

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 30 to 32/Kol/2024
Assessment Year: 2020-21 to 2022-23

Shivananda Patil C/o Subash Agarwal & Associates, Advocates Siddha Gibson 1, Gibson Lane, Suite 213 2 nd Floor Kolkata - 700069 [PAN : BEIPP9978P]	Vs	ADIT, CPC, Bengaluru
--	----	-----------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
-------------------------------	--	---------------------------------

Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri Prohash Roy, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 30/04/2024
घोषणा की तारीख /Date of Pronouncement: 03/06/2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeals are directed at the instance of the assessee against the separate but identical orders of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)"), passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2020-21 to 2022-23.

2. As the issues involved in these appeals are identical, for the sake of convenience they were heard together and are being disposed off by way of this common order.

3. The common issue involved in these appeals that arises for our adjudication is in respect of denial of relief claimed u/s 90 of the Act on account of delay in furnishing of Form 67 of the Act.

4. Facts in brief are that the assessee is an individual and earns income from salary. The assessee has undertaken employment at Bhutan and has paid taxes in Bhutan on the salary earned. In the return of income filed for the impugned Assessment Year(s), relief has been claimed u/s 90/90A of the Act at Rs.1,75,696/-, Rs. 1,89,409/- and Rs.1,51,215/- for Assessment Year 2020-21, 2021-22 and 2022-23; respectively. Further in the return processed u/s 143(1)(a) of the Act, the said claim was denied solely on account of delay in furnishing Form 67. Subsequently, the assessee filed the rectification application u/s 154 of the Act but failed to get any relief. Thereafter, the assessee preferred appeal before the Id. CIT(A) against the order u/s 143(1) of the Act but there was a delay in filing of the appeal before the Id. CIT(A). Though it was claimed that delay was on account of *bonafide* reasons as the assessee tried to avail the remedy u/s 154 of the Act. However, the Id. CIT(A) was not satisfied with this argument and he dismissed the appeal for all the three impugned years as not maintainable in view of the provisions of Section 249(2) of the Act.

5. Aggrieved, the assessee is now in appeal before this Tribunal.

6. The Id. Counsel for the assessee submitted that Form 67 for all the three impugned Assessment Years have been furnished on the e-portal. Delay in filing the appeal for few days was not intentional as the assessee was trying to avail the remedy u/s 154 of the Act. He further submitted that it has been consistently held by this Tribunal in catena of judgments that filing of Form 67 is directory and not mandatory in nature and even if it is filed subsequent to the filing of regular return of

income, then the same should be entertained by the Id. Assessing Officer/Appellate Authorities.

The Id. D/R on the other hand, vehemently argued supporting the orders of the authorities below.

7. We have heard rival contentions and perused the material placed before us as well as the case-laws relied upon by the Id. Counsel for the assessee. The common issue involved in all these appeals relates to denial of relief claimed u/s 90/90A of the Act at Rs.1,75,696/-, Rs. 1,89,409/- and Rs.1,51,215/- for Assessment Year 2020-21, 2021-22 and 2022-23; respectively, on the ground of delay in filing of Form 67. We note that the assessee has obtained Form 67 at a later date and had e-filed on the Income-tax portal with all necessary attachments. Form 67 for Assessment Year 2020-21, 2021-22 and 2022-23 have been furnished on 26/03/2021, 27/03/2022 and 09/05/2023; respectively. The correctness of the tax credit available to the assessee on account of the tax paid on salary earned in Bhutan is not in dispute as the same has been claimed in the return which has been processed u/s 143(1) of the Act and the claim made by the assessee in the ITR is in consonance to the Form 67 filed. We observe that the Id. CIT(A) has dismissed all the three appeal of the assessee as non-maintainable only on account of delay in filing of the appeals.

7.1. We, on considering the fact that the assessee is an individual and has made a legitimate claim of Foreign Tax Credit (FTC) and has also furnished Form 67 and and the delay in filing of the appeal before the Id. CIT(A) has occurred due to time spent in taking alternative remedy

u/s 154 of the Act but the same did not fructify. Though the assessee ought to have filed the appeal against the order u/s 154 of the Act but he had filed the appeal against the order u/s 143(1) of the Act. Considering the *bonafide* claim of the assessee, we are inclined to condone the delay in filing of the appeal before the ld. CIT(A).

8. Now, we are left with two remedies, first that we restore the appeal to the file of the ld. CIT(A) for adjudication on merits and second to deal with the matter on merits here itself. Considering the smallness of the amount of tax credit involved and also to avoid fresh round of litigation before the ld. CIT(A), which would only result into multiplicity of proceedings, we decide to adjudicate the appeal of merits here itself.

9. We notice that Form 67 has been filed with a minor delay. Copies of Form 67 are filed in the paper book furnished for each of the Assessment Years. In the decisions referred by the ld. Counsel for the assessee, we note that this Tribunal has consistently taken a view that filing of Form 67 is directory and not mandatory in nature and that the claim of FTC cannot be denied merely for late filing of Form 67 as it is merely a procedural formality. We take note of the proposition of law laid down by this Tribunal in the case *Krishna Kumar Chaudhary in ITA No. 113/Kol/2023, order dt. 13/04/2023*, while dealing with identical issue:-

“5. We have heard the rival contentions and perused the relevant record placed before us. The sole grievance of the assessee is that the ld. CIT(Appeals) erred in not granting foreign tax credit for the reason that Form 67 was filed after the due date of filing of the return of income. We notice that the assessee is an individual and earned

income of Rs.36,56,726/- during A.Y. 2019-20 and during this period was employed by Minas De Benga, LDA, a Company based in Mozambique, Africa and received a salary of Rs.23,69,373/- from its Mozambique employer and filed the return for A.Y. 2019-20 on 18.08.2019 but did not file Form 67 as provided under Rule 128(9) of the Income Tax Rules, 1962, in support of the foreign tax credit of Rs.6,97,756/- deducted by the Mozambique employer. Subsequently Form 67 was filed on 10.02.2021. Both the lower authorities have denied this claim of the assessee.

6. We further find that it has consistently held that filing of Form 67 is procedural in nature and the assessee should not be denied the benefit of foreign tax credit for such delay. We find support from the decision of this Tribunal in the case of Satreena Consultants Pvt. Limited (supra), wherein similar issue was decided in favour of the assessee, wherein also Form 67 was filed after the due date of filing of the return of income but the claim of the assessee was allowed by this Tribunal observing as follows:-

“7. We have heard the rival contentions and gone through the relevant records placed before us. The only issue for our consideration is regarding relief under section 90 of the Act at Rs.7,38,649/- claimed by the assessee but denied by both the lower authorities for delay in filing Form No. 67. We observe that it is not in dispute that the assessee earned income from Tanzania and Rs.21,24,975/- was deducted as withholding tax and the credit for the same was claimed as relief under section 90 of the Act against the tax liability arising in India at Rs.7,38,649/-. We notice that for the purpose of foreign tax credit, Rule 128(8) of the Income Tax Rules provides the procedure wherein for the purpose of credit of any foreign tax shall be allowed on furnishing various documents, which includes Form No. 67, which is a statement of income from the country or specified territory outside India offered for tax for the previous year of foreign tax deducted or paid on such income and the same needs to be verified in the specified manner, which includes any one of the three, namely, tax authority of the country, or specified territory outside India or from the person responsible for deduction of such tax or signed by the assessee. There are certain other requirements, which need to be fulfilled for the purpose of filing Form No. 67.

8. Now our attention was drawn towards the Notification issued by the Central Board of Direct Taxes on 18th August, 2022. The time limit for filing the Form 67 was before the last date of filing the return under section 139(4) of the Act and the method of filing Form 67 was prescribed on 19.09.2017. Further we find that the method of filing Form no. 67 was prescribed on 19.09.2017 i.e. after the date of filing the return of income by the assessee. It is also not in dispute that the last date for filing the return under section 139(4) of the Act for A.Y. 2017- 18 was 31. 03. 2019 and the assessee filed Form

67 on 28. 09. 2018 alongwith revised return. Under these given facts and circumstances, where the assessee filed the original return on 06.07.2017 when there was no mechanism for filing Form No. 67, as it came into effect on 19.09.2017 and thereafter before the expiry of the due date prescribed under section 139(4) of the Act, the assessee furnished Form 67 and also filed the revised return. I am of the considered view that the claim of the assessee towards withholding taxes paid in Tanzania is to be given against the tax liability on the income declared in India. Even otherwise filing of Form 67 has been held to be directory in nature by the Coordinate Bench, Mumbai in the case of Sonakshi Sinha -vs.- CIT(A) [ITA No. 1704/MUM/2022 dated 28.09.2022] and the relevant finding of this Tribunal is reproduced below:

“12. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that 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 due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) Ltd v. ACIT [2022] 139 taxmann.com 448 (Bangalore – Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358 (Bang – Trib) it was held 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 and that 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. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmipathi V CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of

credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration.

9. I, therefore, respectfully following the decision referred to hereinabove and the discussion made supra, direct the ld. Assessing Officer to allow the claim of the assessee made in Form No. 67 and give benefit of relief of withholding tax credit in Tanzania against the tax liability arising in India. Accordingly all the effective grounds raised by the assessee in the instant appeal are allowed.

7. Similar view was also taken by this Tribunal in another case of Atanu Mukherjee (supra). We, therefore, respectfully following the decision referred hereinabove and since the ld. D.R. having not placed any binding precedence in favour of the revenue, direct the ld. Assessing Officer to accept the Form 67 filed by the assessee and allow the eligible foreign tax credit in accordance with law and allow the grounds of appeal raised by the assessee.

10. Respectfully following the decision of this Tribunal (supra) and also considering the fact that the claim of the assessee is *bonafide*, we find that the assessee is entitled for the alleged Foreign Tax Credit claimed in the return of income. Accordingly, the findings of the ld. CIT(A) is reversed and effective grounds of appeal raised by the assessee are allowed.

11. In the result, all the appeals of the assessee are allowed.

Order pronounced in the Court on 3rd June, 2024 at Kolkata.

Sd/-

(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 03/06/2024

30/6/24

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata