

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.232/PUN./2024
Assessment Year 2019-2020

Shri Aniruddha Raju Patki, B-10, Shri Krishna Icon Housing Society, Near Iskon Temple, Ravet Pradhikaran, Pune – 412 101. Maharashtra. PAN BXOPP1546A	vs.	The Income Tax Officer, Ward – 13 (2), Aayakar Sadan, Pune – 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Manish Mehta

Date of Hearing :	19.03.2024
Date of Pronouncement :	02.05.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2019-20, arises against the Addl./JCIT(A)-6, Chennai, Chennai's Din and Order No. ITBA/APL/S/250/2023-24/1058673737(1), dated 12.12.2023, involving proceedings u/s.143(1) of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. The assessee pleads the following substantive grounds in the instant appeal :

Ground No. 1: Non grant of Foreign Tax Credit ('FTC') of Rs. 1,35,244

On the facts and circumstances of the case and in law, the Ld. Additional/ Joint Commissioner of Income-tax (Appeals) [ADDL/JCIT(A)] has erred in confirming the action of the Ld. CPC of making the adjustment in the Intimation under Section 143(1) of the Income-tax Act, 1961 ('The Act') of not allowing Foreign Tax Credit ('FTC') of Rs. 1,35,244 allowable as per Section 90 of the Act read with Article 23(2) of the India-Ireland Double Taxation Avoidance Agreement ('DTAA') read with CBDT circular No. 333 dated 02 April 1982.

It is prayed that the Ld. Jurisdictional Assessing Officer (JAO) be directed to grant the FTC of Rs. 1,35,244.

Ground No. 2: Orders of the Hon'ble Income Tax Appellate Tribunal (ITAT) not followed by the Ld. ADDL/ JCIT(A)

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT(A) has erred in not following several orders of the Hon'ble ITAT, relied upon during the appellate proceedings before the Ld. ADDL/JCIT(A), including the order of the Hon'ble ITAT in the case of another employee of the employer of the Appellant i.e., The Order of the Hon'ble ITAT in the case of Ashish Agrawal vs Income Tax Officer Ward - 12(1), Hyderabad (ITA No. 337/Hyd/2023)

It is prayed that the action of the Ld. ADDL/JCIT(A) of not following orders of the Hon'ble ITAT is contrary to the following judicial pronouncements:

- Decision of the Hon'ble Supreme Court in the case of Assistant Collector of Central Excise vs. Dunlop India Ltd. [(1985) 154 ITR 172 (SC)]
- Decision of the Hon'ble Telangana High Court in the case of Mylan Laboratories Limited v. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/income-Tax Officer National Faceless Assessment Centre, Income Tax Department, Delhi & Another [TS-46-HC-2022(TEL)]
- Decision of the Hon'ble ITAT in the case of Northern Coalfields Limited Vs. Assistant Commissioner of Income Tax, Circle 2(1), Jabalpur (LT.A. No. 18/Jab/2014) It is, therefore, prayed that the Ld. JAO be directed to allow FTC of Rs. 1,35,244.

Ground No. 3: Non- grant of FTC is not a permissible adjustment/ no adjustment of a debatable issue can be made in the Intimation under Section 143(1) of the Act.

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT(A) ought to have held that the non-grant of FTC of Rs. 1,35,244 is not a permissible adjustment under Section 143(1) of the Act as no such adjustment relating to debatable issues can be made in the Intimation under Section 143(1) of the Act

It is prayed that the order of Ld. ADDL/JCIT(A) is contrary to the following judicial pronouncements:

- Order of the Hon'ble ITAT in the case of City Manager Association vs. DCIT, CPC Bengaluru, (IT A No.1345/ Ahd/2019);
- Order of Hon'ble IT AT in the case of Paris Elysees India Private Limited vs. Deputy Commissioner of Income Tax, ITA No. 357/JPR/2022;
- Decision of the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P.) Ltd [2007] 291 ITR 500.

It is, therefore, prayed that the Ld. JAO be directed to allow FTC of Rs. 1,35,244.

Ground No. 4: Proceedings under Section 143(1) of the Act are invalid in law

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT(A) ought to have held the entire 143(1) proceedings as invalid in law as the Ld. CPC had not followed the provisos to Section 143(1)(a) of the Act of giving opportunity to the Appellant to defend his case.

It is prayed that the order of the Ld. ADDL/JCIT(A) is contrary to the following orders of Hon'ble ITAT relied upon during the Appellate Proceedings before the Ld. ADDL/JCIT(A):

- Arham Pumps v. Deputy Commissioner of Income Tax (CPC), Bengaluru (ITA No.206/Ahd/2021)
- Ernst & Young Merchant banking Services LLP vs ADIT, CPC (ITA No.2333/MUM/2022)

It is, therefore, prayed that the Ld. JAO be directed to allow FTC of Rs. 1,35,244.

The Appellant craves leave to add, amend, alter, substitute, withdraw all or any of the above Grounds of Appeal anytime either before or during the hearing of the Appeal.

3. I next note that the learned lower appellate authority has upheld the CPC's processing dated 08.03.2021 denying the relief on Foreign Tax Credit ["FTC"] to the assessee as under :

4. Decision

4.1 The Appellant is aggrieved by the denial of foreign tax credit of Rs.1,35,244/-, 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 on 21/11/2023 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 29/11/2023 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 2019-20 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 Tax Credit.

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**.

4. Mr. Mehta vehemently argued during the course of hearing that both the learned lower authorities have rightly disallowed the assessee's claim in light of Rule 127 of I. Tax Rules, 1963 once the assessee had not filed the corresponding Form-67 within "due" date for filing return u/sec.139(1) of the Act. He

strongly contested the assessee's pleadings by submitting that the foregoing Rule 127 of the I.T. Rules has to be mandatorily complied with going by the principles of stricter construction. I find in this factual backdrop that the instant issue is no more *res integra* in light of *Duraiswamy Kumaraswamy vs. CIT* [2023] 156 taxmann.com 445 (Mad.) wherein their lordships' have already concluded that the above stated compliance is only directory than mandatory in nature. Faced with this situation, I accept the assessee's instant sole substantive ground in principle and direct the CPC/Assessing Officer herein to verify and finalise the consequential computation as per law. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 02.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 02nd May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Addl./JCIT(A)-6, Chennai
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "SMC" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.