

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.725/Mum/2024
(Assessment Year :2021-22)**

Shivan Vinod Mehra Malbar Hill 21B, Urvashi Petit Hall Neapean Sea Road Malbar Hill Mumbai – 400 006	Vs.	DCIT-ACIT, Circle-I ASR, New C.R. Building Amritsar
PAN/GIR No.ACEPM1187E		
(Appellant)	..	(Respondent)

Assessee by	Ms. Sejal
Revenue by	Shri P.D. Chougule
Date of Hearing	30/05/2024
Date of Pronouncement	31/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 26/12/2023 passed by Addl. / JCIT (Appeal)-11, Mumbai for the A.Y.2021-22 with regard to denial of foreign tax credit in the intimation u/s.143(1).

2. The assessee is aggrieved by denial of foreign tax credit of Rs.20,86,652/- u/s.90 of the Act by the CPC in the intimation u/s.143(1).

3. The brief facts are that assessee is an individual and was working with Timex Nederland B.V. Sequel Services, Hong Kong. The assessee was earning his income from salary earned in Hong Kong on which he has paid taxes in Hong Kong on the said salary income for the A.Y.2021-22, which was claimed as relief in terms of FTC u/s.90 of the Act to the extent of Rs.20,80,652/-. The assessee has filed Form 67 on 31/03/2022 along with certificates / statements specifying the nature of income and amount of tax paid as per Rule 128 of the Income Tax Rules, 1962. The assessee had filed the return of income in India u/s.139(4) on 31/03/2022 and alongwith the return he has filed Form No.67 on the same date. The return filed by the assessee was processed and intimation was received on 17/11/2022, whereby it was informed vide order dated 03/10/2022 u/s.143(1), the CPC has raised demand including interest of Rs.26,29,760/-. The CPC has not computed the relief u/s.90 of the Act and no FTC was given of Rs.20,80,652/- claimed by the assessee.

4. Before the Id. CIT(A) assessee submitted that the assessee had come to India in F.Y.2020-21 to visit his father in India and due to Covid-19 pandemic, lockdown was imposed and he could not return to Hong Kong and only for this reason for the A.Y.2021-22 assessee was deemed to be resident and ordinarily resident for tax purpose in India. Since assessee was under

bonafide belief that he won't be liable to pay tax in India on the income earned in Hong Kong as the same was already taxed in Hong Kong, therefore he could file return on the due date of return u/s 139(1). Later on, assessee took advice from a tax consultant in India, who advised that since he has overstayed in India for more than 183 days, therefore, he has to file return for A.Y. 2021-22 in India. Accordingly, he compiled his data and filed the return of income which was earned in Hong Kong on 31/03/2022. It was return filed u/s.139(4) declaring total income of Rs.1,56,58,090/- which mostly included income earned in Hong Kong of Rs.1,53,04,989/-. The main income was purely on account of salary received in Hong Kong and small amount of capital gain interest income earned declared as other sources in India. He had paid taxes including interest of Rs.41,38,154/-. The ld. CIT(A) after incorporating the entire submission and bonafide explanation of the assessee from pages 2-9 of his order, observed that the due date of filing of return u/s.139(1) was 31st August 2021 which was extended up to 31/12/2021 and therefore, assessee was liable to file Form No.67 before the due date of filing of return of income i.e. 31/12/2021, whereas assessee has filed return u/s.139(4) alongwith Form No.67 on 31.03.2022. Thus, there was delay of 3 months in filing the Form No. 67. The ld. CIT(A) while dismissing the assessee's claim for FTC on his taxable income has relied on the CBDT Notification No.100/2022/F.No.370142/35/2022-TPL, which for sake of ready reference, scan copy is reproduced hereunder:-.

MINISTRY OF FINANCE
(Department of Revenue)
[CENTRAL BOARD OF DIRECT TAXES]

NOTIFICATION

New Delhi, the 18th August, 2022

INCOME-TAX

G.S.R. 636(E).—In exercise of the powers conferred by clause (ha) of sub-section (2) and sub-section (4) of section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. **Short title and commencement.**— (1) These rules may be called the Income-tax (27th Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from 1st day of April, 2022.

2. In the Income-tax Rules, 1962, in rule 128, for sub-rule (9) the following sub-rule shall be substituted, namely:-

“(9) The statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:

Provided that where the return has been furnished under sub-section (8A) of section 139, the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished.”

[Notification No. 100/2022/F. No. 370142/35/2022-TPL]

NEHA SAHAY, Under Secy.

Explanatory Memorandum: This amendment is effective from the 1st day of April, 2022 so that it applies to all the claims of foreign tax credit furnished during the financial year 2022-2023. It is hereby certified that no person is being adversely affected by giving retrospective effect to this rule.

Note : The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S.O. 969 (E) dated the 26th March, 1962 and last amended vide notification number G.S.R 634 (E) dated 17th August, 2022.

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5. Ld. CIT(A) held that since this notification is applicable from 01/04/2022 and since assessee's appeal pertain to A.Y. 2021-22, therefore aforesaid notification is not applicable and accordingly, he denied the foreign tax credit of Rs. 20,86,652/-.

6. After considering the aforesaid facts and the order of the Ld. CIT(A), we find there is no dispute that the assessee's major income which was declared in the return of income in India was salary earned in Hong Kong of Rs.1,53,04,989/- out of total income declared of Rs.1,56,58,090/-. Due to adverse circumstances of second wave of Covid-19 Pandemic and circumstances beyond his control, assessee who had come to India to visit his father had over stayed because of complete lockdown all across. Thus due to this reason, he was treated as resident and ordinarily resident for tax purpose in India. Later on, on the advice of tax consultant in India, assessee filed return of income which was belated return u/s.139(4) on 31/03/2022

and alongwith said return of income assessee had filed Form 67 as required in terms of Rule 128 of the Income Tax rules. From the bare perusal of the CBDT notification, it is seen that sub-rule (9) of Rule 128 was amended wherein it was provided that statement in Form No.67 can be furnished on or before the time specified under sub-section (1) or sub-section (4) of Section 139. Explanatory Memorandum clearly states that this amendment is effective from 01/04/2022. If such notification has been issued to include the due date up till the date of filing of return u/s.139(4), which is beneficial to the assessee and to remove the rigours, then same should be held to be applied retrospectively. Otherwise also during the Covid period, the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation reported in 411 ITR 722 had given relaxation for initiation of any kind of proceedings and applications and statutory compliances till March 2022. This judgment has overriding effect in all such situations. Before us various judgments of Co-ordinate Benches of ITAT have been cited wherein it has been held that filing of Form 67 is directory in nature and not mandatory and mere delay in filing of Form No.67 will not preclude the assessee from getting benefit of tax credit and the above amendment in Rule 128 is curative in nature and therefore, it has to apply retrospectively. Accordingly, we direct the ld. AO to allow the foreign tax credit of Rs.20,86,652/.

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

Order pronounced on 31st May,2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 31/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai