

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3974/MUM/2023  
Assessment Year: 2018-19**

Vipul Vasant Patil,  
Heramb Kophrad  
Umbergothan, Agashi,  
Virar (W)  
Palghar-401 301.  
**PAN NO. APJPP 7462 H**  
**Appellant**

**Vs.** The Asst. Director of  
Income-tax, Centralized  
Processing Centre, Income  
Tax Department,  
Bengaluru-560 500.  
**Respondent**

Assessee by : Mr. Abdulkadir Jamsadwala  
Revenue by : Ms. Rajeshwari Menon, DR

Date of Hearing : 15/04/2024  
Date of pronouncement : 25/04/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 25.09.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2018-19, raising following grounds:



1. Re.: Denial of relief u/s. 90 of the Income-tax Act, 1961 [Act] vis-à-vis credit for Foreign Taxes paid of Rs. 3,33,695:

1.1 The Assessing Officer [AO] / Centralised Processing Centre, Bengaluru [CPC] erred in denying the relief claimed under section 90 of the Act vis-à-vis credit for foreign taxes paid of Rs. 3,33,695, which action has been upheld by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [CIT(A) / NFAC].

1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the AO / CPC erred in denying the relief claimed u/s. 90 for the credit of foreign taxes paid of Rs. 3,33,695 on the ground that the Appellant has claimed the credit of foreign taxes paid only in the revised return of income and not in the original return of income and also not filed Form No. 67 within the due date of filing of return of income prescribed u/s. 139(1) of the Act without appreciating the fact that the same was furnished alongwith the revised return of income and hence the action of the CIT(A) upholding the Order of the AO / CPC is incorrect, erroneous and not in accordance with the law.

1.3 The Appellant submits that the AO / CPC be directed to grant the relief u/s. 90 vis-a-vis the credit of foreign taxes paid of Rs. 3,33,695 and accordingly compute the total income and taxes thereon.

2. Re.: Interest u/s. 234B of the Act has been levied in excess:

2.1 The AO / CPC has erred in levying excessive interest u/s. 234B of the Income-tax Act, 1961.

2.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, excessive interest has been levied u/s. 234B and hence the action of the AO / CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.



*2.3 The Appellant submits that the AO / CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.*

*3. Re.: Interest u/s. 234C of the Act has been levied in excess*

*3.1 The AO / CPC has erred in levying interest of Rs. 1,09,672 instead of Rs. 92,819 u/s. 234C of the Income-tax Act, 1961.*

*3.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, no further interest is leviable u/s. 234C (over and above the interest u/s. 234C of Rs. 92,819/- computed and paid by the Appellant at the time of filing its return of income) and hence the action of the AO / CPC upheld by the CIT(A) in this regard is incorrect, erroneous and not in accordance with the law.*

*3.3 The Appellant submits that the AO / CPC be directed to delete the excess interest so levied and to re-compute its tax liability accordingly.*

2. Briefly stated, facts of the case are that the assessee is a resident individual having income from salary and house property and other sources. The assessee also earned salary income and other income in Singapore for the period from 01.12.2017 to 31.03.2018 from Unilever ltd, on which tax was deducted in foreign country. He e-filed his return of income for the assessment year under consideration on 16.07.2018, however, omitted to claim foreign tax credit. Subsequently, the assessee filed revised return on 28.03.2019, wherein he claimed foreign tax credit (FTC) of Rs.3,33,695/- on salary income earned in Singapore , which subjected to tax both in Singapore and India. The assessee also



filed Form No. 67 prescribed under Income-tax Rules, 1962 along with revised return on 28.03.2019. Before us, the assessee has filed a detail of salary and other income earned in Singapore and the taxes paid for the period from 01.12.2017 to 31.03.2018. The relevant detail is reproduced as under:

**Vipul Patil**  
**Financial Year (FY): 2017-18**  
**Assessment Year (AY): 2018-19**

**1. Calculation of doubly taxed income earned in Singapore (i.e. from 01 December 2017 till 31 March 2018)**

Particulars	Amount of salary (in SGD)	Amount of salary (in INR)
2017 tax year	54,411	25,66,555
2018 tax year	53,286	25,51,875
<b>Total</b>	<b>1,07,697</b>	<b>51,18,430</b>

**2. Average Rate of tax in Singapore**

Particulars	Amount (2017)	Amount (2018)
Taxable Income as per Singapore tax return	54,411	1,92,856
Total Taxes Paid	1,559	19,664
<b>Average rate of tax</b>	<b>2.86</b>	<b>10.20</b>

**3. Foreign tax credit on doubly taxed income**

Particulars	Amount in INR (2017)	Amount in INR (2018)	Total
Income doubly taxed (A)	25,66,555	25,51,875	<b>51,18,430</b>
Taxes payable on above income in India (at the rate of 33.93%)	8,67,752	8,62,789	<b>17,30,541</b>
Taxes paid on above income in Singapore	73,403	2,60,291	<b>3,33,695</b>
Average rate of tax	2.86	10.20	<b>6.52</b>
<b>Foreign tax credit (lower of above)</b>	<b>73,403</b>	<b>2,60,291</b>	<b>3,33,695</b>

**4. Average Rate of tax in India**

Particulars	Amount (in INR)
Taxable Income (1,30,28,660-1,50,000)	1,28,78,660
Total Taxes Payable	43,54,338
Average rate of tax	33.81

2.1 The revised return of income filed by the assessee was processed by the Centralized Processed Centre (CPC) on 11.06.2020. However, credit of FTC was not allowed to the assessee. Further, the assessee filed a rectification application before the CPC



however, in the rectification order u/s 154 of the Act dated 31.05.2021 the claim of FTC of Rs.3,33,695/- was denied to the assessee.

3. On further appeal against the rectification order, the Ld. CIT(A) also rejected the claim of the assessee on the ground that the Form No. 67 was to be filed before the due date specified for furnishing return of income u/s 139(1) of the Act as provided under clause 9 of Rule 128 of the Income-tax Rules, 1962.

4. We have heard rival submission of the parties and perused the relevant material on record. The grievance of the assessee before us is that FTC claimed by the assessee in the revised return of income filed on 28.03.2019 along with Form No. 67 was not allowed by the CPC while processing revised return and also in the rectification order dated 31.05.2021. We find that the Ld. CIT(A) has declined the claim of the FTC mainly for the reason that Form No. 67 was not filed by the assessee on or before the due date specified for furnishing return of income u/s 139(1) of the Act as provided under clause 9 of Rule 128 of the Income-tax Rules, 1962. Before us, the Ld. counsel for the assessee referred to the decision of the Hon'ble Madras High Court in the case of **Duraiswamy Kumarswamay v. Pr. CIT [2023] 156 taxmann.com 445 (Madras)** wherein FTC claimed was allowed in respect of Form No. 67 filed before the completion of assessment. The relevant finding of the Hon'ble Madrash High Court in reproduced as under:



“9. In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of Indian from the assessment year 2018-2019 and 2019-2020. The petitioner admitted the fact that he has filed his return in India on 10.08.2019. The intimation under Section 143(1) was issued on 26.03.2020. However, he has filed the return without Form-67 which is required to be filed under Rule 128 to claim the benefit of FTC and the same came to be filed on 02.02.2021 which was well before the completion of the assessment year. The intimation under Section 143(1) was issued from the CPC only on 26.03.2021.

10. According to the learned counsel appearing for the respondent, the procedure under Rule 128 is mandatory and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income tax and claimed the benefits of FTC. However, the petitioner would submit that it is not mandatory. The Rule cannot make anything mandatory and it can be directory in nature, that too before the Assessment, the claim to avail the benefits of FTC is filed. Therefore, it would be the amounts to due compliance under the Act. The petitioner referred to the Judgment of the Hon'ble Supreme Court in the case of 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, wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.

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.”*

4.1 Further, we find that the Co-ordinate Bench of the Tribunal in the case of **Vidya Tukaram Desai in ITA No. 3086/Mum/2023** for assessment year 2020-21 following the finding of coordinate bench in the case of **Sonkashi Sinha reported in (2022) 142 taxmann.com 414 ( Mumbai-Trib)**, has allowed the claim of foreign tax credit where Form No. 67 is filed before the completion of the assessment for the relevant assessment year. The relevant finding of the Tribunal is reproduced as under:

*“9. In the aforesaid case, it was held by the Tribunal that the Appellant would be eligible to foreign tax credit where Form No. 67 is filed before the completion of assessment for the relevant assessment year. During the course of hearing, the Ld. Authorised Representative for the Appellant also placed on record the judgment in the case of Duraiswamy Kumaraswamy Vs. Principal Commissioner of Income-tax-8: (W.M.P. Nos. 5925 and 5927 of 2022, dated 06/10/2023)/ [2023] 156 taxmann.com 445 (Madras) wherein identical view has been taken by the Hon'ble Madras High Court.*

*10. In the present case also Form No. 67 has been filed by the Appellant before processing the return of income under Section 143(1) of the Act. Therefore, respectfully following the above judicial precedents, we remand the issue raised in present appeal relating to claim of foreign tax credit back to the file of Assessing Officer with the direction to grant foreign tax credit to the Appellant as per the aforesaid decision after verification. Ground No. 1 raised by the Appellant is allowed for statistical purposes.”*

4.2 In view of the above precedents on the issue in dispute, we are of the considered opinion that assessee is eligible for claim of the foreign tax credit as Form NO. 67 has been filed by the assessee



along with revised return of income on 28.03.2019 which is much before the processing of the return of income by CPC on 11.06.2020. However, we find that in the case of the assessee before allowing foreign tax credit following facts need to be ascertained:

(i) The assessee has earned salary income of 54411 Singapore Dollar in calendar year 2017 and income of 192856 Singapore dollar in calendar year 2018 before 31.03.2018 which include salary income of 53286 Singapore dollar. The assessee has claimed that tax equivalent to Indian Rupees 73,403/- has been deducted in calendar year 2017 whereas tax of Rs.260,291/- has been deducted corresponding to the calendar year 2018 by the Singapore tax authorities. In view of the above facts it is required to ascertain whether the income earned in Singapore has been added by the assessee in the return of income filed for the year under consideration in India.

(ii) It needs to be verified whether the tax credit claimed pertained only to Singapore income included in the return of income filed in India for the year under consideration.

(iii) It is also needs verification that the assessee has not claimed any refund for such taxes paid/withheld before the Singapore authorities.



4.3 In view of the above, we direct the Assessing Officer to consider the claim of the assessee subject to the verification of the facts as mentioned above. The matter is accordingly restored to the file of Assessing Officer for considering the claim of the assessee of the foreign tax credit as directed above.

4.4 The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes. The ground No. 2 and 3 are consequential, therefore, the Assessing Officer is directed to compute the interest liability u/s 234B and 234C in accordance with law.

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

**Order pronounced in the open Court on 25/04/2024.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 25/04/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**