

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 406 to 408/Bang/2024
Assessment Years: 2019-20 to 2021-22

Shri Balasubramanyan Ashok, 83 LG Lakedew, Bilishivale Doddagubbi, Bangalore – 560 077. PAN: AJAPA0861G	The Deputy Commissioner of Income Tax, Circle – 3(3)(1), Bangalore.
APPELLANT	RESPONDENT

Assessee by	:	Shri Sharath Rao, CA, Smt. Vaidehi .G, CA & Shri Dhiraj .R, Advocate
Revenue by	:	Smt. Shamala .D.D, Addl. CIT (DR)

Date of Hearing	:	22.05.2024
Date of Pronouncement	:	29.05.2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of separate orders all dated 11.01.2024 passed by NFAC for A.Ys. 2019-20, 2020-21 and 2021-22 respectively. It has been submitted that the only issue raised by the assessee commonly in all the three appeals are on denial of the FTC claimed due to belated filing of form 67. For

sake of convenience, grounds raised by the assessee for AY 2019-20 are being reproduced herewith:

“1. In the facts and circumstances of the case and law, the order passed by the learned Commissioner of Income Tax (Appeals), NFAC (herein referred as Id. CIT(A)) dismissing the appeal was bad in law by observing that the denial of claim of foreign tax credit in the intimation issued u/s 143(1) of the Income tax Act, 1961 (the Act), cannot be said to be a mistake apparent from record rectifiable u/s 154 of the Act. The said order was passed without providing an opportunity of being heard to the appellant which is against the principle of natural justice.

2. In the facts and circumstances of the case and in law, the CIT(A) have erred in law in upholding the order issued by Centralized Processing Centre (CPC) u/s 154 of the Act in arbitrarily denying the appellant's eligible claim amounting to INR 1,09,59,576 made in the revised return as per the provisions of the Section 90 of the Act read with Article 25(2)(a) of the India-US Double Taxation Avoidance Agreement, without providing any cogent reasons against the settled judicial principles and without considering the documentary evidences.

The appellant craves leave to add, amend and/or alter the above grounds of appeal, at any time before or at the time of hearing of the appeal.”

2. Brief facts of the case are as under:

2.1 The assessee is a citizen of India and was employed with Microsoft Research Lab India Private Limited during the assessment years under consideration. In addition to the income that was earned in India, the assessee had earned income in USA on which federal taxes were duly paid in USA.

2.2 .It is further submitted that, the assessee's residential status for the subject AY was "Resident and Ordinarily Resident" as per Section 6 of the Income-tax Act, 1961 (the Act). On account of the

same, the assessee offered his global income to tax in India (i.e. income received in India as well USA).

2.4 It is submitted that, the assessee filed original tax return in India for the relevant years under consideration on 31/08/2019, 24/12/2020 and 23/12/21 respectively for the years under consideration. Subsequently the returns were revised on 31/03/2020, 31/03/2021 and 31/01/2022 respectively for the years under consideration wherein, the FCT was claimed and Form 67 was filed along with the revised return. The assessee claimed a Foreign Tax Credit (FTC), under Article 23 of India-US Double Taxation Avoidance Agreement (DTAA). It is submitted that, the FTC was claimed on doubly taxed income for the assessment years under consideration, computed under Section 90 of the Act, based on the tax return in USA and proof of federal taxes paid was annexed along with.

2.5 It is submitted that, the revised return was processed by the Centralized Processing Centre ('CPC') and an intimation under section 143(1) was issued on 19/03/2021, 24/12/2021 and 13/10/2022. In these intimations, the CPC did not grant the FTC claimed by the assessee under section 90 of the Act. Consequently, tax demand of INR 1,25,08,380/-, INR 1,50,29,730 and INR 4,46,47,190 was raised for the years under consideration to be due from assessee.

2.6 The assessee filed rectification application which was rejected vide orders dated 22/02.2022, 14/05/2022 and 10/01/2023

respectively rejecting the FTC claimed for the assessment years under consideration, for delayed filing of Form 67.

Aggrieved by the order passed under section 154, the assessee preferred appeal before the Ld.CIT(A).

3. The CIT(A) confirmed the addition. The CIT(A) held that the assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is non-est in law. The CIT(A) also held that provisions of Rule 128(8) &(9) are mandatory in nature. The CIT(A) rejected the contention of the assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

3.1 Aggrieved by the order of Ld.CIT(A), assessee preferred appeal before this *Tribunal*.

4. It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision. The Ld.AR placed reliance on the decision of *Coordinate Bench of this Tribunal* in case of *M/s. 42 Hertz Software India Pvt. Ltd. vs. ACIT* reported in (2022) 139 *taxmann.com* 448.

5. On the contrary, the Ld.DR submitted that fulfilment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to FTC.

We have perused the submissions advanced by both sides in light of records placed before us.

6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. This view is fortified by the decision of coordinate bench of this *Tribunal* in case of *Ms. Brinda Kumar Krishna vs. ITO in ITA no.454/Bang/2021 by order dated 17/11/2021*.

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various *High Courts*, which has also been approved by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence (P.) Ltd.* reported in (2021) 432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in

accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly the grounds raised by assessee stands allowed for statistical purposes.

In the result appeals filed by assessee stands allowed for statistical purposes.

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

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th May, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore