

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 1248/Mum/2024
(Assessment year: 2020-21)

Faisul Ramon Nagel 9 th Floor, Maker Chambers Nariman Point, Mumbai-400 0021 Pan : CDAPN2575C	vs	ITO, International Tax Ward 3(3)(1), Mumbai, Room No.1615, 16 th Floor, Air India Building, Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Nimesh Vora
Respondent by : Shri Anil Sant, Addl. CIT DR

Date of hearing : 26/06/2024
Date of pronouncement : 27/06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the
Commissioner of Income-tax(Appeal)-56, Mumbai [for brevity, 'Ld.CIT(A)'] passed
under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment
Year 2020-21, date of order 02.02.2024. The impugned order was emanated from
the order of the Income-tax Officer, International Tax Ward 3(3)(1), Mumbai, (in
short, 'the A.O.')

passed under section 154 of the Act date of order 08/08/2022.

2. The assessee has taken the following grounds of appeal:-

“Present appeal is preferred against the order passed u/s 250 of the Income Tax Act, 1961 ("the Act"), dated 02/02/2024, by the Commissioner of Income Tax Appeal - 56, Mumbai (hereinafter referred to as the "learned CIT(A)").

On the facts and in the circumstances of the case and in law, the learned CIT(A):

1. *Erred in confirming non grant of foreign tax credit under Section 90/90A of INR 10,01,206.*
2. *Erred in not granting relief of foreign tax credit for the reason that requisite Form 67 was filed along with revised return of income under Section 139(5) of the Act and not with the original return of income filed under Section 139(1) of the Act.*
3. *Should have directed to grant consequential interest under Section 244A of the Act.*

The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit at any time before or during the hearing of the above appeal and further craves leave to consider each of the grounds of appeal as without prejudice to each other.”

3. Brief facts of the case are that the assessee filed its original Return Of Income (in short ROI) by claiming refund of Rs. 27,78,160/- on account of excess taxes paid. The return was processed U/s 143(1) and refund of Rs. 29,44,850/- was received by the assessee. The said ROI was revised on 31 May 2021 and the assessee has offered to tax, the interest income amount of Rs. 14,959/-, income from foreign sources amount of Rs. 37,10,841/- and the correspondingly claimed foreign tax credit of Rs. 10,36,967/- U/s 90 of the Act. The Id. AO processed the revised ROI and passed an intimation under section 143(1) of the Act with demand of Rs. 14,17,030/- which was raised on account of non-granting of foreign tax relief amounting to INR 10,36,967/-. Further the Id. AO reprocessed the said

intimation U/s 154 of the Act and had not carried out any rectifications to the said demand. The assessee thereafter again filed an online rectification request for re-processing of ROI. But the rectification application is rejected and the demand of Rs. 14,17,030/- is confirmed by the order dated 08/08/2022. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) rejected the assessee's appeal on the grounds of the delay filing in form 67 under Rule 128 of the Income Tax Rule. 1962 (in short Rule). Being dissatisfied with the appeal order the assessee filed an appeal before us.

4. The Ld.AR filed a written submission which is kept on record. The Id. AR argued that the assessee filed the original return of income without declaring any foreign tax credit (in short, 'FTC') under section 90 of the Act. So, no form No.67 was required to file. During the revised return, the assessee declared the foreign tax credit and filed the Form No.67 U/R 128. After pointing out the defect in original return, the revised return was filed by declaring the foreign tax credit. The rectification was filed but the rectification was rejected by the Revenue. The Id. AR further argued that in the rectification order dated 8/08/2022, the Id. AO itself has computed the foreign tax relief for taxes paid in South Africa amount of Rs. 10,36,967/- at serial number 22 in clause (b). However, while calculating the total tax relief, due to some system error, the amount of total tax relief is mentioned as '0', APB pages 9 and 10 of Annexure 1 as a result the demand is raised. Hence, non-consideration of foreign tax credit constitutes a mistake which is apparent from record. Therefore, once the appropriate tax relief under Section 90 is granted, the demand amount of Rs. 14,17,030/- will get reduced.

5. The Ld.AR relied on the order of the Hon'ble **High Court of Madras** in the case of **Duraiswamy Kumaraswamy v/s PCIT (2023) 156 taxmann.com 445 (Mad)**. The relevant paragraph is reproduced as below:-

"8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of Indian from the assessment year 2018-2019 and 2019-2020. The petitioner admitted the fact that he has filed his return in India on 10.08.2019. The intimation under section 143(1) was issued on 26.03.2020. However, he has filed the return without Form-67 which is required to be filed under Rule 128 to claim the benefit of FTC and the same came to be filed on 02.02.2021 which was well before the completion of the assessment year. The intimation under section 143(1) was issued from the CPC only on 26.03.2021.

*10. According to the learned counsel appearing for the respondent, the procedure under rule 128 is mandatory and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income tax and claimed the benefits of FTC. However, the petitioner would submit that it is not mandatory. The Rule cannot make anything mandatory, and it can be directory in nature, that too before the Assessment, the claim to avail the benefits of FTC is filed. **Therefore, it would be the amounts to due compliance under the Act. The petitioner referred to the Judgment of the Hon'ble Supreme Court in the case of G.M.Knitting Industries (P.) Limited (supra), wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.***

11. The law laid down by the Hon'ble Apex Court in G.M. Knitting Industries (P) Ltd. (supra), which was referred to above, would be squarely applicable to the

present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order.

12. Further, in the present case, the intimation under section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore the impugned order is liable to be set aside.

13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.”

(Emphasis supplied)

6. The Ld.AR further relied on the order of the Coordinate Bench of ITAT-Mumbai in case of **Priya Savina Murzello v/s DCIT (2023) 148 taxmann.com 472 (Mumbai Tribunal)** wherein it has been held as under: -

"11. We find that in another decision in Anuj Bhagwati v. DCIT, in ITAs No. 1844 and 1845/Mum.72022, the coordinate bench of the Tribunal vide order dated 20-9-2022, while deciding a similar issue held that section 90/91 of the Act has not been amended insofar as grant of foreign tax credit is concerned and Rules cannot override the Act and therefore filing of Form No. 67 is not mandatory but it is directory. The relevant findings of the coordinate bench of the Tribunal in the aforesaid decision are as under:

"8. We considering the facts, circumstances provisions of the Act and judicial decisions are of the opinion that there is no amendment on these aspects in the section 90 of the Act and the Rules cannot override the Act and therefore the filing of Form No. 67 is not mandatory but it is directory. Accordingly, We restore the disputed issue to the file of the CIT(A) to adjudicate afresh on merits considering the observations in above paragraphs and the ratio of judicial decisions. Further the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal and allow the grounds of appeal of the assessee for statistical purposes."

12. Thus, respectfully following the aforesaid decisions of the coordinate bench of the Tribunal, we are of the considered opinion that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), as they stood during the year under consideration, will not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since in the present case, the claim of the assessee was denied on this technical aspect without going into the merits, therefore, we deem it appropriate to direct the jurisdictional Assessing Officer to

decide the claim of the foreign tax credit on merits, after accepting the Form No. 67 and other related documents filed by the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

13. In the result, the appeal by the assessee is allowed for statistical purposes.”

7. The Ld.DR vehemently argued and relied on the order of the revenue authorities. The relevant paragraph of the appeal order paragraph 5.2.9 is reproduced as below:-

“5.2.9 Reiterating the facts of the case of the appellant that the return of income for AY 2020-21 was filed by the appellant on 15.02.2021. The appellant not given any reasons for not filing Form No. 67 before the filing of return of income. Such submissions given by the Appellant is not acceptable. As discussed above, it was mandatory for the appellant to file the statement in Form No. 67 before the filing of the return of income for A.Y. 2020-21, which the appellant has failed to do so. Therefore, appellant cannot be allowed credit of foreign tax because of delay in filing of Form No. 67 as prescribed under sub-rule 9 of Rule 128.

Thus, the denial of foreign tax credit amounting to Rs.10,36,967/-, which was claimed by the appellant in the return of income, by the AO in order u/s 154 of the Act, is upheld.”

8. We heard the rival submissions, considered the documents available in the record. The assessee filed the original return without declaring the FTC. After detecting the defect in the return, the assessee filed the revised return with Form No.67r.w.r. 128 of the Rule. The assessee cannot be said as defaulter for finling the form 67. The claim of FTC is launched only in revised return along with form-67. We respectfully followed the order of the Hon’ble High Court of Madras in

the case of **Duraiswamy Kumaraswamy** (supra) . The Ld.AO rejected form No.67 and entire return and withdrew the FTC in return of income, which is highly unjustified. The assessee when detected the defect, filed the revised return as per the provisions of the Act.We respectfully relied on the decision of the coordinate bench of the Tribunal in the case of **Priya Savina Murzello** (supra). Here we considered the assessee's submission and set aside the appeal order. This Bench remits the matter back to the file of the Id. AO to make verification by taking into consideration the FTC claimed by the assessee in form 67 and revised return. The Id. AO is directed to give due credit of FTC to assessee after proper verification. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the assessee.

Accordingly, the impugned demand is quashed and the order is passed with the direction indicated above.

9. In the result, **ITA No.1248/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 27th day of June, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 27/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**