IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No. 67/KOL/2024
Assessment Year: 2020-21

Neetu Agarwal, Flat 6C, Block 2, Shree Ramnagar Residential Complex, VIP Road, Telgharia, Kolkata - 700052 (PAN: ACTPA2426P)	Vs	Income Tax Officer, Ward 7(1), Kolkata Aayakar Bhavan, Kolkata
(Appellant)		**(Respondent)**

Present for:

Appellant by : Puja Agarwal, C.A.
Respondent by : Abhishek Kumar, JCIT, Sr. DR

Date of Hearing : 05.09.2024
Date of Pronouncement : 13.09.2024

O R D E R

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Addl/JCIT(A)-13, Mumbai (hereinafter referred to as "the Ld. Addl./Jt. CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21, dated 16.11.2023, which has been passed against the rectification order u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 08.08.2022.

2. The grounds of appeal raised by the assessee are reproduced as under:

"1 Passing the order under section 250 of the Income Tax Act. 1961 ('the Act') which is bad in law and liable to be quashed.

2 Dismissing the appeal without providing an opportunity of being heard and thus the order is violative of principles of natural justice and unsustainable in law.

3. Holding that the delay in filing of appeal cannot be condoned, without providing any reasons.

4. Concluding that there is no "sufficient cause" for delay, without appreciating the facts and circumstances.

5. Not appreciating that the delay in filing of appeal was not deliberate, malafide or intentional, but due to a bonafide belief and reasonable cause.

6. Not appreciating that the Appellant would be put to undue injustice for a mistake or oversight on the part of her advisors.

7 Without prejudice to the above, not deciding the appeal on merits, inspite of issuing notices in respect of the issue under consideration and not allowing grant of tax credit in respect of the taxes withheld on the foreign income earned by the Appellant and claimed in accordance with u/s 90 of the Act and Article 23 of the India-Srilanka DTAA.

8 Not allowing carry forward of losses claimed by the Appellant in the return of income.

9. Levying interest u/s 234B and 234C of the Act.

The grounds mentioned above are independent and without prejudice to the other grounds preferred by the Appellant. The Appellant craves leave to add, alter, vary, substitute or amend the above grounds of appeal, at any time before or, at the time of hearing of the appeal, so as to enable Income Tax Appellate Tribunal to decide the appeal according to law."

3. Brief facts of the case are that the assessee is a resident individual and for the Financial Year 2019-20 (relevant to AY 2020-21), the assessee filed her return of income (ROI) on 09 January 2021 vide acknowledgment number 155096361090121 showing total income of Rs. 29,38,200/- consisting of the following:

Head of Income	Amount (Rs.)
Salaries	21,18,400
Foreign sources income	11,93,439
Other source	11,360
Loss from house property	2,00,000
Tax payable	7,21,718

4. The taxes on the same were paid by way of TDS of Rs. 3,60,000/-, TCS of Rs. 34,800/- and Foreign Taxes of Rs. 3,27,574/-. The ROI was processed by the Centralized Processing Centre ('CPC') electronically and an intimation u/s 143(1) of the Act dated 24 December 2021 was issued,

however in the same, the credit of foreign tax was not provided, there by resulting in a demand of Rs. 4,12,080/-.

5. The assessee filed a rectification application against the intimation u/s 143(1) on 14 January 2022 along with Form No. 67. Against the rectification application, a rectification order u/s 154 of the Act was passed on 11 July 2022 without providing for credit of foreign taxes. Subsequently, another rectification order was passed on 08 August 2022 again without providing the claim of foreign taxes. Additionally, the loss from house property which was carried forward has also been denied.

6. Aggrieved with the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A) on the ground of not granting tax credit in respect of taxes withheld on the foreign income earned by the assessee and credit claimed in accordance with section 90 of the Act and Article 23 of the India-Sri Lanka DTAA. The assessee also claimed that the belated filing of Form No. 67 was only a procedural lapse and credit of the foreign tax ought to have been granted. Additional Ground for not allowing carry forward loss of Rs. 1,85,000/- claimed by the assessee in the return of income was also raised. The petition for condonation of delay in filing of the appeal was also filed along with the reasons for delay in filing the appeal. The petitioner had engaged a tax consultant to take care of the income tax proceedings and the intimation u/s 143(1) of the Act was sent to him for necessary action. The tax consultant had filed a request for rectification of the same and the assessee was under the impression that the Chartered Accountant was taking care of the same and therefore, an appeal was not filed against the rectification order. The assessee appointed a new tax consultant who brought this fact of non-filing of the appeal to her notice. The assessee was made aware of the order and consequent demand when the same was brought to her notice. Since, the petitioner was not aware earlier of the order nor of the demand, no appeal was filed against the order in time. It is stated that the petitioner is a law-

abiding citizen and had always paid her taxes in time and the delay in filing the appeal was not deliberate nor intentional but was due to the *bona fide* belief and reasonable cause and the assessee prayed that the delay in filing the appeal may be condoned in the interest of justice. The ld. CIT(A) perused the reason and rejected the application for condonation of delay and dismissed the appeal.

7. Aggrieved by the said appeal order, the assessee has preferred the present appeal before us.

8. We have heard the rival contentions. The Ld. Sr. DR stated that since there was no sufficient cause, therefore, the appeal was rightly dismissed.

9. The Ld. AR submitted before us that it was for the first time that the assessee had earned foreign income and had been made aware of the demand when the rectification application was filed which the assessee followed up. Two rectification orders were received by the assessee but credit for foreign taxes were not allowed. It was stated that Form No. 67 was not filed with the return but was filed with the rectification application and the Ld. AR Ms. Puja Agarwal requested that the order of the Ld. Addl/Jt. CIT(A) may be set aside.

10. Since the assessee was not represented properly nor the delay was condoned by the Ld. Addl/Jt. CIT(A), there was justified reason for setting aside the order and restore the appeal to the Ld. Addl/Jt. CIT(A) on this ground alone since the merits of the case have not been discussed. However, since the facts can be ascertained from the record and setting aside the order would cause further inconvenience to the assessee, therefore, we were inclined to decide the issue on the basis of facts on record. Hence, Ground Nos. 2, 3 ,4, 5 and 6 are allowed and there was justification for the delay in filing the appeal before the Ld. Addl/Jt. CIT(A).

11. As regards, Ground No. 7, in the case of the assessee Form No. 67 was not filed along with the return of income. It was submitted before the Ld. Addl/Jt. CIT(A) by the assessee that the return of income was filed on 09.01.2021 and she had submitted the Form No. 67 after receiving the communication from the e-filing team, Income Tax Department that the return of income was not accompanied by Form No. 67 as mandated by law. Subsequently, since the credit was not allowed, she filed a rectification application and Form No. 67 on 14.01.2022. The credit was not allowed since Form No. 67 was filed beyond the date for filing the return of income under section 139(1) of the Act. Two orders u/s 154 of the Act were passed on 11.07.2022 and 05.08.2022 but the credit for the claim of foreign taxes was not allowed.

Similar issue also came up for consideration before the coordinate Bench of the Tribunal in the case of Ramakrishna Rao Chintalapudi Vs Income Tax Officer, Ward-2(3), Alipurduar in ITA No. 541/KOL/2024, Assessment Year: 2020-21, order dated 02.06.2024, "C" Bench, ITAT, Kolkata wherein it has been held as under:

> *"9. The only issue in this case is non-allowance of the credit for the foreign tax paid in Bhutan. Before proceeding further, we would like to reproduce rule 128 of the Income-tax Rules, 1962 (the Rules) which relates with foreign tax credit as under:*
>
> > *"Foreign Tax Credit. 128. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:*
> >
> > *Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India"*
>
> *10. We further note that section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 22 of DTAA between India and Bhutan provides for credit for foreign taxes. Article 22(2) is relevant in the present context same is extracted below:*

"ARTICLE 22

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1……

2. Double taxation shall be eliminated as follows:

(i) In India:

(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Bhutan, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Bhutan.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Bhutan.

(b)

(ii)

(a) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

In Bhutan:

Where a resident of Bhutan derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Bhutan shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

(b) Where in accordance with any provision of the Agreement, income derived by a resident of Bhutan is exempt from tax in Bhutan, Bhutan may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income."

11. Thus, Section 90 of the Act read with Article 22(2) of the DTAA provides that tax paid in Bhutan shall be allowed as a credit against the tax payable in India but limited to the proportion of Indian tax. Neither section 90 nor the DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirement. Foreign Tax Credit is an assessee's vested right as per Article 22(2) of the DTAA read with Section 90 and the same cannot be disallowed for non-compliance with procedural requirement that is prescribed in the rules.

12. Further, we would like to mention that rule 128(9) provides that Form No. 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the rule nowhere provides that if the said Form No. 67 is not filed within the required time frame, the relief as sought

by the assessee u/s 90 of the Act would be denied. It is therefore evident that if the intention of the legislature were to deny the foreign tax credit, either the Act or the rules would have specifically provided that the foreign tax credit would be disallowed if the assessee does not file Form No. 67 within the due date prescribed under section 139(1) of the Act. We further note that Filing of Form No. 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC. The following decisions support the claim of the assessee:

i. CIT vs. G.M. Knitting Industries (P) Ltd. 71 Taxmann.com 35(SC)
ii. Brinda Ramakrishna vs. ITO 193 ITD 840 (Bang.)
iii. 42 Hertz Software India Pvt. Ltd. vs. Asst. CIT, Ita No.29/Bang/2021
iv. Duraiswamy Kumaraswamy vs. PCIT, W.P No.5834 of 2022

13. Hon'ble Supreme Court, in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, (1992 Supp (1) Supreme Court Cases 21) in respect of compliance with the procedural requirements have observed that:

> *"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

14. Further, in the case of Engineering Analysis Centre of Excellence Private Limited vs the Commissioner of Income-tax & Anr. Civil Appeal Nos. 8733-8734 of 2018 & Ors., Hon'ble Supreme Court have held as under that the provisions of DTAA shall override the provisions of the Income-tax Act unless they are more beneficial to the assessee:

> *165.The conclusions in the aforestated paragraph have no direct relevance to the facts at hand as the effect of section 90(2) of the Income Tax Act, read with explanation 4 thereof, is to treat the DTAA provisions as the law that must be followed by Indian courts, notwithstanding what may be contained in the Income Tax Act to the contrary, unless more beneficial to the assessee.*

15. We have gone through the decisions of the coordinate Benches and concur with their findings in this regard that filing of Form No. 67 is directory and not mandatory and the credit for foreign taxes paid cannot be denied merely on the delay in filing the Form No. 67. In the case of M/s. 42 Hertz Software India Pvt. Ltd. Vs the Assistant Commissioner of Income Tax, Circle – 3 (1)(1), Bangalore, ITA No. 29/Bang/2021 ITAT, BANGALORE it is held that:

> *6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear 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. In our view, 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. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms. Brinda Kumar Krishna vs.ITO in ITA no.454/Bang/2021 by order dated 17/11/2021.*

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P.) Ltd. reported in (2021) 432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

16. In Vikash Daga Vs ACIT Circle – 3 (1) Gurgaon ITA No.2536/Del/2022, the ITAT DELHI BENCH 'H', NEW DELHI vide order dated 14/06/2023 have held that:

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs.1887114/-. In our considered opinion filing of form 67 is a procedural / directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules 3 does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act.

9. In the result, the appeal filed by the assessee is allowed.

17. Similarly, in the case of Ashish Agrawal Vs. Income Tax Officer, Ward-12(1), Hyderabad ITA No. 337/Hyd/2023 ITAT HYDERABAD BENCHES "B", have held vide order dated 26/09/2023 that:

11. As far as the issue of FTC is concerned, learned AR placed reliance on the decision in the case of Ms. Brinda Rama Krishna (supra). In the case of Ms. Brinda Rama Krishna (supra), the Bench considered the issue in the light of the provisions of DTAA, section 295(1) of the Act, the decisions of the Hon'ble Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner (1992 Supp (1) SCC 21), Sambhaji Vs. Gangabai (2008) 17 SCC 117 and a lot many decisions of the Hon'ble Apex Court including the case in Union of India Vs. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) etc. and reached a conclusion that since Rule 128(9) of the Rules does not provide for disallowance of FTC in the case of delay in filing Form 67 and such filing within the time allowed for filing the return of income under section 139(1) of the Act is only directory, since DTAA over rides the Act, and the Rules cannot be contrary to the Act.

12. We find from Article 25(2)(a) of the DTAA that where a resident of India derives income which, in accordance with the provisions of the convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of the resident an amount equal to the income tax paid, paid in the United States, whether directly or by deduction. In view of this provision over riding the provisions of the Act, according to us, Rule 128(9) of the Rules has to be read down in conformity thereof. Rule 128(9) of the Rules cannot be read in isolation. Rules must be read in the context of the Act and the DTAA impacting the rights, liabilities and disabilities of the parties.

13. In the case of Purushothama Reddy Vankireddy (supra) also the Co-ordinate Bench of the Tribunal, in the similar circumstances, allowed the appeal of assessee for FTC claim. Respectfully following the same, we are of the considered Page 6 of 8 ITA No. 337/Hyd/2023 opinion that the decisions relied upon by the assessee are applicable to the facts of the case and the grounds raised by the assessee are accordingly allowed.

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

18. We have also gone through the decision of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. PCIT (supra) and find that the facts are identical to the facts of the case of the assessee and the decision is squarely applicable to the facts of the case of the assessee. In that case, the petitioner was resident of India and had filed Indian ITR and claimed benefit of FTC u/s 90/91 of the Act r.w. Article 24 of the India-Kenya DTAA. During the year, he had income of both Kenya and India but while filing the Indian ITR for the impugned assessment year 2019-20, the Form No. 67 prescribed in rule 128 of the rules for claiming FTC was inadvertently not uploaded along with the ITR which was uploaded on 02.02.2021. The return was processed on 26.03.2021, however, the credit of FTC was not given effect to and the request made to the CPC to give effect to the FTC was not accepted and intimation along with notices of demand was received. The assessee also could not succeed with the rectification application filed and approached the CIT u/s 264 of the Act and at the same time filed a writ petition before the Hon'ble Madras High Court. It was stated by the respondent-department that rule 128 is mandatory and cannot be considered as directory in nature. The petitioner referred to the judgment of the Hon'ble Supreme Court in the case of CIT vs. G.M. Knitting Industries (P) Ltd. Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015. The Hon'ble High Court allowed the Writ Petition in favour of the assessee by holding as under:

"11.The law laid down by the Hon'ble Apex Court in Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order. W.P.No.5834 of 2022

12. Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore, the impugned order is liable to be set aside.

13.Accordingly, the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first

respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order."

19. Respectfully following the order of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. PCIT (supra) and concurring with the views held by the coordinate Benches of the Tribunal (supra), we hold that merely because the assessee could not file Form No. 67 within the prescribed time limit as per the provisions of rule 128(9) of the Income-tax rules, 1962, as it stood during the year under consideration, will not preclude the assessee from claiming the benefit of foreign tax credit in respect of taxes paid outside India. Therefore, the claim of the assessee is allowed and the Assessing Officer is directed to give benefit of foreign tax credit in respect of tax paid outside India by the assessee in accordance with law and the DTAA between India and the Bhutan. Since in the instant case the assessee had filed Form No. 67 along with the return of income filed u/s. 139(4) of the Act, the foreign tax credit was allowable. The AO is directed to allow the credit in accordance with the provisions of section 90 read with DTAA. Accordingly, grounds no. 1, 2 and 3 of the appeal are allowed."

12. The relevant extract of Article 24 of India-Sri Lanka Double Taxation Avoidance Agreement (DTAA) is as under:

"ARTICLE 24 - Elimination of double taxation - 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except when express provision to the contrary is made in this Convention. When income or capital is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this article.

2. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax payable in a territory outside India (which shall not affect the general principle hereof) Sri Lanka tax payable under the law of Sri Lanka and in accordance with this Convention whether directly or by deduction on profits, income or chargeable gains from sources within Sri Lanka (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) or capital in Sri Lanka shall be allowed as a credit against any Indian tax computed by reference to the same items of income or capital by reference to which the Sri Lanka tax is computed :

Provided that such credit shall not exceed Indian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within Sri Lanka or to capital in Sri Lanka, so however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India, and as to the balance if any against surtax payable by it in India.

3. For the purposes of paragraph (2) of this article, the term "Sri Lanka tax payable" shall be deemed to include any amount which would have been payable as Sri Lanka tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

(a) any of the following provisions, that is to say sections 11, 16, 17, 18, 19, 20, 21, 22 and 85 of the Sri Lanka Inland Revenue Act No. 28 of 1979 so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

(b) any agreement entered into under section 17 of the Greater Colombo Economic Commission Law No. 4 of 1978; or

(c) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities to be of a substantially similar character, if it has not

been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in a territory outside Sri Lanka (which shall not affect the general principle hereof) Indian tax payable under the law of India and in accordance with the Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) or capital in India shall be allowed as a credit against any Sri Lanka tax computed by reference to the same items of income or capital by reference to which the Sri Lanka tax is computed:

Provided that such credit shall not exceed Sri Lanka tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India or to capital in India.

5. For the purpose of paragraph (4) of this article, the term "Indian tax payable" shall be deemed to include any amount which would have been payable as Indian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say, sections 10(4), 10(4A), 10(15)(iv), 32A, 33A, 35C, 54E, 80CC, 80HH, 80J, 80K of the Income-tax Act, 1961; or

(b) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities to be of a substantially similar character if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character."

13. Since the provisions of DTAA override the provision of Section 90 of the Act as they are more beneficial to the assessee, in view of judicial pronouncements in this regard (supra) and since Rule 128(9) does not preclude the assessee from the claiming credit for FTC in case of delay in filing the return of income as the credit for FTC is a vested right of the

assessee and since Form No. 67 was filed along with the rectification application, as contended by the assessee, therefore, there was no justification for not allowing the credit for FTC. Hence, in view of the discussion made in the preceding paragraph, the claim of foreign tax credit has to be allowed since it is a vested right of the assessee and provision of DTAA will override the normal provision of the Income-tax Act if the same are more beneficial to the assessee and there is no justification for not allowing the credit. Respectfully following the judicial pronouncements (supra), the AO is directed to allow the FTC in accordance with Article 24 of the DTAA between India & Sri Lanka and as per law. Hence, Ground No. 7 is allowed.

14. Ground No. 8 is related to not allowing the carry forward losses claimed by the assessee in the return of income. The assessee had claimed loss of Rs. 1,85,000/- in the return of income. No discussion has been made by the Ld. CIT(A) in this regard. The assessee is also directed to file necessary evidence for such claim before the Ld. AO who shall allow the loss claimed in accordance with law after verification of the details. Hence, Ground No. 8 is allowed for statistical purposes.

15. Ground No. 9 is consequential in nature, while Ground No. 10 is general in nature, therefore, both the grounds do not require any separate adjudication.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13th September, 2024.

Sd/-	***Sd/-***
(Sanjay Garg)	**(Rakesh Mishra)**
Judicial Member	**Accountant Member**

Dated: 13th September, 2024

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy// By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata