

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.211/PUN/2024
निर्धारण वर्ष / Assessment Year: 2021-22

Arijit Mitra, Flat No.T-25-1212, Metro Tower, Sadesatranali Road, Amonora Park Town, Hadapsar, Pune- 411028. PAN : ANEPM2834P	Vs.	DCIT, Circle-12, Pune.
Appellant		Respondent

Assessee by : Shri Sanket M. Joshi
Revenue by : Shri Ramnath P. Murkude
Date of hearing : 27.08.2024
Date of pronouncement : 30.08.2024

आदेश / ORDER

PER SATBEER SINGH GODARA, JM:

This assessee's appeal for assessment year 2021-22 arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1058890068(1), dated 19.12.2023, in proceedings u/s 154 and section 143(1) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The assessee pleads the following impugned grounds in the instant appeal :-

“1. The Ld CIT (Appeals) erred in confirming the disallowance of the foreign tax credit towards tax withheld in USA of Rs.8,61,822/- though Ld CIT(Appeals) had admitted the fact that the Ld AO at CPC has disallowed the foreign tax credit without providing specific for disallowing the foreign tax credit reasons in the intimation u/s 143(1) as well as u/s 154 of the Income Tax Act, 1961.

2. The Ld CIT (Appeals) erred in confirming the disallowance of the foreign tax credit towards tax withheld in USA of Rs.8,61,822/- without appreciating the fact that filing of Form no. 67 as required by Income Tax Rule 128(9) before the due date of filing of return u/s 139(1) is directory and not mandatory. The Ld CIT (Appeals) erred in not considering the decisions of judicial authorities on the similar issue which were cited and explained by the appellant in the appellate proceedings.

The appellant prays before Your Honour to kindly direct the Ld AO to allow the tax credit of tax withheld in USA of Rs.8,61,822/-.

3. The appellant craves leave to add, alter, delete, and substitute any or all grounds of appeal at the time of hearing.”

3. Suffice to say, the sole and substantive dispute between the parties is that of the assessee’s entitlement to avail foreign tax credit withheld in USA amounting to Rs.8,61,822/- on the ground that he had failed to file the corresponding prescribed Form 67 under Rule 128(9) before the “due” date of filing of return u/s 139(1) of the Act. The Revenue vehemently submits that such a condition is indeed mandatory in nature and, therefore, the assessee’s instant sole substantive ground deserves to be rejected.

4. We find no merit in the revenue’s technical objection once it is come on record that case law Duraiswamy Kumaraswamy vs.

PCIT (2024) 336 CTR (Mad) 108 had settled the issue in assessee's favour that compliance to the foregoing provision(s) is only directory than mandatory in nature. Learned departmental representative could hardly dispute the fact that the assessee had filed its Form 67 on record in section 154 rectification proceedings. That being the case, we accept the assessee's argument in principle and leave it open for the assessing authority/CPC to factual verify the same as per law.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced on this 30th day of August, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.