

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.296/MUM/2024
Assessment Year: 2019-20**

Shri Nirav D. Udani (Executor to the Estate of Late Shri Jitendra Hatiben Udani) 143-A Mittal Court, Nariman Point, Mumbai - 400021 PAN: AAAPU8613P	Vs.	Asst. DIT, CPC, Bengaluru, INT Tax Ward 4(3)(1), Room No.1625, 16 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anuj Kishnadwala, A.R.
Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 27 . 05 . 2024
Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 20.12.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2019-20.

2. In the instant case, the assessee being a US citizen but resident of India had declared his total income at Rs.40,40,626/- comprising the amount of Rs.6,70,090/- from salary (pension from Johnson & Johnson INC and amount of Rs.33,05,549/- as dividend income. The assessee has also claimed the relief of Rs.6,34,636/- under section 90 of the Act by filing form No.67. The CPC processed the income tax return of the assessee vide intimation dated 17.03.2021 under section 143(1) of the Act, however, did not grant the relief claimed under section 90 of the Act.

3. The assessee, being aggrieved, challenged the non-granting the relief, before the Ld. Commissioner who by observing that the assessee had filed his return of income for A.Y. 2019-20 on 31.07.2019 and has not filed form No.67 before the due date of filing the return under section 139(1) of the Act but filed form No.67 as prescribed under rule 128 of the Income Tax Rules, 1962 (in short 'the Rules') on 31.12.2019, thus, the assessee failed to furnish form No.67 to claim foreign tax credit on or before the due date of filing of the return under section 139(1) of the Act. Therefore, the assessee has not followed the Rule 128 of the Rules in respect of filing form No.67 on or before the due date for filing of the return of income for relevant assessment year, therefore, the denial of the tax credit of Rs.6,34,636/- by the AO/CPC in the order under section 143(1) of the Act is justified.

4. The assessee, being aggrieved, challenged the affirmation of the denial of the credit/relief under section 90 of the Act and

claimed that it is admitted fact that the assessee has filed the form No.67 before the finalization of the assessment and therefore the assessee is entitled to get the benefit of the relief to the extent of Rs.6,34,636/-, as per section 90 of the Act.

5. On the contrary, the Ld. D.R. refuted the claim of the assessee.

6. We have heard the parties and perused the material available on record. On the rival claims of the parties, question emerge ***“whether the assessee who filed No.67 for claiming the relief under section 90 of the Act, belatedly after the due date specified for furnishing the return of income under section 139(1) of the Act but before completion of the assessment proceedings and/or issuing the intimation under section 143(1) of the Act, would be entitled to get the benefit of the relief as prescribed under section 90 of the Act or not?”***

6.1 The Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy Vs. Commissioner of Income Tax (2023) 156 taxmann.com 445 (Madras) has also dealt with the identical issue wherein the assessee filed the form No.67 after filing of the income tax return but before the finalisation of the assessment and ultimately allowed the claim of the assessee by holding i.e. form No.67 filed after the due date specified for furnishing the return of income under section 139(1) of the Act but before completion of the assessment proceedings and issuing the intimation under section 143(1) of the Act, then the assessee would be entitled to get the benefit of the relief as prescribed under section 90 of the Act.

6.2 We further observe that the Hon'ble co-ordinate Bench of the Tribunal at Mumbai in the case of Sonakshi Sinha vs. Commissioner of Income-tax (Appeals) [2022] 142 taxmann.com414 (Mumbai - Trib.) also dealt with the identical issue and ultimately allowed the relief to the assessee who filed form No.67 belatedly but before the conclusion of the assessment proceedings.

6.3 Hence on the aforesaid analyzation, we are of the considered view: *“where the form 67 is filed, may be belated i.e. after the due date specified for furnishing the return of income under section 139(1) of the Act but before completion of the assessment proceedings and/or issuing the intimation under section 143(1) of the Act, then the Assessee would be entitled to get the benefit of the relief as prescribed under section 90 of the Act . Hence the question framed is answered accordingly.*

6.4 Coming to the instant case, admittedly the return of income was filed by the assessee under section 139(1) of the Act on **31.07.2019** and thereafter the form No.67 was filed on **31.12.2019** and subsequently the income tax return filed by the assessee was processed and completed under section 143(1) of the Act on **17.03.2021** which goes to show that though the assessee filed form No.67 after the due date of filing of the return under section 139 of the Act but before its is a fact that same was filed before conclusion of the assessment proceedings and/or issuing intimation under section 143(1) of the Act dated **17.03.2021**, hence, respectfully following the judgments referred to above, we are inclined to allow the claim of the assessee.

5. Consequently, the AO is directed to allow the relief to the tune of Rs.6,34,636/- as claimed under section 90 of the Act to the assessee.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.