

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,

ITA No.804/Mum/2024
(A.Y. 2018-19)

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| Mr. Madhusudhan Pillai F 1102, Residences CHS Phase – 1, Godrej Trees, Pirojshanagar, Vikhroli East, Mumbai – 400079 | Vs. | CPC, Bengaluru DCIT, Circle-42(1)(1) Kautilya Bhavan, Mumbai – 400051 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AHSP0412E | | |
| Appellant | .. | Respondent |

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| Appellant by : | Ravindra Poojary |
| Respondent by : | H.M. Bhatt |

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| Date of Hearing | 29.05.2024 |
| Date of Pronouncement | 21.06.2024 |

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of Id. ADDL/JCIT(A)-4, Chennai of the Income Tax Act, 1961 for A.Y. 2018-19. The assessee has raised the following grounds before us:

“Disallowance Foreign Tax Credit relief under section 90 to Rs.18,74,932/-

- 1. The Id CIT(A) erred on facts and in law and under the circumstances in confirming the action of the A.O in denying Foreign Tax Credit relief u/s 90 of Rs.18,74,932/- by observation that the appellant has not filed form no. 67 of the IT rule 1962 to seek relief ought to be given within the time allowed u/s 139(1) of the IT Act without appreciating the fact that the appellant has filed form 67 on 21 November 2018 which is much before the completion of assessment u/s 143(1) dated 17.06 2020. Therefore, the appellant ought to be given relief u/s 90 of Rs.18,74,932/-*
- 2. The Id. CIT(A) erred in disallowing the Foreign Tax Credit relief u/s 90 of the act solely on the ground that Form 67 has not been filed on or before the due date of filing return of income without appreciating the fact that the requirement of filing Form no. 67 under rule 128(9)*

of the Income-tax Rules, 1962 is directory but not mandatory. Therefore, the disallowance may be deleted.

3. *The Id CIT(A) erred on facts and in law and under the circumstances in confirming the action of the A.O confirming the disallowance of deduction of Rs.18,74,932/- made by the CPC under section 143(1) of the Act, without appreciating that the disallowance is a debatable issue and hence the adjustment is bad in law.*
4. *The appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”*

2. Fact in brief is that assessee is an individual who was resident in India for the purpose of Income Tax, however he has earned income from salary in the country of Tanzania and paid the taxes in that country on the said salary income earned in Tanzania. The assessee has filed the return of income on 29.08.2018 and claimed credit of foreign tax credit amounting to Rs.18,74,932/- paid in Tanzania. The CPC has processed the return of income filed by the assessee u/s 143(1) on 17.06.2020 and did not grant tax credit of Rs.18,74,932/- claimed u/s 90 of the Act by the assessee.

3. In the appeal, the ld. Addl/JCIT(A)-4, Chennai has dismissed the appeal of the assessee holding that assessee has not filed the form 67 to claim relief of taxes u/s 90 of the Act before the time limit specified u/s 139(1) of the Act.

4. Before us the ld. Counsel submitted that assessee has filed the form no. 67 for claiming foreign tax credit on 21.11.2018 before the processing of the return of income of the assessee on 17.06.2020 and he also submitted that assessee has filed the return of income within the due date as prescribed u/s 139(1) of the Act. The ld. Counsel further submitted that Rule 128 does not provide for disallowance of foreign tax credit in case of delay in filing form no. 67. The ld. Counsel has placed reliance on the following judicial pronouncements:

- “1. *Sonakshi Sinha VS CIT(A) [I.T.A. No.1704/Mum/2022, DT.20.09.2022 (Mumbai Tribunal)*

2. *Tom Thomas VS ADIT(CPC) Bangalore, [I.T.A. No.20/Mum/2022, DT.29.11.2022 (Mumbai Tribunal)*
3. *Shishir Agarwal Vs ADIT(CPC) Bangalore, [I.T.A. No.3029/Mum/2023, DT.22.12.2023 (Mumbai Court)*
4. *Rohan Hattangadi vs CIT(A), II.T.A. No. 1896/Mum/2022, DT.02.12.2022 (Mumbai Tribunal)*
5. *Brinda Ramakrishna VS ITO-5(3)(1), [LT.A. No.454/BANG/2021, DT.17.11.2021 (Bangalore Tribunal)]*

5. On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. The assessee is resident of India for the previous year under consideration in view of provision of Section 6 of the Act as the assessee stayed in India for a period exceeding 182 days in India. During the year under consideration the assessee was employed with G.A. Insurance Tanzania Limited till 31.12.2017 and the assessee had earned salary income of Rs.65,13,744/- from the said company and offered the same in his Income Tax return filed for the assessment year 2018-19. The employer of the assessee in Tanzania has deducted income tax under the Tanzania Income Tax Law to the amount of Rs.18,74,932/-. The assessee has claimed foreign tax credit amounting to Rs.18,74,932/- in the Income tax return filed on 29.08.2018. However, the form no. 67 for claiming tax credit was uploaded on the portal on 21.11.2018. The CPC Bangalore has not allowed the claim of said foreign tax credit on processing of the return of income u/s 143(1) on 17.06.2020 on the ground that assessee has not filed the form 67 before the due date of filing return of income as prescribed in Rule 128 of the Income Tax Rule 1962. We have perused the copies of return of income form no. 67 and tax clearance certificate of Tanzania revenue authority placed in the paper book filed by the assessee during the course of appellate proceedings before us. The assessee has offered the salary income earned from the company G.A. Insurance Tanzania Ltd. to the amount of Rs.65,13,744/-. As per the tax clearance certificate of Tanzania

Revenue Authority they have deducted tax to the amount of Rs.18,74,932/- from the salary income earned by the assessee in Tanzania. We have also perused the Article 23 of the India-Tanzania DTAA which provide deduction on the income which is subject to tax in both the contracting state. The assessee has also e-filed Form no. 67 with the Income Tax Department on 21.11.2018 as per the copy of the said form placed in the paper book filed by the assessee. The assessee has filed Form no. 67 beyond the due date of filing of return of income, however, it was filed before the processing of return of income by the CPC. We find that on similar issue and identical facts the coordinate benches of the ITAT, Mumbai in the cases referred by the Id. Counsel as supra held that the assessee is eligible for foreign tax credit as assessee has filed form no. 67 before completion of the assessment though not in accordance with Rule 128(9) of the Income Tax Rule which provided that such form shall be filed on or before the due date of filing return of income. The relevant extract of the decision of ITAT, Mumbai in the case of Sonakshi Sinha Vs. CIT(A) as referred above is reproduced as under:

"012. 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 on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.

013. Other grounds of appeal are also revolving around the issue of claim of foreign tax credit and therefore those are allowed.

014. Accordingly, appeal of the assessee is allowed.”

Following the decision of the ITAT as referred above we consider that assessee has filed Form No. 67 before the processing of return of income as discussed supra in this order, therefore, we direct the assessing officer to allow the claim of foreign tax credit of Rs.18,74,932/- u/s 90 of the Act as prescribed in the DTAA between India & Tanzania. Therefore grounds of appeal of the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.