

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH: BANGALORE  
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.569/Bang/2024
Assessment Year: 2019-20

Mr. Manju Krishnappa 120/75, Fort Kengeri Bangalore South Kengeri SO Karnataka 560 060  <b>PAN NO : AVLPK4733C</b>	<b>Vs.</b>	ADIT, CPC & ITO Ward-1(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Itu Singh, A.R.
<b>Respondent by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	08.05.2024
<b>Date of Pronouncement</b>	:	08.05.2024

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal by assessee is emanated from the order of NFAC for the assessment year 2019-20 dated 31.1.2024. The assessee has raised following grounds of appeal:

- 1 : 0** **Re.: Denial of relief u/s. 90 of the Income-tax Act, 1961 ["Act"] for Foreign Taxes Paid of Rs. 4,45,656 :**
- 1 : 1 The Assessing Officer ["AO"] / Centralized Processing Centre, Bengaluru ["CPC"] in denying the relief claimed under section 90 of the Act vis-à-vis credit for foreign taxes paid of Rs. 4,45,656, which action has been upheld by the Commissioner of Income-tax (Appeals) ["CIT(A)"].
- 1 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the stand taken by the AO / CPC in this regard is incorrect and erroneous and the CIT(A) ought to have held as such.
- 1 : 3 The Appellant submits that the AO / CPC be directed to grant the relief u/s. 90 vis-à-vis the credit of foreign taxes paid of Rs. 4,45,656 and accordingly compute the total income and taxes thereon.
- 2 : 0** **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 : 0** **Re.: Interest u/s. 234C of the Act has been levied in excess:**
- 3 : 1 The AO / CPC has erred in levying excessive interest u/s. 234C of the Act.

- 3 : 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. 234C 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.
- 4 : 0 **Re.: General:**
- 4 : 1 The Appellant craves leave to add, alter, amend, substitute and/or otherwise modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

**2.** Facts of the case are that the appellant, a resident and ordinarily resident (ROR) of India for AY 2018-19, filed his original return of income on 30 August 2019 under section 139(1) of the Income Tax Act, 1961 ("the Act"). Further the appellant filed revised return of income under section 139(5) on August 12, 2020. The appellant received an intimation under section 143(1) of the Act dated March 23, 2021 (received on 24 March 2021). In the intimation, there is a demand raised of INR 6,06,260 out of which demand of INR 5,85,766 is erroneous on account of the following :

**I. Non grant of foreign tax credit of INR 4,45,656**

**2.1** The appellant is a resident and ordinarily resident (ROR) in India during FY 2018-19 as per the provisions of the Act and accordingly, subject to tax on his global income in India during FY 2018-19. The assessee moved to Germany on 1 November 2018 for the purpose of employment and was rendering services in Germany with effect from 1 November 2018. The salary income earned during the period November 2018 to March 2019 is subject to tax in both countries, i.e. in Germany and in India (under their respective domestic tax laws): Since the assessee qualifies as ROR in India, he is eligible to avail credit of taxes paid in Germany, in accordance with section 90 of the Act read with Article 23 of the double tax avoidance agreement entered between India and Germany.

*"Where a resident of the Republic of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, the Republic of India shall allow as a deduction from the tax*

*on such income of that resident an amount equal to the income-tax paid in the Federal Republic of Germany, whether directly or by deduction..... "*

**2.1.1** Accordingly, while filing his return of income in India, the assessee and claimed the following foreign tax credit of INR 4,45,656 (being lower of average tax rate on doubly taxed income in India and actual taxes paid on income earned in Germany). Also, the assessee has filed Form 67 on the income tax portal along with the proof of the taxes paid outside India.

## **II. Interest under section 234B and 234C of the Act**

**2.2** Consequent to the above, the learned AO has erroneously determined the interest under section 234B of the Act as INR 2,22,122 instead of INR 1,04,520 and the interest under section 234C of the Act is erroneously determined as INR 64,529 instead of INR 42,020. Being aggrieved, the assessee has preferred this appeal. The assessee craves leave to place further facts and evidences in support of its claims, contentions and grounds of appeal at or before the hearing of the appeal.

**3.** After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in the case of Ms. Brinda Ramakrishna Vs. ITO (2022) 193 ITD 840 (Bangalore Trib.), wherein held 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) 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.”*

**3.1** Further, similar issue also came for consideration before this Tribunal in the case of Sanjiv Gopal Vs. ADIT reported in 198 ITD 411 (Bangalore Trib.), wherein the Tribunal held as under:

*“The only issue under consideration in the instant appeal is that the NFAC denied of FTC available to the assessee merely because there was a delay in filling Form 67 i.e., it was filed after the due date for filling original return of prescribed under section 139(1). The said issue under consideration is no longer res integra. It is to that on identical issue, the co-ordinate Bench of Tribunal, Bangalore in the case of -I/s. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 held 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. Therefore, non-furnishing of Form No. 67 before the due date under section 139(!) is not fatal to the claim for FTC. [Para 6]*

*The aforesaid decision has also been followed by a Division Bench of Tribunal Surat Bench in the case of Sanjay Patil v. Assessing Officer [IT Appeal No. 189/SRT/2021, dated 18-5-2022]. Following the view expressed in the aforesaid decision, it is to be held that the assessee is entitled to FTC and the Assessing Officer is to be directed to allow the claim. [Para 7]”*

**3.2** In view of the above order of the Tribunal, taking a consistent view, we hold that the assessee is entitled to FTC and the ld. AO is directed to grant the same after due verification.

**4.** In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 8<sup>th</sup> May, 2024

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 8<sup>th</sup> May, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**