

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" , HYDERABAD**

**BEFORE**

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER  
AND  
SHRI MANJUNATHA, G. HON'BLE ACCOUNTANT MEMBER**

ITA No.229/Hyd/2024		
Assessment Year: 2019-20		
Rakesh Reddy Tanguturu, 8-2-293/82/F/A/65, Plot No.65-A, Road No.14, Jubilee Hills, Hyderabad, Telangana.  PAN : AAUPY9817A.  (Appellant)	Vs.	The Asst.Commissioner of Income Tax, Circle – 6(1), Hyderabad.      (Respondent)
Assessee by:	Shri Kumar Pal Tated, C.A.	
Revenue by:	Shri AVES Madhukar, Sr.A.R.	
Date of hearing:	08.05.2024	
Date of pronouncement:	09.05.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2019-20 arises from the order of Addl/JCIT (Appeals), Madurai, dt.31.02.2024 invoking proceedings under section 143(1) of the Income Tax Act, 1961 (in short, "the Act").

2. The brief facts of the case are that assessee, who is an individual having income from business, other sources and agricultural income. For the year under appeal, in addition to the above sources of income, the assessee had also reported income from capital gains being gain on redemption of mutual funds. For the previous year ending on 31.03.2019 relevant to AY 2019-20, the original return of income was filed electronically on 27.09.2019 admitting an income of Rs.1,35,05,760/- after claiming deduction under chapter VI-A of the Act. In the original return of income, the assessee had also reported loss from business of Rs.40,21,673/-. The business loss of Rs.40,21,673/- was not set off against any other source of income. Subsequently, the return was revised on 21.08.2020 to report the revised loss from business to Rs.4,47,991/- from Rs.40,21,673/- . Even this loss of Rs.4,47,991/- was ignored in the return, meaning thereby the loss from business was not set off against any other source of income both in original and revised return of income.

2.1. Durin the assessment year under consideration, assessee received director fees of Rs.42,67,487/-, which is equivalent to Rs.85,000/- in AUD Dollars from M/s. Infotech Professional Pvt Ltd, a company incorporated in Australia. The director fee was offered to tax under the head income from other sources. The fee of Rs.85,000/- AUD Dollars was subject to withholding tax @32.50% in Australia. The tax withheld in Australia Dollar was AUD 27,625 (Equivalent to Rs.13,86,933/-). In accordance with the provisions of section 90 of the Act, the tax withheld in Australia was claimed as deduction from gross tax liability computed on the net adjusted total

income. The revised return was processed under section 143(1) of the Act by the Assistant Director of Income Tax, CPC, Bangalore vide intimation dated 22.01.2021. In the intimation, the relief of tax of Rs.13,86,933/- claimed under section 90 of the Act was denied without stating any reasons.

3. Feeling aggrieved with the order passed u/s 143(1) of the Act by CPC, Bangalore, the assessee filed an appeal before the Id.CIT(A), who upheld the order of CPC u/s 143(1) of the Act.

4. Feeling aggrieved with the order passed by Addl/JCIT (A), Madurai, assessee is now in appeal before us.

5. Before us, Id.AR submitted that the Id.CIT(A) has wrongly dismissed the appeal and that the Id.CIT(A) should not dismiss the appeal on the ground of delay in filing of Form 67, as filing of Form 67 is a directory requirement, but not a mandatory one and as such, the assessee is entitled to claim credit thereof.

5.1. In support of his case, the Id. AR has relied upon the following case laws :

1. Purushotham Reddy Vankireddy Vs. ADIT (International Taxation) reported in (2023) 147 taxmann.com 398 (Hyderabad -Tribunal).

2. Brinda Ramakrishna Vs. The ITO, Ward 5(3)(1), Bangalore in ITA No.454/Bang/2021 dt.17.11.2021.

3. Rohan Gattangadi Vs. CIT(A), Faceless Appeal Centre, Delhi in ITA No.1896/Mum/2022 dt.02.12.2022.

4. Smt. Shalini Bhupal Vs. DCIT, Circle 2(1), Hyderabad in ITA No.271/Hyd/2023 dt.30.08.2023.

6. Per contra, the ld.DR heavily relied upon the order of ld.CIT(A) and submitted that as per Rule 128(9), the assessee is required to furnish Form 67 on or before the due date specified for furnishing of return of income under sub-section (1) of Section 39 of the Act.

7. We have heard the rival contentions of both the parties and perused the material available on record and also the orders of lower authorities. In the present case, the ld.CIT(A) dismissed the appeal of assessee holding that assessee filed Form 67 belatedly without any valid reasonable cause. The ld. AR submitted that Rule 128(9) of ITAT Rules does not provide for disallowance of foreign tax credit in case of belated filing of Form No.67 which is directory and not mandatory. We are further of the considered opinion that this issue is also squarely covered by the decision of the Co-ordinate Bench of the Tribunal in the case of Natco Pharma Limited Vs. DCIT in ITA No. 470/Hyd/2022, dt. 31/07/2023, wherein the identical issue has been decided as under:

“10. Learned AR submits that filing of Form 67 in accordance with rule 128 of the tax rules is only a procedural requirement to enable the tax authorities to verify the FTC available to the assessee, but it does not take away altogether the right of the assessee to claim the FTC.

11. Insofar as this issue is concerned, this is no longer *res integra* and we find that the Bangalore Bench of the Tribunal in the case of *M/s.42 Hertz Software India Pvt.Ltd vide ITA No.29/Bang/2021 order dated 07/03/2022* for the assessment year 2017-18, decided an identical issue and held that FTC cannot be denied to the assessee, where the assessee filed FTC in Form 67, although belatedly since filing of such Form 67 is not mandatory but directory in nature. Relevant observation of the Tribunal from para 6 onwards reads as under:-

*"6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms.Brinda Kumar Krishna vs. ITO in ITA no.454/Bang/2021 by order dated 17/11/2021".*

12. A Co-ordinate Bench of this Tribunal in the cases of *Shridhar Madhav Diwan vs. DCIT in ITA No. 102/Hyd/2023, dated 24/05/2023* and *Purushothama Reddy Vankireddy vs. ADIT in ITA No. 526/Hyd/2022, dated 05/12/2022*, followed the same and held the issue in favour of the assessee. These decisions are applicable to the facts of the case and while respectfully following the said view, we hold the issue in favour of assessee.”

8. Respectfully, following the decision of the Coordinate Bench of the Tribunal in the case of *Natco Pharma Limited (supra)*, wherein the Tribunal has allowed the appeal in favour of the assessee on identical facts, we deem it appropriate to restore the issue to the file of Assessing Officer with a direction to verify the FTC claim of the assessee and give due credit of the same in accordance with the law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 9<sup>th</sup> May, 2024.

<b>Sd/-</b> <b>(MANJUNATHA. G.)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 9<sup>th</sup> May, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Rakesh Reddy Tanguturu, 8-2-293/82/F/A/65, Plot No.65-A, Road No.14, Jubilee Hills, Hyderabad, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 6(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File