

IN THE INCOME TAX APPELLATE TRIBUNAL “K(SMC)” BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 4270/Mum/2024
(Assessment Year: 2020-21)

Gursharan Kaur A-301, Skylark CHS, Opp. Vikram Petrol Pump A Bunglows Juhu Versova Link Road, 4 Bunglow Andheri West Mumbai -400 053	Vs.	ITO Ward 24 (1)(1) Piramal Chamber, Mumbai – 400012.
PAN/GIR No. BKOPK8032M		
(Assessee)	:	(Respondent)
Assessee by	:	Shri. Tejas Chandrana
Respondent by	:	Mr. Tushar Mohite Sr. DR
Date of Hearing	:	17.10.2024
Date of Pronouncement	:	29.11.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals), Delhi (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2020-21.

2. The assessee has raised the following grounds of appeal:

“Following grounds of appeal are without prejudice to each other.

- 1. The learned CIT (A) has erred in law and on facts in upholding the order passed by Central Processing Center ("CPC") u/s 154 of the Act.*
- 2. The learned CIT(A) has erred in law and on facts in upholding the action of the CPC of denying relief u/s 90/90A due to late filing of Form 67.*
- 3. The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234B and 234C of the Act.”*

3. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 22.09.2020 declaring total income at Rs. 12,82,760/- and the same was processed u/s. 143(1) of the Act. The assessee had claimed FTC credit amounting to Rs. 2,05,221/- u/s. 90/90A of the Act r.w.r. 128 of the Income Tax Rules, 1962 (herein referred to as “Rules”) and the same was disallowed by CPC/learned Assessing Officer (ld. A.O. for short) for non-filing of form 67 within the due date. The assessee then filed rectification application u/s. 154 of the Act where the ld. AO rejected the assessee’s claim.
4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 11.07.2024 upheld the disallowance made by the ld. AO for the reason that the assessee had failed to file form 67 before the due date specified for furnishing of return of income u/s. 139(1) of the Act.
5. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).
6. We have heard the rival submissions and perused the materials available on record. The only moot issue to be decided in this appeal is whether the assessee is entitled to the claim of FTC where form 67 has not been filed before the filing of return of income. In the present case, the assessee has filed form 67 on 22.01.2023 and the due date for filing of return of income u/s. 139(1) was 10.01.2021. It is observed that the Rule 128 of the Income Tax Rules, 1962 facilitates for the claim of FTC where in clause (8) and (9) of the Rules, the conditions required for such claim has been enumerated. The same is cited hereinunder for ease of reference:

128. [Foreign Tax Credit. [Rule 128 inserted by the Income-tax (Eighteenth Amendment) Rules, 2016, w.e.f. 1-4-2017.]

(1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way

of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:

- (8) *Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:-*
- (i) *a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;*
 - (ii) *certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,-*
 - (a) *from the tax authority of the country or the specified territory outside India; or*
 - (b) *from the person responsible for deduction of such tax; or(c)signed by the assessee:*
- Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by*
- (A) *an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;*
 - (B) *proof of deduction where the tax has been deducted.*
- (9) *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.”*

7. From the above, it can be inferred that as per Rule 128(9) the statement in form no. 67 shall be furnished on or before the due date specified for filing the return of income u/s. 139(1) of the Act. The learned Departmental Representative (ld. DR for short) for the revenue has contended that the word ‘shall’ specified in the said provision has to be interpreted as mandatory and not directory in nature. The ld. DR relied on the decision of the coordinate bench in the case of *ITA No. 269/Viz/2021, Muralikrishna Vaddi, Visakhapatnam vs. ACIT/DCIT, vide order dated 14.06.2022* which has iterated that the same is mandatory and not directory.
8. Per contra, the learned Authorised Representative (ld. AR for short) for the assessee has relied on the decision of the coordinate benches in the case of *ITA No. 1896/Mum/2022, Rohan Hattangadi vs. CIT(A), order dated 02.12.2022* and *ITA No. 454/Bang/2021, Ms. Brinda Rama Krishna vs. The Income Tax Officer, Ward 5(3)(1),*

Bangalore, order dated 17.11.2021 were the delay in filing form no. 67 has been considered to be a mere procedural irregularity which does not hinder the claim of the assessee. It has held that the said condition to file form no. 67 on or before the due date is directory and not a mandatory requirement.

9. From the above, it is evident that this issue is no longer *Res Integra* were the various coordinate benches have decided this issue in favour of the assessee. By respectfully following the above said decisions, we deem it fit to allow the grounds raised by the assessee.

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

Order pronounced in the open court on 29.11.2024

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai; Dated: 29.11.2024

Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai