

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.393/Asr/2024
Assessment Year: 2020-21**

Pashora Singh, H. No. 108/A Guru Amardas Avenue, Gali No. 3 Ajnala Road, Punjab. [PAN:FFOPS7306F] (Appellant)	Vs.	Commissioner of Income Tax Appeal / Addl. JCIT (A)-1, Jaipur. (Respondent)
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Appellant by	Sh. Iqbal Singh Bedi, CA
Respondent by	Sh. Himanshu, Sr. DR

Date of Hearing	21.08.2024
Date of Pronouncement	28.08.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. CIT (A) dated 31/05/2024, passed u/s 250 of the Act 61, which has arisen out of the order of CPC Bangalore passed u/s 143(1) of the Act dated 29.12.2023.

2. The grounds of appeal taken by the assessee in Form No. 36 are as below:

"1. Re.: Relief u/s 90 of the Act denied:

1.1 The learned ADDL/JCIT(A) has erred in confirming the Order of Centralized Processing Center ("CPC"), Bengaluru by

denying the relief claimed under section 90 of the Act of INR 26,406/- in the original return of income.

1.2 The learned ADDL/JCIT(A) has erred in denying the relief on the ground that the Appellant has not filed Form-67 within the due date of filing of return of income prescribed under section 139(1) of the Act.

1.3 The learned ADDL/JCIT(A) has erred in not appreciating that the Appellant had filed original return of income under section 139(8A) of the Act on 31.03.2023 for the assessment year 2020-21.

1.4 The Appellant filed Form No.67 on 31.03.2023 (date of order 29.12.2023 filed before processing of ITR). The denial of Foreign Tax Credit was not called for.

1.5 Without prejudice to the above, the learned ADDL/JCIT(A) erred in not appreciating that submission of Form 67 is a procedural requirement and based on the Registrar substantive provisions of the Act read with the DTAA, the appellant should be eligible to claim relief of tax paid in Italy.”

3. The facts of the case are that the assessee has filed its return of income for the assessment year 2020-21 (year under appeal), on 31.03.2023 in Form ITR-3 updated return u/s 139(8A) of the Act 1961, declaring a total income of Rs.4,82,580/- which included income from salary, (Rs.3,01,440/-), income from business (Rs.71,871/-) and income from other sources (Rs.1,09,269/-).

3.1 The salary income has been received in Italy and relief u/s 90 of the Act has been claimed by the assessee in his return which has been denied by the CPC, Bangalore on the ground that Form No. 67 for claiming “Foreign Tax Credit” has not been filed within the time allowed u/s 139(1) of the Act 1961.

3.2 In the instant case, the assessee has not filed any return within stipulated time framed u/s 139(1) of the Act, but has filed the return u/s 139(8A) of the Act (updated return) on 31.03.2023 alongwith Form 67 filed online on the said date claiming FTC. The CPC Bangalore refused to allow the claim on the ground that Form 67 has been belatedly filed beyond stipulated time as prescribed by law.

4. The second issue relates to the disallowance of Rs. 17,559/- on account of TDS credit claimed by the assessee, but not allowed by CPC, Bangalore.

5. The matter was carried in first appeal before the Id. JCIT(A), Jaipur and both the additions has been sustained due to reasons contained in the appellate order.

The relevant portion in the appellate order para 5.1.2 to 5.1.3 are reproduced below:

“5.1.2. In view of the above, while passing intimation order u/s 143(1) of the Act, the AO (CPC) denied the assessee's claim of foreign tax credit of Rs. 26406/- on the ground that the assessee did not file ITR and Form No.67 within due date specified. At this juncture, it may be noted that, as per Rule 128 (9), the statement in Form No. 67 and the certificate or the statement

shall be furnished on or before the due date of ITR filling u/s 139(1) of the IT Act.

5.1.3 As seen from the above, it is an admitted fact that the assessee has violated the provisions of Rule 128 (9) of the Income Tax Rule, 1962 wherein it is mandatory to file statutory ITR and Form No.67 within due date.

I have carefully considered the issue under dispute and examined the same in the light of the provision of the statute. At the outset, as discussed above as per Rule 128 of the Income Tax Rules, 1962, a resident taxpayer is eligible to claim credit for any foreign tax paid, in a country or specified territory outside India. The credit shall be allowed only if the assessee furnishes the required particulars in Form 67 within the specified timelines i.e. on or before the due date specified for furnishing the return of income under sub-section (1) of Section 139 to claim credit of such taxes.

Keeping in view of the above, I am of the opinion that the AO has rightly disallowed the foreign tax credit relief and made addition of Rs.26,406/- to the income of the appellant.

Therefore, these grounds of appeal are dismissed.”

6. The Id. AR has filed a short paper book alongwith short synopsis containing the computation of income, copies of 26AS and copies of return and acknowledgment receipts of Form No. 67 furnished by the assessee. He also enclosed copies of judgment of various courts and tribunal on which he relied upon in support of his arguments.

6.1 The Id. AR submitted that furnishing of Form No. 67 beyond the time limit prescribed u/s 139(1) does not disentitle the assessee for claim of FTC. He further submitted that the filing of Form No. 67 is not mandatory but only directory in nature and it is sufficient compliance if the said Form is filed alongwith the return of income and the same is before the AO at the time of assessment. On this issue, he relied upon the judgment of the Coordinate Benches of ITAT:

a) *In the case of Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bang. - Trib.).*

b) *The ITAT SMC Bench Mumbai in ITA No. 1458/MUM/2023 in the case of Mr. Yogesh Dnyandeo Kinage V. Assistant Director of Income-tax, CPC.*

6.2 He further relied on the judgment of the ITAT, Mumbai Benches in ITA No. 1704/Mum/2022 in the case of Sonakshi Sinha vs. CIT(A) NFAC, dated 20.09.2022 wherein it was held that:

“In the instant case the CIT (A), NFAC has not disputed the allowability of the foreign tax credit. He has only disallowed the credit on the ground that form 67 has not been filed on or before the due date of filing of return of income as per rule 128 (9) of the income tax rules, 1962.

It was held that "one of the requirements of Rule128 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.

Further observed that 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 7 April 2022. the assessee can file such form number 67 on or before the end of the assessment year.

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.”

6.3 Regarding the issue of non allowability of TDS credit, the ld. AR submitted the copies of Form 26AS as stated that TDS has reflected in the Income Tax website should be allowed as credit as tax deducted at source.

7. The ld. DR relied on the order of the ld. CIT(A) and submitted that in the instant case Form No. 67 has been filed belatedly which is not as per provisions of the Rules 128 Sub-rule (9) which provides that Form No, 67 will have to be furnished on or before the due date of filing of ITR u/s 139(1) of the Act. Since the assessee has violated the provisions of Rule 128 (9) of the IT Rules 1962 for claim of FTC, cannot be allowed to the assessee.

8. Regarding the next issue, in respect of TDS credit. He submitted that as per provisions of section 139(8A), the updated return needs to be accompanied with proof of payment of additional tax u/s 140(B), and in this case the same has not been done. Moreover, he argued that in this updated return it is seen, that the appellant has not offered the entire income for taxation and has not also claimed

the entire TDS in updated return and as such full credit of taxes cannot be allowed in this case.

9. We have considered the rival arguments and have considered all the materials on record. Regarding the first issue of furnishing of Form No. 67 within the due date for filing of return u/s 139(1) we are of the view that the same is only directory in nature and is not mandatory. We are of the opinion that it will be sufficient compliance on the part of the assessee if the said Form No. 67 claiming the benefit of FTC is filed before the completion of assessment proceedings and the said Form No. 67 should be before the AO for his consideration at the time of processing or assessment u/s 143(1). In the instant case, since the Form No. 67 has been filed by the assessee alongwith return u/s 139(8A) on the same date which is updated return in ITR 3 U, the AO was not justified in ignoring the Form No. 67 which was also on record before him at the time of assessment proceedings.

9.1 As such, we direct the AO to consider the Form No. 67 for the purpose of assessment of the updated return filed u/s 139(8A) of the Act 1961.

10. The second issue relating to the benefit of TDS credit as reflected in Form 26AS, it is admitted that this particular return of income has been submitted under the provisions of section 139(8A) of the Act and no claim for TDS refund is allowable with respect to return filed under the said section.

10.1 It is also seen as pointed out by the Id. CIT. DR that the assessee has also not claimed the full TDS as reflected in Form 26AS in his return of income. As such, on this issue we set aside the matter back to the file of the AO to examine the return and allow the credit of TDS to the extent of actually claimed in the return, which again should be supported by Form 26AS, and to allow the credit of TDS to the extent which is legally allowable as per provisions of the Act.

11. In the result, the appeal of the assessee bearing **ITA No. 393/Asr/2024** is partly allowed.

Order pronounced in the open court on 28.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

