

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & Dr. MITHA LAL MEENA, AM

आयकर अपील सं./ITA No.679 & 680/JP/2023  
निर्धारण वर्ष / Assessment Year : 2019-20 & 2022-2023

The DCIT Circle-6 Jaipur	बनाम Vs.	Shri Amit Gupta 54, Tonk Road, Taruchhaya Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANHPG 9142 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA &  
Shri Rajiv Sogani, CA

राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 31/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 26 /04/2024

आदेश / ORDER

PER: SANDEEP GOSAIN

Both these appeals have been filed by the Department against two different orders of Addl./JCIT(A)-11, Mumbai both dated 22-09-2023 for the assessment years 2019-20 and 2022-23 wherein the Department has raised following grounds of appeal.

ITA NO. 679JP/2023  
DCIT, CIRCLE -6, JAIPUR VS AMIT GUPTA, JAIPUR  
ITA No. 679/JP/2023 – A.Y. 2019-20

1. On the facts and circumstances of the case and in law the order of the Id. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.
2. On the facts and circumstances of the case and in law the Id CIT(A) ought to have appreciated that Rule 128(9) of the I.T. Rules provides that filing of Form 67 on or before the due date of filing of return for the purpose of seeking foreign tax credit is a mandatory condition.
3. On the facts and circumstances of the case and in law the Id. CIT(A) erred in allowing the foreign tax credit amount of Rs.64,00,660/- without appreciating the fact that the assessee neither filed Return nor Form 67 for claiming foreign tax credit within due date prescribed for the relevant year which is due date prescribed for the relevant year which is in contravention to the provisions of the Act.

ITA No. 680/JP/2023 – A.Y. 2012-23

1. On the facts and circumstances of the case and in law the order of the Id. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.
2. On the facts and circumstances of the case and in law the Id CIT(A) ought to have appreciated that Rule 128(9) of the I.T. Rules provides that filing of Form 67 on or before the due date of filing of return for the purpose of seeking foreign tax credit is a mandatory condition.
3. On the facts and circumstances of the case and in law the Id. CIT(A) erred in allowing the foreign tax credit amount of Rs.53,15,256/- without appreciating the fact that the assessee neither filed Return nor Form 67 for claiming foreign tax credit within due date prescribed for the relevant year which is due

date prescribed for the relevant year which is in contravention to the provisions of the Act.

2.1 First of all, we take up the grounds of appeal of the department for the assessment year 2019-20 for adjudication. Brief facts of the case are that the Appellant is a resident individual for the Financial Year 2018-19 (relevant to AY 2019-20). The Appellant filed its belated return of income u/s.139(4) of the Act on 29/02/2020 vide acknowledgment number 314235180290220 declaring total income at Rs. 2,53,30,920/-. The appellant is a salaried person and also earning income from house property and other source. During the year under consideration appellant had received salary of Rs. 1,47,43,499/-, house property income of Rs. 1,06,91,690/- and income from other sources of Rs.80,734/-. The appellant has claimed deduction under chapter Vi-A of the Act of Rs.1,85,000/- Further, the assessee has made tax payments as Foreign Tax Credit (FTC) u/s.90/91 of the Act of Rs.64,00,660/- and other payments ie. TDS/TCS, Advance tax of and self-assessment tax u/s.140A of the Act has made by the assessee that met the total tax liability as per the assessee. The ITR was processed u/s 143(1) of the Act by the CPC, Bangaluru and order dated 19/03/2021 was passed wherein aggregate tax liability was enhanced by levying Interest u/s 234A,234B & 234C of the Act of Rs. 27,70,510/- by disallowance of Foreign Tax Credit (FTC) u/s 90/91 of the Act of Rs. 64,00,660/-,

2.2 Aggrieved by the order of the Id. CIT(A), the assessee carried the matter before the Id. CIT(A) who allowed the appeal of the assessee by observing as under:-

“6. Decision

There is no denying of facts that tax was deducted on the income earned in USA. The deduction of tax has been duly certified by the authorised Chartered Accountant. On examination of Section 90, Section 91 and DTAA, it does not provide for denial of exemption merely on account of delay in filing of certain Forms, in this case Form 67. Having regard in consonance with the view expressed by the Co-ordinate Benches decision in the case of I.T.A. Sumedha Arora Vs ITO (No.1399/DEL/2022, Delhi) and Shri. Shashidhar Seetharam Sharma Vs ITO, CPC (ITA No.708/Bang/2022, Bengaluru) as discussed above. I held that claim of FTC does not get controlled solely by the delay in filing of Form 67 prescribed under Rule 128(9) of the Income Tax Rules. Hence, the Assessing Officer is directed to take cognizance of Form 67 so filed and grant FTC as may be entitled to the assessee in accordance with law.

2.3 During the course of hearing, the Id. DR supported the order of the AO.

2.4 On the other hand, the Id. AR of the assessee supported the order of the Id. CIT(A) and filed the written submission to justify his claim.

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the assessee filed his return of income on 29-09-2020 at a total income of Rs.2,53,30,920/- (PB 1-5). It is also noted that while filing the return of income, the assessee considered income of Rs.2,30,75,189/-,

earned in USA as part of his total income offered for tax in India. Against the income earned in USA, assessee paid tax of Rs.64,00,660/- in USA. Resultantly, while filing the return of income, assessee took credit of tax paid in USA of Rs.64,00,600/- in accordance with Section 90/91 of the Income Tax Act, 1961. The return of income was processed u/s 143(1) vide order dated 19-03-2021 and while processing such return CPC, Bangalore rejected the foreign tax credit (FTC) claimed of Rs.64,00,660/- and raised demand against the assessee of such amount including interest which in first appeal has been allowed by the Id. CIT(A) by observing that ‘‘Having regard in consonance with the view expressed by the Coordinate Benches decision in the case of I.T.A. Sumedha Arora Vs ITO (No.1399/DEL/2022, Delhi) and Shri. Shashidhar Seetharam Sharma Vs ITO, CPC (ITA No.708/Bang/2022, Bengaluru) as discussed above. I held that claim of FTC does not get controlled solely by the delay in filing of Form 67 prescribed under Rule 128(9) of the Income Tax Rules. Hence, the Assessing Officer is directed to take cognizance of Form 67 so filed and grant FTC as may be entitled to the assessee in accordance with law’’. The Bench has taken into consideration the order of the Id. CIT(A) in which it is found that the issue in question is squarely covered by the decision of Coordinate Bench of ITAT Delhi and Bangalore Bench in the cases in the case of I.T.A. Sumedha Arora Vs ITO (No.1399/DEL/2022, Delhi) and Shri. Shashidhar Seetharam Sharma Vs ITO, CPC (ITA

No.708/Bang/2022, Bengaluru). Respectfully following the same, we concur with

the findings of the Id. CIT(A) and thus the appeal of the Department is dismissed.

3.1 As regards the appeal of the Department for the assessment year 2022-23 on the similar issue, we feel that the decision taken by the Bench in the assessment year 2019-20 shall apply mutatis mutandis in the case of the assessee for the assessment year 2022-23. Thus the appeal of the Department is dismissed.

4.0 In the result, both the appeals of the department are dismissed.

Order pronounced in the open court on 26 /04/2024.

Sd/-

( डा० मीठा लाल मीना )

(Dr. Mitha Lal Meena)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/04/2024

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- DCIT, Circle-6, Jaipur
2. प्रत्यर्थी / The Respondent- Shri Amit Gupta, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.679/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar