

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 207/PAT/2023
Assessment Year: 2019-2020**

***Koshlesh Varij Lochan,..... Appellant
Flat No. 110, Garudadri Elite Apartment,
Kudlu Gata, Kudlu,
Bangalore-560068, Karnataka,
[PAN: ADTPL4128Q]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1(1), Muzaffarpur***

Appearances by:

*Shri Koshlesh Varij Lochan, A.R., appeared on behalf of the
assessee*

*Shri Sushil Kumar Mishra, JCIT, D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing : May 30, 2024

Date of pronouncing the order : August 28, 2024

O R D E R

Per Dr. Manish Borad, Accountant Member:-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24th February, 2023, which is arising out of

the order under section 143(1)(a) of the Act dated 27.03.2021 pertaining to A.Y. 2019-20 framed by CPC.

2. Though the assessee has raised various grounds of appeal, sole grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the action of the CPC not granting foreign tax credit relief under section 90/90A of the Act at Rs.2,19,610/- solely on account of delay in filing Form No. 67.

3. At the outset, the assessee submitted that he is working with Tata Tax Consultancy Services Limited (TCS), Mumbai and was sent to Budapest (Hungary) for the Project of TCS. He submitted that on foreign allowance of Rs.14,64,069/- (i.e. Hungarian Currency HUF 58,41,044), tax was deducted at source of Rs.2,19,610/-. Though the return was submitted on 27.01.2020 but Form 67 could not be filed in time on account of technical breaches and non-availability of the facility to upload the document. Finally, he filed Form 67 on 11.05.2021. Merely for the delay in filing Form 67, CPC denied the foreign tax credit of Rs.2,19,610 and ld. CIT(Appeals) has also confirmed the action of CPC. He submitted that it has been consistently held by the Hon'ble Coordinate Benches of this Tribunal that filing of Form 67 is directory in nature and when all the information are duly verifiable, the legitimate claim of FTC should not be denied.

4. On the other hand, ld. D.R. supported the order of lower authorities.

5. We have heard the rival contentions and gone through the material placed before us. The only issue for our consideration is that whether the assessee deserves to be allowed the foreign tax credit of Rs.2,19,610 deducted by the employer on the foreign allowances given to him while working at Budapest (Hungary) for the Project of Tata Consultancy Services Limited, India. We note that the Hungarian Currency abbreviated as 'HUF' like dollar is marked at \$. The assessee received HUF 58,41,044 (in Indian Currency Rs.14,64,069/-) as foreign allowance while working at Budapest, Hungary and tax at source was deducted as per the Income Tax Laws of the Hungarian Government @ 15% i.e. HUF 8,76,157 (INR Rs.2,19,610). It is not in dispute that the assessee has worked outside India being resident his world income is taxable in India but he is certainly eligible for foreign tax credit for the taxes paid on the income earned outside India.

6. We notice that ld. CIT(Appeals) has inadvertently considered the Hungarian Currency i.e. HUF as a status of a person which is totally wrong and he has proceeded on a wrong way observing that the income is received and tax paid in Hungary is for the HUF and not for the

individual. This observation of the ld. CIT(Appeals) is totally incorrect.

7. Further we notice that the assessee has furnished Form 67 on 11.05.2021 vide Acknowledgment No. 351423100110521. We also notice that in the income tax return, the assessee has claimed the foreign tax credit, but the same was denied for the alleged sum only for non-filing of Form 67. There is no other observation against the assessee by the lower authorities except delay in filing of Form 67, which means that assessee has made a valid claim in Form 67. Under the given facts and circumstances, we find that the decision of the Coordinate Bench of this Tribunal dated 12th June, 2024 in the case of *Bijender Singh -vs. ITO, Ward-2(3), Alipurduar in ITA Nos. 445 to 447/KOL/2024* is squarely applicable on the facts and circumstances of the case. The finding of the Coordinate Bench of this Tribunal reads as under:-

“8. We have heard rival contentions and perused the material placed before us as well as the case-laws relied upon by the ld. Counsel for the assessee. The common issue involved in all these appeals relates to denial of relief claimed u/s 90/90A of the Act at Rs.1,37,964/-, Rs. 3,50,317/- and Rs.6,82,357/- for Assessment Year 2019-20, 2021-22 and 2022-23; respectively, on the ground of delay in filing of Form 67. We note that the assessee has obtained Form 67 at a later date and had efiled on the Income-tax portal with all necessary attachments. Form 67 for Assessment Year 2019-20, 2021-22 and 2022-23 have been furnished on 01/11/2019, 09/05/2023 and 20/06/2023; respectively. The correctness of the tax credit available to the assessee on account of the tax paid on salary earned in Bhutan is not in dispute as

the same has been claimed in the return which has been processed u/s 143(1) of the Act and the claim made by the assessee in the ITR is in consonance the Form 67 filed. We observe that the ld. CIT(A) has dismissed all the three appeal of the assessee as non-maintainable only on account of delay in filing of the appeals.

8.1. We, on considering the fact that the assessee is an individual and has made a legitimate claim of Foreign Tax Credit (FTC) and has also furnished Form 67 and and the delay in filing of the appeal before the ld. CIT(A) has occurred due to time spent in taking alternative remedy u/s 154 of the Act but the same did not fructify. Though the assessee ought to have filed the appeal against the order u/s 154 of the Act but he had filed the appeal against the order u/s 143(1) of the Act. Considering the bonafide claim of the assessee, we are inclined to condone the delay in filing of the appeal before the ld. CIT(A).

9. Now, we are left with two remedies, first that we restore the appeal to the file of the ld. CIT(A) for adjudication on merits and second to deal with the matter on merits here itself. Considering the smallness of the amount of tax credit involved and also to avoid fresh round of litigation before the ld. CIT(A), which would otherwise only result into multiplicity of proceedings and prolonging the matter, we, therefore, decide to adjudicate the appeal on merits here itself.

10. We notice that Form 67 has been filed with a minor delay. Copies of Form 67 are filed in the paper book furnished for each of the Assessment Years. In the decisions referred by the ld. Counsel for the assessee, we note that this Tribunal has consistently taken a view that filing of Form 67 is directory and not mandatory in nature and that the claim of FTC cannot be denied merely for late filing of Form 67 as it is merely a procedural formality. We take note of the proposition of law laid down by this Tribunal in the case Krishna Kumar Chaudhary in ITA No. 113/Kol/2023, order dt. 13/04/2023, while dealing with identical issue:-

“5. We have heard the rival contentions and perused the relevant record placed

before us. The sole grievance of the assessee is that the ld. CIT(Appeals) erred in not granting foreign tax credit for the reason that Form 67 was filed after the due date of filing of the return of income. We notice that the assessee is an individual and earned income of Rs.36,56,726/- during A.Y. 2019-20 and during this period was employed by Minas De Benga, LDA, a Company based in Mozambique, Africa and received a salary of Rs.23,69,373/- from its Mozambique employer and filed the return for A.Y. 2019-20 on 18.08.2019 but did not file Form 67 as provided under Rule 128(9) of the Income Tax Rules, 1962, in support of the foreign tax credit of Rs.6,97,756/- deducted by the Mozambique employer. Subsequently Form 67 was filed on 10.02.2021. Both the lower authorities have denied this claim of the assessee.

6. We further find that it has consistently held that filing of Form 67 is procedural in nature and the assessee should not be denied the benefit of foreign tax credit for such delay. We find support from the decision of this Tribunal in the case of Satreena Consultants Pvt. Limited (supra), wherein similar issue was decided in favour of the assessee, wherein also Form 67 was filed after the due date of filing of the return of income but the claim of the assessee was allowed by this Tribunal observing as follows:-

“7. We have heard the rival contentions and gone through the relevant records placed before us. The only issue for our consideration is regarding relief under section 90 of the Act at Rs.7,38,649/- claimed by the assessee but denied by both the lower authorities for delay in filing Form No. 67. We observe that it is not in dispute that the assessee earned income from Tanzania and Rs.21,24,975/- was deducted as withholding tax and the credit for the same was claimed as relief

under section 90 of the Act against the tax liability arising in India at Rs.7,38,649/-. We notice that for the purpose of foreign tax credit, Rule 128(8) of the Income Tax Rules provides the procedure wherein for the purpose of credit of any foreign tax shall be allowed on furnishing various documents, which includes Form No. 67, which is a statement of income from the country or specified territory outside India offered for tax for the previous year of foreign tax deducted or paid on such income and the same needs to be verified in the specified manner, which includes any one of the three, namely, tax authority of the country, or specified territory outside India or from the person responsible for deduction of such tax or signed by the assessee. There are certain other requirements, which need to be fulfilled for the purpose of filing Form No. 67.

8. Now our attention was drawn towards the Notification issued by the Central Board of Direct Taxes on 18th August, 2022. The time limit for filing the Form 67 was before the last date of filing the return under section 139(4) of the Act and the method of filing Form 67 was prescribed on 19.09.2017. Further we find that the method of filing Form no. 67 was prescribed on 19.09.2017 i.e. after the date of filing the return of income by the assessee. It is also not in dispute that the last date for filing the return under section 139(4) of the Act for A.Y. 2017- 18 was 31. 03. 2019 and the assessee filed Form 67 on 28. 09. 2018 alongwith revised return. Under these given facts and circumstances, where the assessee filed the original return on 06.07.2017 when there was no mechanism for filing Form No. 67, as it came into effect on 19.09.2017 and thereafter before the expiry of the due date prescribed under section 139(4) of the Act, the assessee furnished Form 67 and also filed the

revised return. I am of the considered view that the claim of the assessee towards withholding taxes paid in Tanzania is to be given against the tax liability on the income declared in India. Even otherwise filing of Form 67 has been held to be directory in nature by the Coordinate Bench, Mumbai in the case of Sonakshi Sinha -vs.- CIT(A) [ITA No. 1704/MUM/2022 dated 28.09.2022] and the relevant finding of this Tribunal is reproduced below:

“12. 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 Lakshmi pathi 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.

9. I, therefore, respectfully following the decision referred to hereinabove and the discussion made supra, direct the ld. Assessing Officer to allow the claim of the assessee made in Form No. 67 and give benefit of relief of withholding tax credit in Tanzania against the tax liability arising in India. Accordingly all the effective grounds raised by the assessee in the instant appeal are allowed.

7. Similar view was also taken by this Tribunal in another case of Atanu Mukherjee (supra). We, therefore, respectfully following the decision referred hereinabove and since the ld. D.R. having not placed any binding precedence in favour of the revenue, direct the ld. Assessing Officer to accept the Form 67 filed by the assessee and allow the eligible foreign tax credit in accordance with law and allow the grounds of appeal raised by the assessee.

11. Respectfully following the decision of this Tribunal (supra) and also considering the fact that the claim of

the assessee is bonafide, we find that the assessee is entitled for the alleged Foreign Tax Credit claimed in the return of income for the impugned Assessment Years. Accordingly, the findings of the ld. CIT(A) is reversed and effective grounds of appeal raised by the assessee are allowed.

12. In the result, all the appeals of the assessee are allowed”.

8. Respectfully following the decision of the Coordinate Bench referred *supra*, we find that the same is squarely applicable on the facts of the instant case and we find that since the assessee has furnished Form 67 giving valid information about FTC on the foreign allowances received in Hungary, we direct the ld. Assessing Officer to accept the Form 67 and allow the alleged foreign tax credit in accordance with law. Thus, the sole grievance raised by the assessee in various grounds of appeal is allowed.

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

Order pronounced in the open Court on 28.08.2024.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 28th day of August, 2024

*Copies to :(1) Koshlesh Varij Lochan,
Flat No. 110, Garudadri Elite Apartment,
Kudlu Gata, Kudlu,
Bangalore-560068, Karnataka,*

- (2) *Income Tax Officer,
Ward-1(1), Muzaffarpur*
- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) *CIT- ;*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.