per the rectification order, claim of the assessee was allowed. Ld. Counsel for the assessee also drew our attention to Form No.67 which was enclosed with the rectification order passed u/s 154 of the Act.

5. On the other hand, Ld. Sr. DR for the Revenue supported the assessment order.

6. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

- 6.4. *“Thus, it is very clear that as per rule 128(9) of the I.T. Rules, 1962, for claiming FTC, the appellant is required to furnish Form No. 67 on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act. For assessment year under consideration, AY 2021-22, the due date for filing of return u/s. 139(1) was 31.07.2021, which was extended to 31.12.2021, however, the appellant has furnished Form 67 on 03.08.2022 i.e., after the extended due date of filing the return of income u/s. 139(1) for A.Y. 2021-22. Here, the word used in the Rule 128(9) is "shall be furnished", and not "may be", therefore, it is mandatory for the assessee to furnish form 67 on or before the date specified u/s. 139(1) to claim relief u/s. 90/91 of the Act.*
- 6.5. *On bare perusal of the Rule 128(9), I find that there cannot be a second opinion that for claiming of relief u/s. 90/91 of the Act, the mandatory/statutory condition is that the Form 67 shall be filed before the due date specified u/s. 139(1) of the Act. Further, the power of condoning the delay in furnishing Form 67 is governed by the section 129 of the Act and as such there is no provision in the Act/Rules which allows the AO or CIT(A) to condone the delay in furnishing Form 67 as mandated by Rule 128. Further, Rule 128(9) is not contrary to the Act as section 295(2)(ha) gives power to the Board to make rules for providing procedure for granting of relief u/s. 90 against income tax payable under this Act. Thus, the Rule 128(9) is a mandatory procedure for claiming credit for FTC. Therefore, the contention of the appellant that claim of relief u/s 90/91 of the Act shall be allowed as he has filed form 67 is not acceptable.*
- 6.6. *Since the assessee has failed to furnish Form No. 67 within the due date of filing of return of income u/s. 139(1) as required under Rule 128(9) of IT Rules, 1962, the AO-CPC has rightly disallowed the claim of Foreign Tax Credit while processing the return of income u/s. 143(1) in this case.*

6.7. *Moreover, in this case, there is no mistake apparent from record to amend the intimation u/s. 143(1) as relief u/s. 90 has been correctly denied in it as the appellant has not filed form 67 for AY 2021-22 within the time specified u/s. 139(1). As discussed above, the claim of relief u/s 90/91 of the Act should be entertained only if Form 67 is filed within the date as per sec. 139(1) of the Act. In view of the above facts, I am of the view that the AO has not erred in law and in facts by rejecting rectification application filed u/s. 154 vide its order dated 24.01.2023. Therefore, the action of the AO in not amending the intimation u/s. 143(1), wherein the claim of Foreign Tax Credit of Rs. 21,25,827/- has not been allowed following the applicable IT Act/Rules for the year under consideration, is upheld.*

6.8. *In view of the aforesaid facts and discussions made, no interference is called for in the action of the AO-CPC in disallowing the claim of Foreign Tax Credit in the order u/s. 154 dated 24.01.2023. Ground nos. 2 and 3 are, accordingly, dismissed.”*

7. Thus, the sole basis of confirmation of AO's action is that Form No.67 was not filed before the due date of filing of return of income. The contention of the assessee is that the AO had accepted the claim of relief u/s 90 of the Act but in final computation, failed to allow relief. Hence, it was a mistake apparent from the record and amenable to the provision of section 154 of the Act. Our attention is drawn to the rectification order and the Form No.67 dated 03.08.2022. Considering the totality of the facts, we hereby direct the AO to verify the claim of the assessee that Form No.67 was filed and the claim was allowed but in final computation, the same was not allowed. After verifying the facts, the AO would grant relief in accordance with law. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 26th April, 2024.

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI