

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

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Sudhir Kumar, Judicial Member**

ITA No. 3007/Del/2023 : Asstt. Year: 2020-21

Manoj Kumar Srivastava, A-28, Duggal Colony, Deoli Road, Khanpur, New Delhi-110062	Vs	ACIT, Circle-5(1)(1), Gautam Budh Nagar, Uttar Pradesh
(APPELLANT)		(RESPONDENT)
PAN No. APYPS6420D		

**Assessee by : Ms. Samita Patni, CA &
Sh. Manoj Kumar, CA
Revenue by : Sh. Anshul, Sr. DR**

Date of Hearing: 14.05.2024

Date of Pronouncement: 24.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 28.08.2023.

2. Following grounds have been raised by the assessee:

"Ground No. 1: That the order of Ld Commissioner of Income tax (Appeal Unit)-1, NATIONAL FACELESS APPEAL CENTRE (NFAC) is erroneous while confirming the order of section 154 owing to the fact that the Claim of Foreign Tax Credit (FTC) was allowable as Form No. 67 was on record at the time of passing of Rectification Order and that the provisions of section 90(2) of the Act empowers provisions of the Act to be applied to the extent they are more beneficial to a taxpayer in case of DTAA covered cases and that the fling of Form 67 as per the provisions of section 90 read with Rule 128(9) is a procedural law and should not control the claim of FTC.

Ground No. 2: That the Right to file a Revised Return is a statutory right u/s 139(5) and the Original Return, which was filed u/s 139(1), stood withdrawn once the ITR was Revised

within the time allowed as such the ITR which was processed for the first time on 25.11.2021 had Form No.67 on record.

Ground No. 3: That Section 139(5) of the Income-Tax Act, 1961 allows taxpayers to rectify their mistakes in their original tax returns by filing a revised return. Deductions or exemptions wrongly claimed and incorrect disclosure of income can be fixed by filing this return.

Ground No. 4: That there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance with any procedural provision."

3. Heard the arguments of both the parties and perused the material available on record.

4. The Assessee is an individual and earned income from salary and interest. The salary derived by him is from a company based in U.S.A, which credits his salary after withholding tax as per the tax laws of U.S. Therefore, the Assessee claims the benefit of Foreign Tax Credit for the taxes withheld in by the U.S. Tax Authorities.

5. In the case under consideration, the assessee filed the original ITR for A.Y. 2020-21 vide Acknowledgement No. 192466970100121 claiming benefit of foreign tax credit amounting to Rs. 10,58,483/- on 10.01.2021 but did not file Form 67. The assessee later on filed Form 67 on 31.03.2021 vide receipt No. 330987350310321 and then filed the revised return on 31.03.2021 vide Acknowledgement No. 33107029031032021. The revised return was processed u/s 143(1) vide order No. CPC/2021/A2/163137704 dated 25.11.2021 and benefit of foreign tax credit was not allowed. The assessee moved for rectification u/s 154 against 143(1) for claiming the benefit of foreign tax credit. The AO/CPC rejected

requisition for rectification u/s 154 vide order No. CPC/2021/U2/273792137 dated 22.08.2022 and upheld the intimation u/s 143(1) disallowing the credit of FTC on account of late filling of form 67 after due date of filling/ of ITR.

6. Aggrieved, the assessee filed appeal before the Id. CIT (A).

7. The Id. CIT (A)-NFAC dismissed the appeal of the assessee on ground that the assessee inadvertently filed the Form 67 of different year than the year under consideration.

8. Aggrieved, the assessee filed appeal before the Tribunal.

9. The assessee is in appeal before the Tribunal prayed for allowing the relief to the assessee as per Section 90 of the Act and as per Article 25 of India USA DTAA provides for credit for foreign taxes. It was submitted that section 90 of the Act read with Article 25(2)(a) provides that USA tax paid shall be allowed as a credit against the Indian tax but limited to proportion of Indian tax.

10. Rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act, which is recently amended and provided for filling before the end of assessment year. However, the Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame or incorrectly filed within time frame and rectified later on, the relief as sought by the assessee u/s 90 of the Act would be denied. It was not the legislative intention to deny the FTC, either under the Act or Rules. Filing of Form 67 is a procedural/directory requirement and is not a

mandatory requirement. It was submitted that violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC.

11. Reliance is placed on the following judgments:

- Brinda Ramakrishna vs. ITO (135 taxmann.com 358) (Bangalore ITAT)
- Sonakshi Sinha vs. CIT (Appeals) (142 taxmann.com 414) (Mumbai ITAT)
- Bhaskar Dutta vs. ACIT (Int. Taxation) (147 taxmann.com 481) (Delhi ITAT)

12. Hence, keeping in view the entire facts narrated above, the JAO is directed to allow the foreign tax credit limited to proportion of Indian tax payable.

13. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 24/05/2024.

Sd/-

(Sudhir Kumar)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 24/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR