

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 775/Del/2024
Assessment Year : 2020-21

AVIK ANUP PRABHU
OSHO DRIVE, GADAIPUR,
MEHRAULI,
NEW DELHI – 110 030
(PAN: AXIPP8009P)
(Appellant)

Vs. DCIT, CIRCLE 22(2),
INCOME TAX DEPARTMENT,
C.R. BUILDING, I.P. ESTATE,
NEW DELHI – 110 002
(Respondent)

Appellant by : Shri Aditya Kumar, CA &
Shri Ankur Agarwal, CA
Respondent by : Shri Kanv Bali, Sr. DR.

Date of hearing : **30.07.2024**
Date of pronouncement : **06.08.2024**

ORDER

PER SAKTIJIT DEY, VP :

This appeal by the Assessee is against the order dated 02.01.2024 of the Addl/JCIT(A)-2, Jaipur for assessment year 2020-21.

2. The dispute in the present appeal is confined to disallowance of Foreign Tax Credit (FTC).

3. Briefly stated facts are, the assessee is a resident individual. For the assessment year in dispute the assessee filed his return of income originally u/s. 139(1) of the Act. Subsequently, the assessee filed a revised return of income claiming Foreign Tax Credit amounting to Rs. 49,54,248/- alongwith Form No. 67. While

processing the return of income of the assessee, the CPC disallowed assessee's claim of FTC on the ground that the assessee had not filed Form No. 67 on or before due date of filing of return of income provided u/s. 139(1) of the Act. Assessee contested the aforesaid disallowance before Ld. First Appellate Authority. However, relying upon Rule 128(9), Ld. First Appellate Authority held that since the assessee had not filed Form No. 67 within the due date provided u/s. 139(1) of the Act, the claim of FTC cannot be allowed.

4. We have considered rival submissions and perused the materials on record. It is evident, in the return of income filed for the assessment year in dispute, the assessee had included the foreign income earned of Rs. 1,68,48,868/-. Since the assessee could not furnish Form No. 67 in support of its claim of FTC amounting to Rs. 49,54,248/- in terms of Section 90 of the Act, subsequently, the assessee filed revised return of income alongwith Form No. 67. However, assessee's claim of FTC has been disallowed only for the reason that Form No. 67 claiming FTC was not filed within due date. We find, this issue is no more *res integra* in view of the various decisions of the Coordinate Benches. In case of Bhaskar Dutta vs. Deputy Commissioner of Income Tax (International Taxation) (2023) 147 Taxmann.com 481 (Delhi - Trib), while deciding the identical nature of dispute, the Coordinate Bench has held that the provisions contained under Rule 128(9) are directory and cannot override the provisions contained u/s. 90 of

the Act. The Bench had further held that even Rule 128(9) nowhere debars claim of FTC on account of delay in furnishing Form No. 67. The relevant observations of the Coordinate Bench while deciding the issue on merits are as under:-

"13. Even, otherwise also, the assessee has a strong case on merit as well. In case of M/s.Brinda Ramakrishnan vs. ITO, supra, the Tribunal while dealing with an identical issue has held as under:

"16. I have given a careful consideration to the rival submission. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide the disallowance of FTC in case of delay in filing Form No. 67; (ii) filing of Form No. 67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s. 154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s. 154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s. 154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s. 154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned Departmental Representative in this regard."

14. Further, in case of *Sonakshi Sinha Vs. CIT (supra)*, the co-ordinate Bench while seized of an identical issue, held as under:

"010. We have also put before the learned authorised representative decision of the honourable Supreme Court in civil appeal number 1449 of 2022 in case of *PCIT versus Wipro Ltd* dated 11 July 2022 as to why the condition of filing form number 67 on or before the due date of filing of the return of income should not be considered as mandatory in nature.

011. The learned authorised representative submitted that honourable Supreme Court was seized of the matter where in the same subsection twin conditions were mentioned, the honourable High Court and lower appellate authorities considered, one of the condition as mandatory and one of the condition as directory. He submitted that here section 90 or 91 does not lay down any condition of filing any form. The requirement of filing of the form is provided under rule 128 of The Income Tax Rules. Therefore, here, the situation is quite different. He submitted that these conditions have been considered by the coordinate bench in case of *Brinda Ramakrishna*.

012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income 012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income

Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz Software India (P.) Ltd v. ACIT [2022] 139 taxmann.com 448 (Bangalore - Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358 (Bang - Trib) it was held 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 and that 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. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmipathi V CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. It is well settled that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the

Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further , the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed."

15. The ratio laid down in these decisions, in our view, are not only logical but just interpretation of the statutory provisions keeping in view the provision, contained under Section 90 and 91 of the Act. Though, we are conscious of a contrary view taken by the Tribunal in the case of Murlikrishnan vs. ACIT (supra), however, we are inclined to agree with the view expressed in the decisions cited by learned counsel appearing for the assessee."

4.1 Identical view has been expressed by the Coordinate Bench in the following decisions as well :

- a) Manoj Kumar Srivastava vs. ACIT (2024) 163 taxmman.com 296 (Delhi – Trib).
- b) Deepak Shimoga Padmaraju vs. Assistant Director of Income Tax/ITO (2024) 162 Taxmann.com 96 (Bangalore –Trib.)
- c) ITO vs. Ramesh Kumar Rathi (2005) 143 Taxman 33 (Kol – Trib)

5. Respectfully following the consistent view expressed by the Coordinate Benches, we allow assessee's claim and direct the Assessing Officer to grant Credit of FTC, after factual verification.

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

Above decision was pronounced in the Open Court on 06th August, 2024.

Sd/-

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

SRB

Copy forwarded to: -

1. Appellant.
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Assistant Registrar, ITAT, Delhi
Benches