

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 467/Bang/2024
Assessment Year : 2019-20

Shri Kamuganti Vamshidhar, 161/12, 2A Main, Rangantha Layout, Mahadevapura, Bangalore – 560 048. PAN: ARSPK0793M	Vs.	The Deputy Commissioner of Income Tax, Circle – 3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Vaidehi Govindarajan, CA
Revenue by	:	Shri Narendra Kumar Naik, Addl. CIT (DR)

Date of Hearing	:	01-05-2024
Date of Pronouncement	:	16-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 24.01.2024 passed by NFAC for A.Y. 2019-20 on following grounds of appeal:

“The below mentioned grounds of appeal are independent of and without prejudice to one another.

1. On the facts and in the circumstances of the case, Central Processing Center (‘CPC’) and the learned CIT(A) have erred in disallowing the relief / Foreign Tax Credit (FTC) claimed by the Appellant under section 90 of the

Income-tax Act, 1961 (the Act) basis the Double Taxation Avoidance Agreement between India and Korea (DTAA/ the Treaty) even though the Form 67 was filed along with the tax return (i.e., with in the due date)

2. On the facts and in the circumstances of the case, the imposition of additional tax demand of INR 1,505,300 (including interest and adjusting refund due to the Appellant) is grossly erroneous and unjustified and is liable to be quashed if the Grounds of Appeals mentioned herein are accepted.

3. On the facts and in the circumstances of the case, CPC has erred in levying additional interest of INR 279,936 under section 234B and INR 58,904 under section 234C of the Act as it is consequential in nature and is liable to be quashed if the Grounds of Appeal mentioned herein are accepted.

The Appellant prays that direction be given to grant all such relief arising from the Grounds of Appeal mentioned supra as also consequential relief and refund thereto.

The Appellant craves, leave to add to or alter, by deletion, substitution or otherwise, any or all of the above Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary at any time before or during the hearing of the Appeal.”

2. Brief facts of the case are as under:

2.1 The assessee is a citizen of India and was employed with Samsung R & D Institute India Bangalore Private Limited (Samsung India) during the period 01.04.2018 to 31.03.2019. The assessee went on an international assignment to Samsung Electronics Co Ltd (Samsung Korea) during the period 16.09.2017 to 15.09.2018.

2.2 It is submitted that, while on assignment, the assessee continued to receive salary from Samsung India on which taxes were deducted at source and remitted to the Government

Treasury. Further, the assessee received certain allowance in Korea from Samsung Korea, which were subject to tax in Korea.

2.3 It is submitted that, the assessee's residential status for the subject AY was "Resident and Ordinarily Resident" as per Section 6 of the Income-tax Act, 1961 (the Act). On account of the same, the assessee offered his global income to tax in India (i.e. income received in India as well as allowance received in Korea).

2.4 It is submitted that, the assessee accordingly filed original tax return in India on 17.08.2019 declaring total taxable income of INR 8,757,430, and a gross tax liability of INR 1,592,141. The assessee claimed a Foreign Tax Credit (FTC) of INR 1,198,909, under Article 23 of India-Korea Double Taxation Avoidance Agreement (DTAA), thereby resulting into a tax refund of INR 32,454. It is submitted that, the FTC was claimed on doubly taxed income for the period 01.04.2018 to 15.09.2018 computed under Section 90 of the Act, based on the 2018 Korean tax return and proof of Korean taxes paid was annexed along with.

2.5 It is submitted that, the assessee's tax return was processed by the Centralized Processing Centre ('CPC') and an intimation under section 143(1) was issued on 18.03.2021. In such intimation, the CPC has accepted total taxable income of INR 8,757,430 (as filed by the Assessee) without making any additions. However, the CPC did not grant the FTC of INR 1,198,909 claimed by the assessee under section 90 of the Act. Consequently, tax demand of INR 1,505,300 including interest

under Section 234B and 234C of the Act and adjusting the refund of INR 32,454 due to the assessee.

2.6 Aggrieved by the intimation, the assessee preferred appeal before the Ld.CIT(A).

3. The CIT(A) confirmed the addition. The CIT(A) held that the assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is non-est in law. The CIT(A) also held that provisions of Rule 128(8) &(9) are mandatory in nature. The CIT(A) rejected the contention of the assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

3.1 Aggrieved by the order of Ld.CIT(A), assessee preferred appeal before this *Tribunal*.

4. It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision. The Ld.AR placed reliance on the decision of *Coordinate Bench of this Tribunal* in case of *M/s. 42 Hertz Software India Pvt. Ltd. vs. ACIT* reported in (2022) 139 taxmann.com 448.

5. On the contrary, the Ld.DR submitted that fulfillment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to FTC.

We have perused the submissions advanced by both sides in light of records placed before us.

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*.

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various *High Courts*, which has also been approved by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence (P.) Ltd.* reported in (2021) 432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in

accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly the grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 16th May, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 16th May, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore