

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI ANIKESH BANERJEE (JUDICIAL MEMBER)**

**ITA No. 4212/MUM/2023
Assessment Year: 2019-2020**

DCIT-17(1),
Room No. 117, 1st floor, G-
Block, Kautliya Bhavan, Bandra
Kurla Complex,
Mumbai-400051.

Appellant

Vs.

Freyaz Kurush Shroff,
3 Marine Chambers, Sir
Vithaldas Thackersey Marg,
Marine Lines,
Mumbai-400020.
PAN NO. BHGPS 4564 M
Respondent

Assessee by : Ms. Freyaz Kurush Shroff (Assessee
in person)
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 30/04/2024
Date of pronouncement : 30/04/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 13.09.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2019-2020, raising following grounds:



"Whether, on the facts and in circumstance of the case and in law, the Ld. CIT (A) is justified in directing the AO to allow the Foreign Tax Credit, without appreciating the fact that the assessee has failed to furnish the Form-67 as per Rule 128 of I.T. Rules and that filing of Form-67 is mandatory in nature and not directory in nature?"

2. We have heard rival submission of the parties and perused the relevant material on record. In the case, the assessee sought for credit of the tax paid in foreign country in respect of global income. The Assessing Officer denied the credit of the foreign tax paid for the reason that Form No. 67 specified under the Income-tax Rules, 1962 (in short 'the Rules') was not filed by the assessee along with return of income filed on the date specified u/s 139(1) of the Act. The Ld. CIT(A) however following the decision of the Co-ordinate Bench of the Tribunal in the case of **Subhankar Chakraborty v. ITO (2023) (ITA No. 1088/Bang/2022)** directed the Assessing Officer to give credit for the foreign tax credit as per Form No. 67, which was filed on 01.04.2021 after due verification as per law. The relevant finding of the Ld. CIT(A) is reproduced as under:

"6.6. However, I find that in a similar case, the ITAT Bangalore Bench in Subhankar Chakraborty vs ITO (2023) (ITA No. 1088/Bang/2022) has held that delay in filing form 67 cannot be ground for denying foreign tax credit. This decision itself is based on Vinodkumar Lakshmi pathi Vs. CIT(A), NFAC, Delhi in ITA No. 680/Bang/2022 reported in [2022] 145 com 235 (Bangalore Trib.). In this case, the ITAT concluded as under:

"16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67; (ii) filing of Form No. 67 is not mandatory but a directory requirement and (iii) DTA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the



proceedings u/s. 154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s. 154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s. 154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

6.7. Respectfully following the judicial precedents cited above, I direct the AO to give credit to foreign tax credit as per Form 67 filed on 01.04.2021 after due verification as per law."

2.1 In our opinion, the Ld. CIT(A) has followed the binding precedent on the issue in dispute and no adverse decision either of the Co-ordinate Bench or of Jurisdictional High Court has been brought to our knowledge by the Ld. Departmental Representative (DR) , therefore, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute.

3. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/04/2024.

**Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 30/04/2024
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