

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.749/Bang/2024
Assessment Year : 2017-18

Shri. Louis Xavier D’Costa, H. No.86B C/o Inacio D’Costa, Belloi Nuvem, Salcette – 403 601, Goa. PAN : AKGPD 2147 P	Vs.	DCIT, Circle – 3(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Balaji, CA
Revenue by	:	Ms. Matta Padma, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.06.2024
Date of Pronouncement	:	04.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 28.02.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. Assessee has raised five grounds in a narrative and elaborative manner. However, the solitary issue that is raised is whether CIT(A) is justified in confirming the intimation issued under section 143(1) of the Act wherein assessee’s claim for Foreign Tax Credit (FTC) was denied.

3. Brief facts of the case are as follows:

Assessee was a salaried person employed with Shell India Markets Pvt. Ltd. Assessee was sent on international assignment to Gabon from 06.10.2013 to 31.08.2016. For the Assessment Year 2017-18, assessee was a resident and ordinarily resident (ROR) under the Act. As assessee was ROR in India, his global income was taxable in India. Accordingly, return of income was filed disclosing the salary for the services rendered outside India i.e., in Gabon for the period 06.10.2013 to 31.08.2016 and taxes were duly paid. Since assessee worked in Gabon, he was required to offer salary income earned in Gabon for the period 06.10.2013 to 31.08.2016 to tax in Gabon. Accordingly, the tax was paid in Gabon also. In order to avoid double taxation of salary income for the impugned period from 06.10.2013 to 31.08.2016, assessee claimed FTC of Rs.29,57,701 for the taxes paid in Gabon as per section 91 of the Act. FTC was claimed in the revised return filed on 19.02.2019. In support of the claim of FTC, assessee has also filed Form 67 on 12.02.2019.

4. The intimation was issued under section 143(1) of the Act on 20.03.2020. In the intimation issued under section 143(1) of the Act, FTC claimed by the assessee was not allowed apparently on the premise that Form 67 was filed beyond the due date of filing of the return under section 139(1) of the Act.

5. Aggrieved by the Order of intimation passed under section 143(1) of the Act, denying the claim of FTC, assessee preferred appeal before First Appellate Authority. The Addl. / JCIT(A) confirmed the intimation issued under section 143(1) of the Act. The Addl. / JCIT(A) held that Form 67 and Rule 128 of the Income Tax Rules, 1962, are applicable from Assessment Year 2018-19 onwards and not the relevant Assessment Year viz., 2017-18.

6. Aggrieved by the Order of Addl. / JCIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein case laws relied on, copy of Form 67 filed for the relevant Assessment Year, submissions made before the Addl. / JCIT(A), etc. The learned AR submitted that the issue in question is squarely covered by various orders of the Tribunal which are detailed below:

- *Order of the Hon'ble ITAT in the case of Mr. Deepak Shimoga Padmaraju vs Assistant Director of income-tax, Bangalore in ITA No. 239/Bang/2024 (order dated 17.04.2024)*
- *Order of the Hon'ble ITAT in the case of Mr. Shashidhar Seetharam Sharma vs ITO in ITA No. 708/Bang/2022 (order dated 19.09.2022)*
- *Order of the Hon'ble ITAT in the case of Mr. Vinodkumar Lakshmipathi v. CIT in ITA No. 680/Bang/2022 (order dated 06.09.2022)*
- *Order of the Hon'ble ITAT in the case of Ms. Brinda RamaKrishna vs. The Income Tax Officer, Ward 5(3)(1), Bangalore in ITA No. 454/Bang/2021 (order dated 17.11.2021)*

7. Further, the learned AR submitted that in one of his colleague's case, the Surat Bench of the Tribunal in the case of Mr. Sanjay Patil Vs. ITO in ITA No.189/SRT/2021 (order dated 18.05.2022) has decided the identical issue in favour of the assessee.

8. The learned DR supported the orders of the Addl. / JCIT(A).

9. We have heard the rival submissions and perused the material on record. The solitary issue that is raised is regarding the denial of FTC in the intimation issued under section 143(1) of the Act, for the reason that Form 67 in support of claim of FTC was filed beyond the due date of filing of return of income under

section 139(1) of the Act. The Addl. / JCIT(A) confirmed the intimation on the premise that Form 67 and Rules are applicable from Assessment Year 2018-19 onwards and not relevant for the concerned Assessment Year. This view of the Addl. / JCIT(A) is incorrect and against the law as following orders of the Tribunal are in respect of Assessment Year 2017-18:

- *M/s. 42, Hertz42 Hertz Software India Pvt. Ltd., vs. The Assistant Commissioner of Income Tax, Circle - 3 (1)(1), Bangalore in ITA No.29/Bang/2021 (order dated 07.03.2022)*
- *Tanmoy Ghosh Vs. The Assistant Director of Income Tax, CPC, Bangalore in ITA Nos. 549/Bang/2022 (order dated 25.08.2022)*
- *Madua Bagchi Vs. The Assistant Director of Income Tax, Circle-61, Kolkatta, in ITA No. 3/KOL/2017-18 (order dated 19.07.2023)*

10. Form 67 and Rule 128 of the Rules are introduced vide Finance Act, 2016, w.e.f. 01.04.2017 and therefore it is clearly applicable for and from Assessment Year 2017-18. Therefore, the conclusion of the Addl. / JCIT(A) is erroneous and legally not tenable. The issue in question is no longer *res-integra* and is squarely covered in favour of the assessee by the Order of the Bangalore Bench of the Tribunal in the case of Brinda Ramakrishna Vs. ITO (supra). On identical facts, the Tribunal had decided that filing of Form 67 before the due date of filing the return under section 139(1) of the Act is only procedural and therefore not mandatory but only directory. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:

“16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of

the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

11. In light of the aforesaid Orders of the Tribunal, we restore the matter to the AO to examine Form No.67 and grant FTC in accordance with law.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 04.06.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.