

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. No. 1240/Del/2023
(Assessment Year : 2018-19)**

Rohin Koul
I-96, Ground Floor,
Lajpat Nagar Part-1,
New Delhi – 110 024

Vs. DCIT
Circle - 3(1)
Gurgaon

PAN: AQKPK 3751 J

(Appellant)

..

(Respondent)

Appellant by : Shri Abhishek Raj Khanna,
C.A.

Respondent by : Shri Saurabh Anand, Sr. D.R.

Date of Hearing 09.05.2024
Date of Pronouncement 15.05.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The instant appeal filed by the assessee is directed against the order dated 15.02.2023 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the assessment order dated 11.01.2021 passed by the CPC, Bengaluru under Section 143(1) of the Act for the Assessment Year (A.Y.) 2018-19.

- 2 -

2. At the time of the hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the instant appeal filed before us through e-portal on 08.04.2023 well within the statutory time limit of 60 days. However, the physical documents in connection of the said appeal were submitted to the Assistant Registrar on 27.04.2023. Upon acceptance of the physical documents with a form of communicating defects, the assessee was communicate by the Registry that the said appeal is barred by limitation for 11 days. The delay so happened due to the dealing counsel met with a road accident and due to Ankle Fracture, was under constant medical treatment and, therefore, not been able to file the physical documents required to be submitted before the Registry. Such plea made by the assessee's Counsel has not been controverted by the Learned DR with all his fairness. Needless to mention, that such statement made by the AR also appears to be genuine, which has been brought to our notice even by filing an application dated 02.05.2023. We, therefore, being satisfied with the "reasonable cause" so explained by the Learned AO condone the delay in filing the appeal before us.

3. The case of the assessee before us, is this that during the year under consideration relevant to A.Y. 2018-19, the assessee earned part salary amounting to Rs.54,33,858/- outside India and a sum of Rs.11,85,273/- was deducted by his Employer outside India. The assessee duly offered the aforesaid salary earned outside India along with salary

- 3 -

and other income earned in India and accordingly, claimed Foreign Tax Credit (FTC) amounting to Rs.11,85,273/- in his Income-tax return filed online. After several reminders, the Income-tax Return was finally processed by the Learned AO CPC, Income Tax Department raising demand of Rs.15,50,185/- by not giving credit against FTC. The assessee, in fact, could not file Form 67 online along with return. The same was filed online to claim FTC late on 06.04.2021. As this particular filing of form 67 was first introduced from A.Y. 2018-19, which, the assessee was not aware of, as claimed by the AR, the same was not filed along with the return of income as a procedural matter. Rectification application thereon though filed, the same was rejected on this technical ground.

4. At the time of hearing of the instant appeal, under this facts and circumstances of the case, it was submitted by the learned AR that the assessee is entitled to claim FTC as he has claimed it under section 90 of the Act r.w. Article 25 India US Treaty (DTAA) in his income tax return filed on 06.07.2018. Section 90 of the Act provides that Govt. of India can enter into Agreement with other countries for granting relief in respect of Income on which taxes are paid in country outside India and such income is also taxable in India. Neither Section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements. FTC is Assessee's vested right as per Article 25 of the DTAA read with Section 90 and same cannot be disallowed for

- 4 -

non-compliance of procedural requirement that is prescribed in the Income Tax Rules. Since the Form 67 has been filed, the same could be verified by the Learned AO and to give relief accordingly. He has relied upon the various judgments passed by the different Courts including the Hon'ble Apex Court in the case of ***Sambhaji and others vs. Gangabai and others reported in (2008) 17 SCC 117***, wherein it has been held that procedural law should not ordinarily be construed as mandatory; the procedural is always subservient to and is in aid to justice. Therefore, filing of Form 67 as per provision of Section 90 r.w. Rule 128(9) of the Act is a procedural law and should not control the claim of FTC. Further that, section 90(2) of Income Tax Act, where the Central Govt. of India entered into a DTAA, the provisions of the Act would apply to the extent they are more beneficial to a taxpayer. Therefore, the provisions of DTAA override the provisions of the Act, to the extent they are beneficial to the assessee. Such contentions of the assessee, however, could not be controverted seriously by the Learned DR.

5. Thus, having regard to the facts and circumstances of the matter, we dispose of this appeal by setting aside the issue to the file of the Learned AO with a direction upon him to verify the details of Form 67 as claimed to have been filed by the assessee in regard to claim of FTC for an amount of Rs.11,85,273/- for A.Y. 2018-19 and to give relief to the assessee in accordance with law. If necessary, the Learned AO would also give an opportunity of being heard to the assessee and to consider

- 5 -

the evidence on record or any other evidence, which the assessee may choose to file at the time of hearing of the matter.

6. In the result, assessee's appeal is, therefore, allowed for statistical purposes.

This Order pronounced in Open Court on 15/05/2024

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 15/05/2024

Priti Yadav, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI