

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JM AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.639/Chny/2024
निर्धारण वर्ष /Assessment Year: 2018-19.

Subramanian ShyamSunder
No.31, Flat No. B20, R.R. Flats,
2nd Floor, Warren Road,
Mylapore, Chennai-600 004.
[PAN-ATJPS2126B]

ACIT,
Vs. Non Corp Circle 17(1)
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Shri V.Padmanabhan, C.A.
प्रत्यर्थी की ओर से /Revenue by : Shri P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 20.05.2024
घोषणा की तारीख /Date of Pronouncement : 29.05.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal arises from vide DIN/order No. ITBA/APL/S/250/ 2023-
24/1061422896(1) dated 23.02.2024 of the CIT(A).

2.0 Through the ground of appeal the assessee has primarily challenged the action of the AO u/s 143(1) vide order dated 29.07.2020 and its confirmation by the CIT(A) of denying it the relief of Rs.5,77,855/- u/s 90/90A on the premise of mandatory Form-67 being late by 01 day.

3.0 As per brief facts of the case, the assessee is an individual and had filed its return of income on 31.08.2019 and the Form-67 on 01.09.2020. The relief claimed by the appellant u/s 90 was disallowed on the premise of mandatory Form-67 being late by 01 day.

4.0 We have considered facts of the case in the light of evidence placed on record and rival's submissions. The only issue for consideration is as to whether the delay of 01 day can be condoned or not. In support of its contentions the assessee has invited attention to the decision of the coordinate bench of this tribunal in IT appeal No.265 & 266 (CHNY) of 2023 in the case of Amit Singh Baid Mehta. The issue under consideration was as to whether non-submission of Form-67 before the due date of filing of written was enough to deny the claim of exemption u/s.90. The coordinate bench concluded the filing of Form-67 is merely a procedural / directory requirement and is not mandatory requirement so as to deny claim. The relevant part of the judgement is reproduced hereunder:

“...6.3 No doubt, rule 128(0) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed under section 139(1) of the Act. However, the Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought for by the assessee under section 90 of the Act would be denied.

6.4 If the intention of the Legislature was to deny the FTC, either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. There are many sections in the Act which specifically deny deduction or exemption or relief in case the return is not filed within prescribed time, such as, sections 80AC, 80-IA(7), 10A(5) and 10B(5), etc. of the Income-tax Act. Such language is not used in Rule 128(9). Therefore, such condition cannot be read into rule 128(9). Thus, we are of the considered opinion that filing of Form 67 is a procedural / directory requirement and is not a mandatory requirement. Since violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC, we are of the considered opinion that the claim of the assessee should be allowed. Accordingly, we set aside the order of the Id.CIT(A) for both the assessment years and direct the Assessing Officer to allow the relief as sought for by the assessee under section 90 of the Act for both the assessment years under consideration.....”

5.0 Upon careful consideration of the facts and the judgement cited Supra we hold that the assessee cannot be denied benefit of the claim u/s.90 merely because of technical / procedural default of just 01 day. Accordingly, the AO is directed to condone the delay and allow the assessee the benefit of claim u/s 90. The ground of appeal raised by the assessee is therefore allowed.

6.0 In the result the appeal is allowed.

Order pronounced on 29th May, 2024.

Sd/-

**(ABY T. VARKEY)
JUDICIAL MEMBER**

Sd/-

**(AMITABH SHUKLA)
ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 29th May, 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Coimbatore / Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF