

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.3585/DEL/2023
(Assessment Year: 2018-19)**

Vaibhav Singhal,
102, Golden Paradise,
2nd Cross Street, Hennur Bande Bus Stop,
Bangalore – 560 043 (Karnataka).

vs.

ITO, Ward 3(3)(5),
Saharanpur.

(PAN : DAWPS9391K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.P. Chitambram, Advocate
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 07.05.2024
Date of Order : 29.05.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 12.10.2023 for the assessment year 2018-19.

2. Grounds of appeal taken by the assessee read as under :-

“1. The Appellants objects to the order dated 12 October 2023 under Section 250 of the Income Tax Act, 1961 ('Act') issued by the Commissioner of Income- Tax (Appeals), National Faceless Appeal Centre (NFAC) for the aforesaid assessment year on the following grounds:

2. Denial or claim of Foreign tax credit u/s 90 of the Act

2.1 The order of the Commissioner of Income- Tax (Appeals) [CIT(A)] is contrary to law, facts and circumstances of the case.

2.2 The CIT (A) erred in confirming the action or the Assessing officer in denying the relief merely on the ground that Form 67 was not filed before filing the original tax return u/s 139 (1) of the Act.

2.3 The CIT(A) has failed to understand that the assessee is entitled to claim foreign tax credit as per the Double Taxation Avoidance Agreement ('DTAA') between India and the host jurisdiction even if a Form 67 is filed along with revised return of income.

2.4 The learned CIT (A) has failed to understand the fact that Rule 128 nowhere provides that if the Form 67 is not filed within the due date of filing return u/s 139(1), the relief as sought by the assessee u/s 90 will be denied.

2.5 The learned CIT(A) erred in understanding the fact that filing of Form 67 is a procedural requirement and should therefore not control the claim of foreign tax credit which is otherwise allowed under the provisions of the Act.

2.6 The CIT (A) ought to have appreciated that intimation under section 143(1) gets statutorily merged with scrutiny assessment order under section 143(3) by operation of law and as such the mistake of non-grant of FTC in intimation now forms part and parcel for the scrutiny assessment order and as such the CIT(A) is empowered to consider the same and grant relief.

3. Miscellaneous

3.1 The NFAC/CPC ought to have granted tile relief u/s 90 amounting to Rs.6,67,530 by considering the fact that Form 67 was filed along with supporting documents as required under Rule 128 of Income-tax Rules, 1962.

3.2 The NFAC/CPC erred in levying excessive interest under sections 234B and section 234C of the Act.

4. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also nil consequential relief thereto.”

3. The facts of the case before the ld. CIT (A)/NFAC is brought out from the order of ld. CIT (A) as under :-

“ Original return was filed on 31.08.2018. It was revised on 31.03.2019. The foreign tax credit was disallowed in intimation u/s 143(1) dated 03.06.2020. Notice u/s 143(2) for Limited Scrutiny assessment was issued on 20.09.2019. In the original return, FTC of Rs.5,86,619/- was claimed on estimate basis as US return was not available. The same was corrected to Rs.6,67,530/- in the revised return as US return was available. The appellant also revised Form 67 accordingly.

5.1 It is also explained and noted that the intimation u/s 143(1) was passed on 03.06.2020 with reference to revised return and also that notice u/s 143(2) pertained to revised return. Thus, the demand was raised u/s 143(1) by disallowing the claim of foreign tax credit. The appellant made number of rectification applications which were not entertained. It was also stated that the issue of claim of FTC was not raised before the AO during the assessment proceedings.

5.2 In view of the above, it is clear that the liability on account of disallowance of FTC claimed has arisen out of intimation u/s 143(1) dated 03.06.2020. It has not arisen by way of action of the AO in the assessment order. In fact, the learned representative of the appellant stated during the VC that FTC issue was not raised before the AO. The case was selected for Limited Scrutiny on account of foreign bank account and no addition was made on the basis of the said issue. The disallowance of foreign tax credit continued as a result of intimation

u/s 143(1) done earlier on 03.06.2020. It is thus clear that the issue of disallowance of FTC was neither raised during assessment proceedings nor is a part of assessment order. The grounds of appeal in the present appeal pertains to disallowance of FTC made in intimation u/s 143(1) dated 03.06.2020. The appellant therefore should have challenged the same by filing an appeal against the intimation u/s 143(1). It is therefore held that the appeal filed is not maintainable and it is accordingly dismissed.”

4. Against the above order, assessee has filed appeal before us. We have heard both the parties and perused the records.

5. Ld. Counsel for the assessee has summarised his comments as under :-

S. No.	Particulars	Date of filing	Foreign tax credit (FTC)	Total income declared	Assessed total income
1	Original Return u/s 139 (1)	31.08.2018	Rs.5,86,619	Rs.67,27,580	NA
2	Form 67 with Original Return	31.08.2018	Rs.5,86,619	NA	NA
3	Revised Return u/s 139 (5)	31.03.2019	Rs.6,67,531	Rs.67,28,500	67,28,500
4.	Form 67 filed with Revised Return without supporting documents to show proof of payment of tax in US	31.03.2019	Rs.6,67,531	NA	NA
5.	Form 67 filed once again with supporting documents evidencing payment of tax in US	05.12.2019	Rs.6,67,531	NA	NA
6.	Intimation u/s 143 (1) received	23.06.2020	In computation of tax liability, FTC not granted as updated Form 67 was not filed along with revised return of income but it was filed later on 05.12.2019	Rs.67,28,500	67,28,500
7.	Limited Scrutiny Assessment order u/s	30.12.2020	In computation	Rs.67,28,500	67,28,500

	143 (1)		of tax liability, FTC not granted as updated Form 67 was not filed along with revised return of income but it was filed later on 05.12.2019		
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1. Rule 128 prescribes filing of Form 67 on or before due date for filing the Return of Income under section 139 along with annexures supporting payment of tax in US for claiming Foreign tax credit.
2. In the instant case, the Appellant while filing the original return of income on 31.08.20 18 had also filed Form 67. Subsequently, the Appellant filed revised return of income on 31.03.2019. Along with revised return of income the Appellant also filed Form 67 on 31.03.2019. However, in this Form 67 filed on 31.03.20 19, the Appellant did not attach the necessary proof to show payment of tax in the US. Later, on 05.12.2019, the Appellant filed updated Form 67 along with proper attachments evidencing payment of tax in US. The lower authorities denied the benefit of FTC while computing the tax liability merely on the basis that proper Form 67 was filed belatedly without appreciating that Form 67 filed before completion of assessment.
3. It is submitted that the condition prescribed in Rule 128 i.e. filing of Form 67 on or before due date for return of income is not a mandatory condition but it is directory. Therefore, as long as Form 67 is filed before completion of assessment, FTC should be granted. This legal principle is squarely covered in favour of the Appellant in the following decisions:
 - a. Power and Energy Consultants India (P.) Ltd Vs ITO [2024] 159 taxmann.com 645 (Delhi - Trib) (refer Annexure 1)
 - b. Bhaskar Dutta Vs DCIT [2023] 147 taxmann.com 481 (Delhi - Trib.) (refer Annexure 2)
 - c. Duraiswamy Kumaraswamy V s PCIT [2023] 156 taxmann.com 445 (Madras) (refer Annexure 3)”
6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

7. Upon careful consideration, we find considerable cogency in the submissions of the Id. Counsel for the assessee. Ld. CIT (A) has primarily taken adverse inference on the ground that necessary claim was not pressed before the AO but the claim was very much before the AO. In the interest of justice and exercising our discretion as spelt out by Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT 157 taxmann.com 1 (SC), we admit this claim of the assessee in the light of the submissions above and case laws cited. We remit the issue to the file of AO. AO shall duly consider the claim of the assessee in the light of the documents already submitted and decide as per law on this claim duly admitted.

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

Order pronounced in the open court on this 29th day of May, 2024.

**SD/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 29TH day of May, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**