

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR “SMC” BENCH : NAGOOR

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.85/NAG./2023  
Assessment Year 2020-2021

The DCIT, Circle-4, Income Tax Office, Room No.24, BSNL RTTC Bldg., Near TV Tower, Seminary Hills, NAGPUR – 440 006. Maharashtra.	vs.	Shri Prabha Nageshwar Rachakondawar, 159, Swami Colony Phase-I, Katol Road, Behind Friends Colony, NAGPUR – 440 013. Maharashtra. PAN ABGPR3591L
(Appellant)		(Respondent)

For Revenue :	Shri Abhay Y. Marathe, Sr. DR
For Assessee :	-None-

Date of Hearing :	26.03.2024
Date of Pronouncement :	09.05.2024

**ORDER**

This assessee’s appeal for assessment year 2020-2021 arise against the National Faceless Appeal Centre [in short the “NFAC”] Delhi’s Din and Order No.ITBA/NFAC/S/250/2022-23/1049196849(1) dated 27.01.2023, involving proceedings u/s.154 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 Revenue pleads the following substantive grounds in the instant appeal :

1. *“The Ld.CIT(A) has erred in allowing the appeal of assessee without considering the statutory requirement prescribed under Rule 128(9) of I T Rules, 1962 for filing of Form 67 before due date of filing of return for claiming Foreign Tax Credit u/s.90/91 of the I T Act, 1961.*
2. *The Ld.CIT(A) has erred in directing the AO to allow the claim of the appellant after making necessary verification with respect to the genuineness of the credit of taxes claimed u/s.90/91 of the Act without considering the fact that the assessee has failed to file Form 67 within the due date.*
3. *Any other grounds which may be raised at the time of hearing with the permission of Hon’ble ITAT.”*

3. Learned DR next took me to the CIT(A)'s impugned lower appellate discussion allowing the assessee's corresponding appeal as under :

*“4.0. The submissions made by the appellant have been duly considered. The appellant derives income from other sources and capital gains on account of sale of shares of foreign company. For the captioned AY, the appellant has offered Rs.7,54,88,652/- as income from long term capital gains in United States of America (USA) under the head 'Income from Capital gains' which has been duly disclosed in Schedule FSI and Schedule TR of*

*the return of income. On the aforesaid income, the appellant claims to have paid taxes in USA amounting to USD 36,331 which has been claimed as credit in the return filed in India in accordance with Rule 128 of the Income-tax Rules,1962 amounting to Rs.1,32,76,534/-. The only issue involved in this case is CPC has not allowed entire tax credit of Rs.1,32,76,534/- u/s 90 of the Act. It is further contended that the form 67 required as per rule 128 of the I T Rules have been duly filed on 28 December 2021. Thus, the form 67 is filed after the due date of filing of return.*

*4.1. Further, the appellant has stated 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) DTAA overrides the provisions of the Act, and the Rules cannot be contrary to the Act. Further reliance is placed on the following judicial pronouncements (i) Mumbai ITAT Anuj Bhagwati vs DCIT in ITA.No.1845/ MUM/2022 (A.Y.2019-20) (ii) Bangalore ITAT Brinda RamaKrishna vs ITO in ITA. No.454/Bang/2021 (iii) Bangalore ITAT 42 Flertz Software India Pvt. Ltd., vs ITO in ITA.No.454/Bang/2021.*

4.2. I have carefully considered facts of case, contention of appellant relied/cases mentioned, and order passed by CPC against which appeal has been preferred. Hon'ble ITAT, Bangalore benches in the case of Brinda Rama krishna in the ITA.no.454/Bang/2021 dated 17.11.2021 has observed 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 (Hi) DTAA 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.*

17. *In the result, the appeal is allowed.”*

4.3. *Similar view has also been held by Hon’ble Mumbai ITAT in the case of Anuj Bhagwati vs DCIT in ITA.No.1845/MUM/2022 (A.Y.2019-20) and Hon’ble Bangalore ITAT in the case of 42 Hertz Software India Pvt. Ltd., vs ITO in ITA.No.454/Bang/2021.*

4.4. *Thus, in view of the above observation of the Hon’ble ITAT, Mumbai and Bangalore benches, I direct the Id.AO to allow the claim of the appellant after making necessary verification with respect to the genuineness of the credit of taxes claimed u/s.90/91 of the Act and also verifying the fact that the corresponding income is disclosed in the return or not. The appellant is also directed to produce the requisite document before the Id AO as and when called for. Subject to the verification by the Id AO, the ground of the appellant is allowed.”*

3.1. *Learned DR vehemently argued that the CIT(A)'s herein has erred in law and on facts in directing the Assessing Officer to grant foreign tax credit to the assessee despite the fact that the latter had belatedly filed the corresponding Form-67 under Rule 128 of I.T. Rules, 1963. I notice in this factual*

backdrop that case law in light of Duraiswamy Kumaraswamy vs. PCIT 460 ITR 615 (Madras) has already held the foregoing Rule 128 of I.T. Rules is directory only than mandatory in nature. This is indeed coupled with the fact that assessee had duly filed her Form-67 on 28.12.2021 well before sec.154 order in question dated 10.03.2022. Faced with this situation, I hardly see any merit in the Revenue's instant sole substantive grievance. Ordered accordingly.

4. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 09.05.2024.

Sd/  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 09<sup>th</sup> May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "Nagpur-SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

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