

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA No. 3077/DEL/2024
[Assessment Year: 2021-22]

Shivank Dua, C-104, Samrat Palace, Garh Road, Meerut-250002 PAN- BOUPD 5631 R	<u>Vs</u>	Income-tax Officer, Ward-1(2)(5), Meerut.
APPELLANT		RESPONDENT
Appellant by	Shri Mitul Ruparayl, adv.	
Respondent by	Shri Yogesh Sharma, Sr. DR	
Date of hearing	06.11.2024	
Date of pronouncement	14.11.2024	

ORDER

PER SATBEER SINGH GODARA, JM:

This assessee’s appeal for assessment year 2021-22 arises against DIN and order no. ITBA/NFAC/S/250/2024-25/1064447356(1), dated 30.04.2024, passed by the learned CIT(Appeals)/ National Faceless Appeal Centre (NFAC), Delhi, in appeal No. NFAC/2020-21/10284203 in proceedings u/s 250 of the Income-tax Act, 1961, hereinafter referred to as the “Act”.

2. Heard both the parties at length. The assessee pleads the following substantive grounds in the instant appeal.

“1 The order passed by the Commissioner of Income Tax (Appeal), (NFAC), Delhi is bad in law and contrary to the provision of law and facts. It is submitted that the same be held so now.

2 The Commissioner of Income Tax (Appeal), (NFAC) Delhi has grossly erred in confirming disallowance of Foreign Tax Credit amounting to Rs. 70,501/- and demanded tax of Rs.64,532/-on the ground that Form 67 was not duly filed in due course of time. However, Form 67 was filed in due course of time but in that form, there was a clerical mistake in mentioning the year on behalf of the income tax practitioner who filed the form on behalf of the Appellant.

3 The Appellant filed his return of income for the A.Y. 2021-22 on 29/12/2021 declaring the total income Rs.11,64,120/-. The Appellant went to United Kingdom to work based on the scheme of employee exchange adopted by the company M/s. Infosys Limited. He stayed there for 2 years from 01/10/2018 to 29/09/2020. During his period of stay in United Kingdom between 01/04/2020 to 29/09/2020, he derived salary of £9997.31 which comes to Rs.9,41,770/-. During his period of stay, his salary income was taxed by the Government of United Kingdom at the rate of 7.486% which comes to £748.40 i.e., Rs. 70,501/- after applying exchange rate. The Appellant was eligible to avail Foreign Tax Credit under section 90 of the Act as per Rules of Double Taxation Avoidance Agreement formed between two Contracting States i.e., United Kingdom and India. The income tax practitioner hired by the Appellant while filing the income tax return under section 139 of the Act filed Form No.67 on 29/09/2021 in order to avail.

4. The Appellant reserves his right to submit all the details in connection with the addition as fresh evidence as per Rule 46A of the Income Tax Rules, 1962 at the time of hearing of this appeal. Being aggrieved by the dismissal of rectification made under section 154 of the Act and dismissal of appeal under section 250 of the Act, the Appellant prefers to appeal on the accompanied grounds.

5. The Appellant craves, leave to add, to alter, to modify, to amend or to withdraw/delete any of the grounds of appeal at any time in or before the final hearing of appeal.”

3. Suffice to say, it emerges during the course of hearing that the assessee's sole substantive ground raised in the instant appeal claims foreign tax credit which has been rejected on the ground that he had failed to file the prescribed Form 67 within due date as per Rule 128 of the Income-tax Rules.

4. It is noticed in this factual backdrop that the instant issue as to whether filing of the said Form 67 within prescribed due date is mandatory or directory in nature stands settled in assessee's favour and against the department in Duraiswamy Kumaraswamy v. PCIT [TS-681-HC-2023 (Mad) dated 6th October, 2023]. That being the case, I accept the assessee's instant sole substantive ground in principle and leave it open for Assessing Authority to verify all the relevant facts as per law for the purpose of consequential relief.

6. This assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 14.11.2024.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

