

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.415/Del/2024
Assessment Year 2020-21

Meghna Das 138, Anuj Vihar, Near Shankar Vihar, Delhi Cantonment New Delhi	Vs.	ITO, Ward-49(1) Delhi
TAN/PAN: BZSPD0242F		
(Appellant)		(Respondent)

Applicant by:	Shri A.T. Panda, Adv.		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	20	06	2024
Date of pronouncement:	20	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-ADDL/JCIT(A), Madurai ['CIT(A)' in short] dated 30.12.2023 arising from the intimation dated 25.11.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2020-21.

2. As per the grounds of appeal, the assessee seeks to challenge the first appellate order wherein the relief claimed under Section 90 towards foreign tax credit amounting to Rs.8,96,355/- has been denied while assessing the corresponding income derived by way of salary from employer based in United Kingdom (U.K.) namely, ZS Associates International Inc., UK.

3. When the matter was called for hearing, the Id. counsel referred to the return of income and submitted that the assessee is a Non Resident Indian (NRI) and moved to UK during the previous year relevant to A.Y. 2020-21 in question. The assessee derived income by way of salary from Indian employer namely, ZS Associates India Pvt. Ltd. and also derived salary income from ZS Associates International Inc, U.K. The aggregate salary of Rs.48,81,664/- was duly reflected in the return of income. The assessee also claimed foreign tax credit in terms of Section 90 r.w. Rule 128(9) of the Income Tax Rules, 1962 for the tax deducted by the employer overseas. The AO however denied foreign tax credit of Rs.8,96,355/- for the solitary reason that prescribed Form No.67 has not been filed within the due date prescribed under Section 139(1) of the Act as warranted by Rule 128(9) of the Income Tax Rules, 1962. The prescribed form was filed on 22.01.2021 in tandem with ROI filed belatedly on same date.

3.1 In this backdrop, the Id. counsel submitted that plethora of decisions are available on the issue where the Co-ordinate Benches have held that filing of Form No.67 within due date should be read as only a directory requirement as opposed to the mandatory requirement interpreted by the Revenue Authorities. The Id. counsel submitted that the view expressed by the CIT(A) against the assessee holding filing of Form No.67 within due date as mandatory requirements runs contrary to the judicial dicta and therefore, requires to be reversed and claim of foreign tax credit should be allowed to the assessee. For the completeness of arguments, the Id. counsel referred to the judgment rendered in the case of *Duraiswamy Kumaraswamy vs. Pr.CIT (2024) 460 ITR 615*

and (Mad.) and Sumedha Arora vs. ITO (2023) 154 taxmann.com 535 (Del).

3.2 The ld. counsel for the assessee thus sought appropriate relief in the matter.

4. The ld. DR for the Revenue relied upon the action taken by the Revenue Authorities.

5. I have carefully considered the rival submissions and perused the first appellate order as well as the intimation passed under Section 143(1) of the Act.

6. The AO while drawing intimation under Section 143(1) has denied foreign tax credit amounting to Rs.8,96,355/- on the ground that the requisite Form no.67 was filed on 22nd January, 2021, i.e., beyond the due date prescribed under Section 139(1) of the Act, the extended due date under Section 139(1) being 10th January, 2021. It is the case of the assessee that the foreign tax credit cannot be denied merely because prescribed Form No. 67 has been filed beyond the due date. The Form No.67 although filed after extended due date specified for furnishing ROI under Section 139(1) but was obtained before completion of proceedings under Section 143(1). Besides, the intimation was issued by CPC after filing of Form-67 on its portal. In the light of the judgments rendered by the Hon'ble Courts and Tribunal on such facts, I find that issue is squarely covered in favour of the assessee by the decision rendered in the case of *Sumedha Arora (supra)* and other judgments. As held in such decisions, filing of FTC in terms of Rule 128 is only directory in nature and rejection of FTC claim owing to belated filing of such form is not proper. Hence, I find

substantial force in the plea of the assessee for relief by way of foreign tax credit so claimed. The action of the CIT(A) is thus set aside and the AO/ NFAC is directed to grant credit towards foreign tax credit against the salary income reported in the return as claimed.

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

Order was dictated and pronounced in the open Court on 20th June, 2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat