

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIALMEMBER**

**SA No.49/Del./2024
(in ITA No.353/Del/2024)
(Assessment Year : 2019-20)**

AND

**ITA No. 353/DEL/2024
(Assessment Year: 2019-20)**

Sanjeev Mehta
G-1, Vishwa Apartment,
3, Shankaracharya Marg,
Civil lines,
New Delhi – 110 054.

vs. ACIT, Circle 70(1),
New Delhi.

**(PAN: AAAPM5622L)
(APPELLANT)**

(RESPONDENT)

ASSESSEE BY : Ms. Prem Lata Bansal, Adv.
REVENUE BY : Shri Anuj Garg, Sr. DR.

Date of Hearing : 04.07.2024
Date of Order : 13.09.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) (for short 'Ld. CIT (A)')/National Faceless Appeal Centre (NFAC), Delhi dated 20.03.2023 for the Assessment Year 2019-20.

Since we have disposed off the appeal in the instant case by this order, the stay application filed by the assessee has become infructuous, hence dismissed.

2. At the time of filing of appeal, the Registry has pointed out a defect that appeal is time barred by 256 days. In response thereof, the Assessee has filed an Application dated 30.01.2024 u/s. 253(5) of the Income Tax Act, 1961 (for short 'the Act') read with Section 5 of Limitation Act seeking condonation of delay in filing of the appeal. The contents of the same are reproduced as under:-

“APPLICATION UIS 253(5) OF THE INCOME TAX ACT R/W SECTION 5 OF LIMITATION ACT SEEKING CONDONATION OF DELAY IN FILING OF THE APPEAL

1. That the appellant / applicant (hereinafter referred to as "assessee") has filed the captioned appeal against the order-dated 20.03.2023 (hereinafter referred to the impugned order) passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi u/s 250 of the Income Tax Act.

2. That the present appeal was to be filed within a period of 60 days as per the law of limitation from the date of communication of the impugned order and therefore, the last date to file the present appeal was 19.05.2023. Hence. the assessee is fling the present application seeking condonation of delay in filing the present appeal due to the reasons below mentioned.

3. That the assessee being a Non-Resident Indian, was not able to keep track of the Indian mail account and the Income Tax Portal and therefore, he was not aware about the outcome of the appeal, which was pending before the CIT(A).

4. That the health condition of father of the assessee had been deteriorating from Aug 2023, which ultimately led to the demise of the father of the assessee on 26 Sep 2023. The assessee due to the said reason returned to India in Sep 2023 for the purpose of performing the last rites and rituals of

his deceased father. The assessee after a few days, discussed with his sister Smt Manju Sapra, the pendency of the matter before the CIT(A) after which he gave the Power Of Attorney in favour of his sister to inquire about the outcome of the appeal filed by him on 05.02.2022 and to proceed further with the same.

The copy of the death certificate of the father of the appellant is enclosed herewith as Annexure-"A".

5. That the sister of the appellant, in order to know about the status of the appeal pending before the CIT(A), consulted an Advocate in the first week of November and provided the details of the appeal filed by the assessee to him.

6. That thereafter, the advocate who was engaged by the sister of the assessee came to know that the order of the appeal was already passed by the CIT(A), NFAC, Delhi on 20.03.2023 and subsequently, he moved an application dated 08.11.2023 to provide the certified copy of the impugned order passed by the CIT(A). However, in response to the said application, an email dated 22.11.2023 was received from "Delhi Samadhan Faceless Appeal" that all the appeals/assessment orders can be downloaded from e- filing portal and the same be accessed for the required documents. Hence no certified copy of the said order was provided by the CIT(A) to the Counsel of the assessee.

The copy of application for certified copy of the order dated 20.03.2023 passed by CIT(A) NFAG dated 08.11.2023 alongwith the email dated 22.11.2023 by Delhi Samadhan Faceless Appeal is enclosed herewith as Annexure-"B" (COLLY).

7. That, in the month of Dec-23, the assessee inquired from his sister about the outcome of the appeal after which he came to know that the appeal was already decided on 20.03.2023 against him and the order of the CIT(A) was already uploaded on the Income Tax Portal. However, sister of the assessee Could not file the appeal against the impugned order due to the reason that the Power Of Attorney in her favour, got misplaced.

8. That now the assessee has again given the Power Of Attorney in favour of his sister to file the present appeal before the ITAT, Delhi and accordingly, the said appeal is being filed.

9. *That there is a delay of 248 days in filing the present appeal, which is completely unintentional and not deliberate and has only occurred due to the above circumstances.*

10. *That infact, the appellant came to know about the passing of the impugned order only in the month of Dec-23 and therefore, considering the period of limitation of 60 days, there is no delay in filing the present appeal. However, the present application is being filed as a matter of abundant precaution in order to pre-empt the respondents from taking a stand that the appeal is filed without the application for condonation of delay*

11. *That the present application is being filed bonafide and in case, the present application is not allowed in favour of the assessee then the great prejudice shall be caused to him.*

12. *That the balance of convenience lies in favour of the appellant.*

In view of above, it is most respectfully prayed that this Hon'ble Tribunal be pleased to condone the delay of 2 days in filing the appeal if any and direct the Registry to place the same on record.

It is prayed accordingly.”

3. We have heard both the counsels on the issue of condonation of delay. In our considered opinion, there was a reasonable cause for the delay in filing the appeal. Therefore, we condone the delay in filing the appeal before the Tribunal.

4. Brief facts of the case are, assessee is an individual filed its return of income and while processing the return of income under section 143(1) of the Act claimed tax relief on the income earned outside India and assessee has submitted details of income earned outside India and relevant tax credit under

section 90 of the act to the extent of Rs.14,91,833/- in his return of income.

While processing the return under section 143(1) of the Act, it was observed that assessee had not filed relevant Form 36 referred in clause (1) of sub-rule 8 along with the return of income filed under section 139(1) of the Act.

Accordingly, the same was disallowed. Subsequently, assessee filed rectification application under section 154 of the Act and the same was rejected since assessee had not filed relevant Form 67 along with the return of income.

4. Aggrieved, assessee is an appeal before us raising following grounds of appeal:-

- “01. That the Ld. CIT(A), NFAC has erroneously confirmed the order passed by the Ld. Assessing Officer disallowing the credit of 14,91,833/- being tax deducted by the USA employer and thereby raising a demand of 19,72,489/- which is arbitrary, capricious and bad in law.*
- 02. That the Ld. CIT(A), NFAC has erred in ignoring the DTAA between India and USA wherein Article 25 of the said convention specifically lays down that if the income has been taxed in the USA, then India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in United States, whether directly or by deduction.*
- 03. That the Ld. CIT(A), NFAC has erred in law in confirming the order of the AO and not granting the relief of foreign tax credit to the assessee of Rs. 14,91,833/- on the income of Rs. 65.81 lakhs earned outside India and offered to tax in India as well as USA leading to double taxation on the income of the assessee as specifically prescribed under section 90 of the Act and rule 128(2) of the Income tax Rules, 1962.*

04. *That the Ld. CIT(A), NFAC has disallowed the claim of FTC only on the ground that the assessee has not filed Form No.67 on or before the due date of filing of return of income as per Rule 125(9) Ignoring the law laid down by Supreme Court and other High courts that such procedural requirement is only directory and not mandatory in nature and therefore the vested right of the assessee as prescribed under the Act cannot be taken away.*
 05. *That the Ld CIT(A), NFAC has wrongly interpreted Rule 128(9) as laying down the consequences for non-filing No. 67 when the same was not provided therein.*
 06. *That the Ld. CIT(A), NFAC has erred in confirming the order ignoring the law that the provisions of the DTAA will override the provisions of the Income Tax Act (section 90 and Rule 128 in the present case) where it is clearly said that the FTC shall be given to the assessee in case when the income is already taxed in one of the Contracting States.*
 07. *That the Ld. CIT(A), NFAC has failed to consider the fact that before disallowing foreign tax credit claimed by the assessee, the CPC Bengaluru in their intimation issued u/s 143(1) of the Act, have not given any opportunity to the assessee to explain as to why FTC claimed by him be disallowed, thereby ignoring the principles of natural justice.*
 08. *That the Ld. CIT(A), NFAC and the Ld. ITO have erred in appreciating the fact that as per procedure for electronic filing of returns for the relevant year, evidences in support of the claim were not required to be filed.*
 09. *That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.”*
5. At the time of hearing, ld. AR for the assessee brought to our notice the details of income earned by the assessee outside India and the relevant salary from foreign employer and he also brought to our notice relevant Form 67. He

further submitted that the issue under consideration is already covered in favour of the assessee and he relied on the following decisions of various ITAT Benches :-

- i) *Ms. Brinda Rama Krishna vs. ITO Ward-5(3)(1), Bangalore (ITA No. 454/Bang/2021 dated 17.11.2021).*
- ii) *Sonakshi Sinha vs. CIT(A), NFAC (ITA No. 1704/Mum/2022 dated 20.09.2022).*
- iii) *M/s 42 Hertz Software India Pvt. Ltd. vs. ACIT Circle 3(1)(1) (ITA No. 29/Bang/2021 dated 07.03.2022)*
- iv) *Duraiswamy Kumaraswamy vs. Pr. CIT & Ors. (2024) 460 ITR 615 (Mad)*
- v) *CIT vs. G.M. Knitting Industries (P) Ltd. (2015) 376 ITR 456 (SC)*

6. On the other hand, learned DR for the Revenue submitted that it is a mandatory provision to file the Form 67 along with the return of income failing which assessee cannot claim any benefit.

7. Considered the rival submissions and material placed on record. We observed that assessee has not filed the relevant Form 67 along with return of income, however he received the same subsequently. As held in several cases that filing of Form 67 along with return of income is not mandatory and the similar issue was considered by the ITAT Mumbai in ITA No.1704/Mum/2022

dated 20.09.2022 in the case of Sonakshi Sinha vs. CIT(A), NFAC. Relevant findings are reproduced below :-

“012. 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 Vinod Kumar Lakshmipathi 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 the relevant for non-adherence to such provision is normally not taken to be mandatory and is Admittedly, Rule 128 considered to be purely directory 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 on or before due date of filing of ROI. Further rule 128

(4) clearly provides the condition where the foreign tax credit would not be allowed. 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 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further , the fact in the present case is quite distinct then the issue involved in the decision of the Honourable Supreme Court in case of Wipro Ltd (supra). 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. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income Tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.”

- 8 Respectfully following the above decision, we are inclined to direct the AO to allow the claim of the assessee as per Form 67 filed by the assessee.
9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 13TH day of September 2024.

SD/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

SD/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated : 13.09.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI