

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2664/DEL/2023
(Assessment Year: 2020-21)**

Anish Tandon,
M-205, Greater Kailash – II,
DELHI – 110 048.

vs.

ACIT, Circle 70(1),
Delhi.

(PAN : AADPT5486A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Baldev Raj, Advocate
Shri Maneesh Upneja, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 02.07.2024

Date of Order : 04.07.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 28.07.2023 for the assessment year 2020-21.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the order under section 250 passed by the learned Commissioner of Income Tax (Appeals) is bad in law, wrong in facts against natural justice.

2. That the learned Commissioner of Income Tax (Appeals) has erred by not allowing Foreign Tax Credit despite the fact that tax was paid overseas and Form 67 was filed before the end of the assessment year.”

3. Brief facts of the case as summarised are that assessee filed return of income on 29.12.2020 declaring taxable of Rs.1,66,74,950/- and claiming refund of Rs. Nil. In this return, the assessee has claimed a foreign tax credit ["FTC"] of Rs.16,74,950/- by filing Form 67 u/s 90(2) of the Income-tax Act, 1961 (for short 'the Act'), which was filed on 01.03.2021. The return of income was processed u/s 143(1) of the Act on 25.11.2021, wherein the CPC, although accepted the returned income, denied the FTC and raised a demand to the tune of Rs.21,73,460/- (out of which Rs.16,74,950 is on account of denial of tax credit and Rs.5,38,401/- is on account of interest charged u/s 234A, B and C). Assessee requested the rectification of a mistake apparent from record u/s 154 of the Act, and the same was rejected vide order dated 22.08.2022.

4. Against the above order, assessee filed appeal before the Id. CIT (A). Ld. CIT(A) vide order dated 28/07/2023 rejected the appeal of the assessee and held as under:-

"During the appellate proceedings, the appellant filed written submission wherein, the appellant contended that the appellant has filed the Form no. 67 on 01.03.2021. Further, it was stated that the Form no. 67 was never revised and was filed only once on 01.03.2021. The appellant has also relied upon certain judicial decisions in support of the contention that the foreign tax credit ought to be granted to the appellant.

I have perused the documents on record and as stated by the appellant, the Form no. 67 has been filed on 01.03.2021. The assessment year under consideration is AY 2020-21 and the extended due date for filing Return of Income is 31.12.2020. As

per the provisions of the Act, the appellant is required to file the Form no. 67 within the due date of filing return for claiming foreign tax credit and in the case under consideration, the Form no. 67 was filed only on 01.03.2021, which is beyond the due date of filing return. As the appellant has not filed the Form no. 67 within the due date of filing return, the CPC has rightly not granted the credit for foreign tax credit. The judicial decisions relied upon by the appellant are different and distinguishable as the case of the appellant is with respect to the intimation u/s. 143(1) r. w.s 154 of the Act and the issue is not a scrutiny assessment matter. As per the provisions of section 143(1) and 154, only mistake apparent from record can be taken into consideration herein, without going into the judicial decisions etc. As per the provisions of the Act, the appellant has not filed the Form no. 67 within the prescribed time and hence the AD was right in not granting the credit for foreign tax credit. Therefore, AO's action is upheld. Accordingly, the grounds of appeal are dismissed.”

4. Against the above order, assessee is in appeal before us.
5. The submissions of the ld. Counsel for the assessee are as under :-
 - (i) Rule 128 (9) does not provide for disallowance of Foreign Tax Credit in case of delay in filing Form 67.
 - (ii) Filing of form 67 is a directory requirement and not a mandatory requirement.
 - (iii) Income Tax Act & DTAA override the rules, and rules cannot be contrary to the act.
 - (iv) FTC cannot be disallowed to the Assessee merely because of the late filing of Form 67, as it is a procedural formality on the Assessee's part.
 - (v) Credit in respect of foreign tax paid cannot be denied to the Assessee for the technicality of not filing Form 67 within the due date of return u/s 139(1) of the Act.
6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

7. We have carefully considered the submissions of both the parties and perused the material available on record. We note that the ITAT, Delhi Bench in ITA No.3585/Del/2023 in the case of Vaibhav Singhal vs. ITO vide order dated 29.05.2024 concluded as under :-

“ Upon careful consideration, we find considerable cogency in the submissions of the Id. Counsel for the assessee. Ld. CIT (A) has primarily taken adverse inference on the ground that necessary claim was not pressed before the AO but the claim was very much before the AO. In the interest of justice and exercising our discretion as spelt out by Hon’ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT 157 taxmann.com 1 (SC), we admit this claim of the assessee in the light of the submissions above and case laws cited. We remit the issue to the file of AO. AO shall duly consider the claim of the assessee in the light of the documents already submitted and decide as per law on this claim duly admitted.”

8. We find that facts in the present case are identical to the aforesaid case. Accordingly, we follow the aforesaid order and remit the issue to the file of AO with similar directions. AO shall duly consider the claim of the assessee in the light of the documents already submitted and decide as per law on this claim duly admitted.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 4th day of July, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 4th day of July, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**