

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2543/Mum/2024
Assessment Year: 2021-22

Cosmos Maya India Pvt. Ltd. Mumbai 2 nd Floor, Sector-2 Communication Centre, Mukta House Filmcity Road Goregaon East Maharashtra - 400065 [PAN: AAGCM9675C]	Vs	Central Processing Centre, ITO- 16(1)(3), Bengaluru
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Prakash Jhunjunwala, A/Rs
Revenue by :	Shri Akshay Tapadiya, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 24/07/2024
घोषणा की तारीख /**Date of Pronouncement**: 24/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. CIT(A) - Chandigarh, dt. 26/03/2024, pertaining to AY 2021-22.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in now allowing the foreign tax credit (FTC) in respect of the tax paid outside India for the reason that Form No. 67 had been filed after furnishing the return of income.

3. Briefly stated the facts of the case is that the assessee is a private limited company, resident of India and eligible to the treaty benefits of India Japan Double Taxation Avoidance Agreement (DTAA). The

assessee is engaged in the business of production of animation TV serials. Return of income for the year under consideration was filed declaring income of Rs.10,48,29,080/- and the refund of Rs. 21,73,480/- was claimed. During the year the consideration, the assessee has earned income amounting to Rs.6,03,27,471/- in Japan from its business and paid taxes in Japan amounting to Rs.59,87,813/-.

4. The assessee could not file Form 67 along with the return of income and the return was processed disallowing the foreign tax credit of Rs.59,87,813/-. The assessee filed Form 67 on 17/11/2022 along with a rectification application. The claim of FTC was denied which order was affirmed by the Id. CIT(A).

5. Representatives of both the sides heard at length. There is no dispute that the assessee holds a foreign tax credit certificate for Rs.59,87,813/-. In our considered opinion filing of Form 67 is procedural/directory requirement and is not mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantial right of claiming the credit of FTC. We accordingly direct the AO to allow the credit of FTC and hold that Rule 128(9) of the Income Tax Rules, 1962 (Rules) does not provide for disallowance of FTC in the case of delay in filing of Form 67 as the same is not mandatory but a directory requirement and DTAA over-rides the provision of the Act and the Rules.

6. The Hon'ble Madras High Court in the case of *Duraiswamy Kumaraswamy vs. PCIT in W.P. No. 5834 of 2022* vide order dt. 06/10/2023, has held in para 11 to 13 as under:-

“11.The law laid down by the Hon'ble Apex Court in *Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred 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 the 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 of 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."

7. Respectfully following the same, we direct the AO to examine the claim as per Form 67 and allow the claim of FTC as per the relevant provisions of law.

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

Order pronounced in the Court on 24th July, 2024 at Mumbai.

Sd/-

**(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 24/07/2024

**SC S.P.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai