

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष

Before

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1719/KOL/2024  
Assessment Year: 2020-21**

**Ratanlal Bhura.....Appellant  
[PAN: BGKPB 4811 R]**

**Vs.**

**DCIT, Circle-2(1), Kolkata.....Respondent**

**Appearances:**

**Assessee represented by:** Siddharth Agarwal, Adv.

**Department represented by:** Bibekananda Madhu, JCIT, Sr. DR.

Date of concluding the hearing : September 12<sup>th</sup>, 2024

Date of pronouncing the order : November 12<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2020-21 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-22, Kolkata [in short Id. 'CIT(A)'] dated 28.06.2024 arising out of the assessment order framed u/s 143(1) of the Act dated 26.12.2021.

1.1. The brief facts of the case of the appellant are that the assessee Ratan Lal Bhura is a resident individual has filed his original return of income on 10.01.2021 and revised return of income was filed on 22.03.2021 for the AY

2020-21. During the assessment year under consideration as per the return of income of the assessee he had earned gross income of Rs. 15,69,370/-. In the intimation u/s 143(1) of the Act and rectification order u/s 154 of the Act the claim of the tax relief of Rs. 3,02,014/- u/s 90/90A of the Act has not been granted by the CPC, Bengaluru. The said order has been put under challenge by the assessee before the ld. CIT(A) wherein the ld. CIT(A) dismissed the case of the appellant thereby holding that there was a delay in filing of Form-67 and as per sub-Rule 9 of Rule 128 of the Income Tax Rules, 1962 it was mandatory, ignoring the judgment pronounced by the Coordinate Bench of ITAT, Kolkata.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. Ld. Counsel for the assessee challenges the impugned order thereby submitting various judicial pronouncements of Hon'ble ITAT and submitted that in all the above judicial pronouncements, it has been held that filing of Form-67 is a procedural formality and the Assessing Officer (hereinafter referred to as ld. 'AO') ought not to have denied the relief u/s 90 of the Act merely for delay in filing Form-67. The ld. Counsel for the assessee submits that pursuant to the intimation u/s 143(1) of the Act, the appellant being the first remedy option filed a rectification application u/s 154 of the Act but an order was received in the portal and e-mail without any change in the order and demand of Rs. 3,10,800/- was confirmed. The ld. Counsel for the assessee further submits that procedural delay in filing of Form-67 although as per the submission of ld. Counsel for the assessee, there was no such delay even though judicial pronouncement has clearly been held that it could not be fatal, but the ld. CIT(A) without assigning any reason has simply stated that filing of Form-67 is not only directive but mandatory in nature that is erroneous and liable to be set aside. Ld. Counsel for the assessee cited following decisions:

*(a) Atami Mukherjee vs. ITO, ITA No. 439/K/2022, order dated 20.12.2022*

*(b) Sobhan Lal Gangopadhyay vs. ADIT, ITA No. 782/K/2022, order dated 09.05.2023*

(c) *Suresh Kumar Doodi vs. ACIT, ITA No. 164/JP/2023, Order dated 28.07.2023.*

(d) *Vinodkumar Lakshmi pathi vs. CIT(A), ITA No. 680/Bang/2022, Order dated 06.09.2022.*

1.3. On the contrary, the ld. D/R supports the impugned order.

2. We have perused the record and find that assessee Ratan Lal Bhura has filed his revised return of income on 22.03.2021 and asking a relief of Rs. 3,02,104/- u/s 90 of the Act. The assessee has filed Form-67 for Acknowledgement No. 300072280220321 dated 22.03.2021. We have gone through the order of the ld. CIT(A) and find that the ld. CIT(A) in its order has held thus:

*“The above Rule mentions that furnishing of Form 67 shall be within the due dates for furnishing of ITR under sub-section (1) of Section 139. In the instant case, the appellant has furnished the required Form-35 for the AY-2020-21 on 22.03.2021 which is after the extended due date of 10.011.2021. The appellant has relied on the various judgments of ITAT Kolkata where it has been held that claim of Foreign Tax Credit cannot be denied merely for late filing of Form-67 as it is merely a procedural formality and not mandatory in nature. But, most respectfully I beg to differ from the above mentioned judgments passed by the Ld. ITAT, Kolkata since Rule 128 of the Income Tax Rules, 1962 categorically mandates that for claiming credit of any taxes in a country or territory specified outside India, for the AY-2020-21 the assessee shall file Form No. 67 under sub-rule (9) of rule 128 of the Income-tax rules, 1962 before the due date for filing the return of income under section 139(1) the Income-tax Act, 1961 and also mandates that filing of Form No. 67 shall precede the filing of the return. Therefore, I am of the view that it is not only directory but also mandatory in nature. In this case, the appellant failed to follow the procedure suggested by the IT Rules.”*

2.1. We have gone through the cited decisions filed by the assessee and find that in a judgment passed by Hon'ble Members of the ITAT, Kolkata in the case of *Sobhan Lal Gangopadhyay vs. ADIT, CPC, Bengaluru* in ITA No. 782/KOL/2022 has discussed this issue and also discussed the other decision of the Coordinate Bench which is essential to reproduced below:

*“6. Before us, ld. Counsel for assessee referred to the decision of the Coordinate Bench in the case of Sonakshi Sinha (supra), wherein it has been held that filing of Form No. 67 is directory in nature and not mandatory. Relevant extract of the Tribunal's decisions is reproduced hereunder:-*

“011. The learned authorised representative submitted that honourable Supreme Court was seized of the matter where in the same subsection twin conditions were mentioned the honourable High Court and lower appellate authorities considered one of the condition as mandatory and one of the condition as directory. He submitted that here section 90 or 91 does not lay down any condition of filing any form. The requirement of filing of the form is provided under rule 128 of The Income Tax Rules. Therefore here the situation is quite different. He submitted that these conditions have been considered by the coordinate bench in case of Brinda Ramakrishna.

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 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 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 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 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.*

*013. Other grounds of appeal are also revolving around the issue of claim of foreign tax credit and therefore those are allowed.*

*014. Accordingly appeal of the assessee is allowed.”*

*7. Above finding of the Tribunal is squarely applicable on the facts of the case in hand and the same remains uncontroverted by the ld. D/R by way of placing reliance on any other binding precedents in its favour. We, therefore, respectfully following the same, are inclined to hold that the Assessing Officer ought not to have denied the relief u/s 90 of the Act merely for delay in filing of Form 67. Thus, effective ground of the assessee is allowed.”*

2.2. In the other judgment also, it has clearly been held that filing of Form-67 is a procedural formality and could not be the basis for denial to the assessee. In the present case, we find that ld. CIT(A) without assigning any reason has stated that he begged to differ from the above-mentioned judgment by the Coordinate Bench of ITAT, Kolkata. It is important to mention here that any judgment passed by superior Court is binding in nature to the Court which are inferior to them. If the inferior Court differs, he has to discuss and assign reason of the difference. But in the present case, we find that ld. CIT(A) without assigning any reason to take a different view has only stated that he begged to differ, that is erroneous and cannot be said to be legally justifiable.

3. The judicial order passed by the Coordinate Bench of ITAT, Kolkata has clearly held that the ld. AO ought not to deny the relief u/s 90 of the Act merely for delay in filing of Form-67. The present fact is squarely covered with the cited judicial pronouncements of the ITAT. Accordingly, considering the

facts of the present case and in light of the decision of the Coordinate Bench, we allow the appeal of the assessee.

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

**Order pronounced in the open Court on 12<sup>th</sup> November, 2024.**

*Sd/-*

**[Sanjay Awasthi]**

Accountant Member

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 12.11.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Ratanlal Bhura, C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor, Kolkata, West Bengal, 700069.**
2. **DCIT, Circle-2(1), Kolkata.**
3. CIT(A)-22, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata