

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1177/Bang/2024
Assessment Year : 2019-20

Shri Anand Bhairat, A2 404, Shriram Whitehouse, 6 th Main, 15 th Cross, R.T. Nagar, Bangalore – 560 032. PAN: AGVPB4531C	Vs.	The Deputy Commissioner of Income Tax, Circle – 3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Adam Kajabee, CA
Revenue by	:	Shri V. Parithivel, JCIT-DR

Date of Hearing	:	18-07-2024
Date of Pronouncement	:	24-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 25.04.2024 passed by NFAC, Delhi for A.Y. 2019-20.

2. The Ld.AR submitted that the only issue that arises in the present appeal is regarding denial of foreign tax credit claimed by assessee u/s. 90 amounting to Rs.29,46,150/- in respect of taxes paid in USA.

3. The Ld.AR submitted that the assessee being a non-resident in India during the relevant period was not aware about Form 67 to be filed in order to claim the FTC. It is only upon the intimation received u/s. 143(1) that the assessee was informed regarding Form 67 not having complied, due to which the claim of FTC was denied. It is submitted that immediately the assessee on 10.02.2022 furnished Form 67 and filed a rectification request u/s. 154 of the act. The Ld.AR submitted that, the rectification request filed by the assessee was not considered by the CPC and the order u/s. 154 was passed on 22.02.2022 disallowing the FTC.

4. Against the order u/s. 154, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the order u/s. 154 by holding that Rule 128 has to be strictly complied with and the assessee should have filed Form 67 before the timeline specified u/s. 139(1) and that any omission would prevent assessee from claiming the FTC.

5. Aggrieved by the order of the Ld.CIT(A)/NFAC, the assessee is in appeal before this *Tribunal*.

6. The Ld.DR on the contrary has supported the orders passed by the authorities below.

He submitted that fulfilment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to FTC.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision. The Ld.AR placed reliance on the decision of *Coordinate Bench of this Tribunal* in case of *M/s. 42 Hertz Software India Pvt. Ltd. vs. ACIT* reported in (2022) 139 taxmann.com 448.

8. There is no dispute that the assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear 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. In our view, 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. This view is fortified by the decision of coordinate bench

of this *Tribunal* in case of *Ms.Brinda Kumar Krishna vs.ITO in ITA no.454/Bang/2021 by order dated 17/11/2021.*

9. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various *High Courts*, which has also been approved by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence (P.) Ltd.* reported in (2021) 432 ITR 471.

10. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 24th July, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 24th July, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore