

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1178/Ahd/2024
Assessment Year 2019-10**

Kamlesh D. Patel A28/29, Madhuvanam Apartment, Kanha Shanthi Vanam, Nandigama Mandal, Chegur, Rangareddy, Telangana PAN: ASDPP9327Q (Appellant)	Vs	The ACIT, Circle-2(1)(1), Vadodara (Respondent)
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**Assessee Represented: Shri Tushar Hemani, Sr. Adv. &
Shri Parimalsinh B. Parmar, A.R.
Revenue Represented: Smt. Malarkodi R., Sr.D.R.**

Date of hearing : 14-10-2024
Date of pronouncement : 29-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 01.04.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the Rectification order passed under section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2019-20.

2. Brief facts of the case is that the assessee is an individual and Senior Citizen who has filed his Return of Income declaring income of Rs.2,63,76,090/- including agriculture income of Rs.26,02,000/. The return was taken for scrutiny assessment and various notices issued between 21-05-2021 to 29-09-2021. Since the Income Tax Portal was closed from 01-06-2021, the assessee could not upload its reply to the notices issued by the Assessing Officer. Therefore the Assessing Officer passed an exparte assessment order treating the agriculture income as unexplained cash credit u/s. 68 of the Act and also denied the claim of Foreign Tax Credit (hereinafter referred as FTC) relief u/s. 90 of the Act to the tune of Rs.10,35,734/- since Form No. 67 was not filed along with the Return of Income.

3. As against the exparte assessment order, the assessee filed appeal before Ld. CIT(A), NFAC, Delhi vide Appeal Acknowledgement No. 115751840020222 dated 02-02-2022. In the meanwhile, the Assessing Officer found though the relief u/s. 90 of the Act to the tune of Rs.10,35,734/- was disallowed to the assessee, however in the computation sheet, the same was mistakenly granted to the assessee which is an apparent mistake on record. Therefore the Ld. A.O. issued a notice dated 17-10-2023 to give proof for the claim of relief made u/s. 90 of the Act. Since the assessee failed to make a reply, the Assessing Officer passed the Rectification order demanding a sum of Rs.30,90,458/- after adjusting the refund already issued of Rs.6,86,660/-.

4. Aggrieved against the rectification order, the assessee filed an appeal before Ld. NFAC with categorically mentioning in Form No. 35 at Serial No. 4, the pendency of the appeal in assessee's own case for the very same assessment year. However, in the appellate proceedings, the assessee filed its written submission and pleaded that filing of Form No. 67 for claiming Foreign Tax Credit is only directory and not mandatory. Hence late filing of Form No. 67 on 24-03-2024 is not mandatory and the assessee should be given the claim of Foreign Tax Credit. The Ld. CIT(A) considered the above submission dismissed the appeal by observing as follows:

4.6 Taxes are paid in an alien nation, the particulars of which can never be verified by the Income tax Authorities in India. It is for such reason that Form no.67 which consists of 4 parts has a verification column, affirming that the claim of the FTC, to the best of the knowledge and belief of the Appellant is true and correct. Providing credit of FTC in the absence of such verification is not logical while the authorities erred in failing to comprehend that the claims are otherwise not verifiable. Further, Rule 128 incorporates the word "Shall", which imply that filing of Form no.67 before the time limit u/s.139(1) [now extended to 139(4)] is mandatory. Having failed to file the same within 139(1) limit, the JAO was correct in denying the credit of FTC paid abroad.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The Commissioner of Income Tax (Appeals) erred in denying credit for taxes paid overseas for the reason that Form 67 was not filed along with the return of income
2. The Appellant submits that the relief available under Section 90/90A was denied by the commissioner of Income Tax (Appeals) for the season that the appellant did not filed Form 67 as prescribed as per Rule 128(9) of the Income Tax Rules, 1962.

3. The Commissioner of Income Tax (Appeals) erred in stating that the filing of Form 67 is mandatory in order to claim the benefit of Foreign Tax Credit and not direction.
 4. The Appellant submits that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that filing of Form 67 is not mandatory and is only direction and the credit for taxes available is made based on the Double Taxation Avoidance Agreement (USA).
 5. The Appellant submits that the provisions of the DTAA should be applicable to the assessee to the extent that they are more beneficial and the Act does not override the provisions of the DTAA.
 6. The Appellant further submits that it has been held in various judicial forums that filing of Form 67 is only a directory requirement and not a mandatory requirement.
 7. The Appellant submits that the Hon'ble High Court of Madras in the case of Duratswamy Kumaraswamy (WP No 5834 of 2022 & ors. order dated 06.10.2003) concluded that the delay in filing Form 67 may be condoned and granted the Foreign Tax Credit claimed.
 8. The Appellant submits the denial of the credit by the Commissioner of Income Tax (Appeals) is not in accordance with the law.
 9. The learned CITIA erred in not granting the relief u/s. 90 for Foreign Tax Credit as the rectification order passed by the AO u/s.154 was without a DIN and was violating the guidelines in making the order as per the "PRESS RELEASE" dated 14/08/2019 issued by the CBDT, and hence is not in conformity with the prescribed guidelines and liable to be treated as invalid and quashed.
 10. The Appellant craves to add, amend, modify, alter or forego any ground of appeal at any time before or during the hearing of this appeal and request an opportunity of being heard before the order is passed.
6. Ld. Sr. Counsel Shri Tushar Hemani appearing for the assessee submitted that the solitary issue involved in the present appeal is whether the claim of Foreign Tax Credit (FTC) can be denied merely because Form No. 67 was filed belatedly. Requirement of filing

Form No. 67 is only directory in nature and not mandatory. Therefore, if the assessee files Form No. 67 belatedly then FTC cannot be denied and placed reliance on the following decisions:

- * True Sparrow Systems P. Ltd. - ITA 765/A/2019;
- * Cryogas Equipments P. Ltd.- ITA 415/A/2020;
- * Mayur Foundation - 274 ITR 562 (Guj);
- * Association of Indian Panel board-TA 655 of 2022 (Guj);
- * Chiragkumar Nandlal Makadia - ITA 4/Ahd/2024 (Ahd);
- * Soumitra Ganguly - 167 taxmann.com 168 (Kol.);
- * Power & Energy Consultants-159 taxmann.com 645 (Del);

7. The Ld. Counsel pleaded that the appeal filed by the assessee as against the exparte assessment order is also pending before Ld. NFAC with Appeal Acknowledgement No. 115751840020222 dated 02-02-2022. Hence the present appeal also be set aside to the file of Ld. NFAC to decide along with the pending appeal.

8. Ld. D.R. appearing for the Revenue has no objection in setting aside the appeal to the file of CIT[A] and decided along with that appeal against exparte assessment order.

9. We have heard rival submissions and perused the materials available on record. Since the appeal against exparte assessment order is still pending with Acknowledgement No.115751840020222 dated 02-02-2022 before NAFC. Without expressing anything on merits of the case, the present appellate order passed by Ld CIT[A] is hereby setaside with a direction to decide the same along with the other appeal within a period of four months.

10. In the result, **the appeal filed by the Assessee is allowed for statistical purpose.**

Order pronounced in the open court on 29 -11-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad :
Dated 29/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद