

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 1305/Kol/2024
Assessment Year: 2020-21
&
I.T.A. No. 1306/Kol/2024
Assessment Year: 2021-22**

**Darshan Lal Soni,
C/o Subash Agarwal & Associates,
Advocates Siddha Gibson, 1,
Gibson Lane, Suite 213, 2nd Floor,
Kolkata - 700069
[PAN: BFSPS6342K]**

.....Appellant

vs.

**Income Tax Officer
Ward 2(3), Alipurduar,
Income Tax Office, Oppo.
Parade Ground, P.O. and Dist.
Alipurduar - 736122**

..... Respondent

Appearances by:

Assessee represented by : Shri Siddharth Agarwal, Advocate
Department represented by : Shri Kallol Mistry, JCIT

Date of concluding the hearing : August 01, 2024
Date of pronouncing the order : August 01, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

Above captioned appeals are filed by the assessee against the two separate orders dated 27.03.2024, passed by the Ld. Commissioner of Income Tax [for short 'the Ld. CIT(A)] by dismissing the appeals of the

assessee, since issues are common except the figure and assessment year, therefore, both the matters are heard together and pronounced by this common order.

1.1 At the time of hearing, Ld. AR stated that there is delay of 17 days in filing both appeals before the Tribunal. On this aspect assessee had filed two separate petitions praying for condonation of such delay.

2. We after perusing application filed by the assessee, find that there is a reasonable cause for the delay in filing the appeals by the assessee. Considering the same, we therefore, condone such delay in filing the appeals by the assessee.

3. First, we take up the issue of ITA No. 1305/Kol/2024 and the orders of this appeal would apply to the other connected appeal.

4. Brief facts of the case are that the assessee filed its return of income for the Assessment Year 2020-21 and which was processed u/s 143(1) of the Income Tax Act, 1961 (for short 'the Act') vide order, dated 15.12.2021 by CPC while processing the return of income, the Assessing Officer (AO) did not give relief to the assessee of Rs. 1,99,789/- u/s 90 of the Act against the tax paid in foreign country and no reasonable opportunity of being heard given to the assessee while passing order u/s 143(1) of the Act. Against the said order, the assessee preferred a rectification application before the AO u/s 154 of the Act where relief was granted of Rs. 1,99,789/- u/s 90 of the Act at serial number 22(b) of the said order. However, while totalling the total relief at serial number 22(d) of the said order it was written as Rs. '0', it means there was no relief granted to the assessee. Accordingly, the assessee had no other option but preferred an appeal against the order dated 15.02.2021 passed by CPC before the Ld. CIT(A) along with prayer for condonation of delay of 439 days. However, such delay was not

condoned by Ld. CIT(A) by rejecting the appeal of the assessee, even on the merit, no relief was granted, by stating that required Form No. 67 was admittedly filed by the assessee on 17.04.2023 and was not available at the time of processing of return of income u/s 143(1) of the Act or even at the time of passing of the rectification order u/s 154 of the Act on 24.02.2023 by the Ld. AO.

5. Aggrieved by the above order, the assessee is in appeal before this Tribunal raising multiple grounds. However, the main grievance of the assessee is that when the assessee had filed Form No. 67 before the competent authority on 17.04.2023 in such situation denial of relief to the assessee is not proper on the part of authority below. Therefore, relief may be allowed to the assessee of Rs. 1,99,789/- u/s 90 of the Act against the tax paid in foreign country and the instant issue is squarely covered in favour of the assessee by the judgment of coordinate Bench as in the case of Atanu Mukherjee Vs. ITO, Ward-50(1), Kolkata, ITA No. 439/Kol/2022, dated 20.12.2022. The relevant extract of the said order is as under:

"5. After hearing the rival contentions and perusing the material on record, we note that the undisputed facts are that the assessee is an individual and tax resident of India. The assessee during the relevant previous year served with M/s Dastur International INC in USA and M/s M N Dastur Company India Pvt. Ltd. in India. The assessee's income was taxable under the Act and accordingly assessee offered salary income earned from services rendered specifically in USA for the period commencing from April 2019 to March 2020 to tax in India. The assessee claimed FTC for tax paid in USA u/s 90/90A read with Rule 128 of the Rule. However, the assessee was denied FTC on the ground of late filing of Form 67 in consonance with Rule 128 of the Rules which provides that Form 67 has to file on or before the due date of return of income as prescribed u/s 139(1) of the Act and this is the compliance to be made in terms of Rule 128(9) of the Rules. Now the main question before us is whether mere late filing of Form 67 would result incomplete denial of tax which has been deposited by the assessee in USA where services were rendered. We have perused the Article 25 in the applicable DTAA between India and USA and also Rule 128 of the rules and provisions of Section 90(2) of the Act. Rule 128(9) of the rules provides that Form 67 should be filed on or before the due date of return of income however we also observe that the said Rule nowhere states that in case of late filing of Form 67 the credit of FTC which is deposited by the assessee in foreign country would be denied. In our considered view the FTC can not be denied to the assessee merely for late filing of Form 67 as the it is procedural

formality on the part of the assessee. We have also perused the various decisions filed before us by the Ld. Counsel for the assessee in defence of his argument that FTC cannot be denied merely on the basis of late filing of Form 67. We have perused the decision of Co-ordinate Bench of Bangalore in the case of M/s Brinda Rama Krishna vs. ITO in ITA No. 454/Bang/2021 for AY 2018-19 dated 17.11.2021 and find that similar issue has been decided in favour of the assessee. The operative part is reproduced as under:

"16. I have given a careful consideration to the rival submissions. 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 for 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 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, 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 DR in this regard.

17. In the result, the appeal is allowed."

Similar ratio has been laid down in the other decision namely decision of Co-ordinate Bench of Bangalore in the case of Shri Pradeep Lankapally vs. DCIT in ITA No. 560/Bang/2021 for AY 2018-19 dated 31.01.2022. We also note that similar issue also has been decided in ITA No. 261/JP/2022 for AY 2020-21 dated 15.09.2022 wherein the Co-ordinate Bench has allowed FTC by holding that the filing of form 67 is a procedural formality and could not be the basis for denial of FTC to the assessee. Considering the aforesaid facts and in the light of the decisions of Co-ordinate Benches, we allow the appeal of the assessee.

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

6. We after hearing the rival submissions of the parties and on perusal of the material available on record, we find force in the submission made by the Ld. AR before this Bench and following the order of the coordinate Bench as in the case of Atanu Mukherjee (supra), claim of the assessee is allowed, since the assessee had filed Form No. 67 belatedly although which was not filed at the time of filing of return. This requirement of filing of Form No. 67 along with return is not mandatory in nature, but directory. Similarly, DTAA overrides the provision of the Act and the Rules cannot be contrary to the

Act. Accordingly, we allow the claim of the assessee with a direction to the AO to allow relief to the assessee of Rs. 1,99,789/- of the assessee as claimed u/s 90 of the Act in accordance with law. Since, we allow the appeal of the assessee in ITA No. 1305/Kol/2024 our verdict will be apply mutatis mutandis in ITA No. 1306/Kol/2024 also. In terms of the above, both appeals of the assessee are hereby allowed.

7. In the result, both appeals of the assessee are allowed.

Kolkata, the 1st August, 2024.

Sd/-
[Rakesh Mishra]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 01.08.2024.
Alindra, PS

Copy of the order forwarded to:

- 1 Darshan Lal Soni
2. Income Tax Officer, Ward 2(3), Alipurduar
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches