

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं./ ITA No.1213/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-2018)**

The Income Tax Officer,
Corporate Ward 6(3)
Chennai.

Vs. M/s. Sysarc Informatix Private Limited,
New No.13, Old No.195,
Defence Officers Colony,
Nandambakkam, Chennai 600 032.

(अपीलार्थी/Appellant)

[PAN : AA ECS 6891A]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. Anitha, IRS, Addl. CIT.

प्रत्यर्थी की ओर से /Respondent by

: Ms. S. Subashini, C.A.

सुनवाई की तारीख/Date of Hearing

: 09.09.2024

घोषणा की तारीख /Date of Pronouncement

: 11.09.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

Aforesaid appeal by revenue for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 22-12-2023 in the matter of assessment order u/s 143(3) passed on 20-12-2019 denying Foreign Tax Credit of Rs.63,43,287/- as claimed by the assessee u/s 90/91 of the Act. The same was denied for delay in filing of requisite Form 67 along with return of income.

2. At the outset, it is noticed that this appeal by Revenue is barred by limitation by 64 days. The Revenue received the impugned appellate order on 22.12.2023 and appeal was to be filed on or before 20.02.2024 but actually it was filed on 25.04.2024 thereby there was a delay of 64 days. The Revenue has filed condonation petition stating the reason that due to ongoing transition on a Pan India scale from manual mode to digital mode, certain assessment and penalty cases were pushed to their office by the faceless charges at the fag end of time limitation. Due to this, entire wherewithal of his charge was diverted to completion of those cases for protecting the interests of the Revenue. Because of this, there was oversight in filing the appeal. When these facts were confronted to Id. Authorized Representative, she objected for condoning the delay. We find the cause as reasonable and hence, condone the delay and admit the appeal for adjudication.

3. The assessee has filed Form 67 beyond due date 30.11.2017 prescribed u/s 139(1). Form 67 was filed (uploaded) by the assessee on 12.12.2017 after extended due date and lay claim on the credit. AO denied the claim of Foreign Tax Credit for the reason that the assessee company has failed to submit the Form 67 within the due date prescribed u/s 139(1) of the Act. However, Ld. CIT(A) relied on the decision of the Hon'ble Madras High Court's judgment in the case of *Duraiswamy Kumaraswamy Vs. PCIT-8 Chennai (W.P.No.5834 of 2022 and W.M.P.Nos.5925 and W.M.P. Nos.5925 and 5927 of 2022)* has deleted the addition made by the AO.

4. We find that this issue has been addressed by the Co-ordinate Bench in the case of *Mrs. Venkatraman Lakshmi vs. ITO (ITA No.704/Chny/2023 dated 31-08-2023)* as under: -

"3. We find that this issue has been adjudicated by us in assessee's favor in the decision of Shri Prakash Varadarajulu vs. DCIT (ITA No.990/Chny/2022 dated 16-02-2023) as under: -

4. We find that filing of Form 67 has been held to be directory and not mandatory in many decisions of the Tribunal. The Mumbai Tribunal, in its recent decision, titled as Sonakshi Sinha vs. CIT (142 Taxmann.com 414), held as under: -

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 subsection (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. (Supra) wherein following its earlier order in the case of Ms. Brinda Rama Krishna (supra) 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 Lakshmipathi v. CIT(A) [IT Appeal No. 680/Bang/2022, 6-9-2022. 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 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.

In the absence of any contrary decision on record and respectfully following the consistent view of Tribunal on this issue, we direct lower authorities to grant the foreign tax credit as claimed by the assessee.

5. The appeal stand allowed”.

4. Taking consistent view in the matter, we direct lower authorities to allow foreign tax credit as claimed by the assessee.

5. In the result, The appeal stand allowed”.

5. Respectfully following the Co-ordinate bench order, no interference is required in the impugned order hence, we dismiss the appeal of the Revenue.

6. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 11th September, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 11 -09-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त/CIT, Chennai

4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF