

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1959/KOL/2024
Assessment Year: 2021-2022**

***Debanjan Chatterjee,.....Appellant
C-3/14, East Enclave Cooperative Society,
Rajarhat, Kolkata-700156
[PAN:AEZPC7707H]***

-Vs.-

***Deputy Director of Income Tax,.....Respondent
CPC, Bengluru,
Bangalore-560500***

Appearances by:

*Shri Nilesh Kariya, A.R., appeared on behalf of the
assessee*

*Shri Sanjay Paul, Addl. CIT, appeared on behalf of the
Revenue*

**Date of concluding the hearing: November 28, 2024
Date of pronouncing the order: December 02, 2024**

O R D E R

Per Rajesh Kumar, Accountant Member:-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-22 dated 22nd July, 2024 passed for Assessment Year 2021-22.

2. The only issue raised by the assessee is against confirmation of order passed under section 154 of the Act by CPC, Bengaluru, whereby the ld. Assessing Officer denied the credit of foreign tax under section 90 of the Act.

3. The facts in brief are that the assessee being a non-resident filed the return of income on 19.02.2022 for the assessment year 2021-22 belatedly by declaring total income of Rs.1,13,38,810/-, in which the assessee declared salary of Rs.1,11,46,983/- earned from an employer based in the United Kingdom. The assessee also filed Form 67 (relating to filing a Statement of income from a country or specified territory outside India and Foreign Tax Credit) in support of its foreign tax credit. The reasons cited by the assessee for the delayed filing of income tax return was that the assessee a British Citizen has been working in the United Kingdom since long time paying regular taxes to HMRC, UK. The assessee was stuck in Kolkata during COVID period and his health condition was not good as he was suffering from several comorbidities. The claim of the assessee was rejected in the intimation issued under section 143(1) of the Act and thereafter the assessee moved a rectification application which was also rejected and hence, the assessee came in appeal before the ld. CIT(Appeals).

4. The ld. CIT(Appeals) also dismissed the appeal of the assessee by observing and holding as under:-

"I have carefully considered the facts of the case and the findings of the Ld. AO recorded while passing Rectification Order u/s 154 of the Income Tax Act, 1961. I have carefully

examined the material at hand including the impugned orders, the submissions of the appellant, the citations and orders relied upon by him as well as the citations that are more broadly applicable to the facts of this case. The brief facts of the case are that the assessee was a resident individual for the impugned year and had filed his return of income on 19.02.2022 and the return was filed u/s 139(4)-Belated after the due date.

During the assessment year under consideration, as per return of income of the assessee, he had earned gross income of Rs. 1,13,38,810/-. In the Intimation u/s 143(1) and Rectification Order u/s 154, the claim of the tax relief of Rs. 37,79,568/- u/s 90/90A of the IT Act has not been granted by the CPC, Bengaluru. Aggrieved by which this appeal has been filed by the appellant. As all the grounds relate to just one issue, hence these are being disposed as one as below.

On perusal of the Rectification Order dated 24.02.2023, it is observed that the claim of foreign tax credit to the tune of Rs.37,79,568/- Under Section 90/90A of the IT Act was disallowed.

It is claimed that inspite of filing of the Form-67, the claim U/s 90/90A has not been allowed. The appellant has submitted the Form-67 during the appellate proceedings. Perusal of the same and the other relevant documents, it reveals that the appellant had filed the Form-67 on 19.02.2022 on the day of filing the belated return u/s 139(4) after the due date. Before proceeding further, it is necessary to reproduce Rule 128 of Income Tax Rules 1962 for the AY-2021-22 which relates to furnishing of Form 67 as under:

“(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.”

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-67 for the AY-2021-22 on 19.02.2022 which is after the extended due date of 31.12.2021. The appellant has relied on the various judgments of ITAT Bangalore and Mumbai 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 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-2021-22, 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 LT Rules.

In view of the above, the grounds of appeal are dismissed”.

5. After considering the rival contentions and perusing the relevant material available on record, we find that the assessee has been staying abroad and was a non-resident during the year in connection with his employment abroad. The assessee claimed foreign tax credit of Rs.37,79,568/- under section 90 and also filed Form 67 with the return of income belatedly on 19.02.2022. Since the provision of DTAA override the provision of Section 90 of the Act as they are more beneficial to the assessee, in view of judicial pronouncements in this regard and since Rule 128(a) does not preclude the assessee from the claiming credit for FTC in case of delay in filing the return of income as the credit for FTC is a vested right of the assessee. Therefore, there was no justification for not allowing the credit for FTC. The case of the assessee is squarely covered by a series of decisions of the coordinate benches. The operative part of the decision in the case Anindya Sarkar Vs ACIT CPC Bangluru ITA No. 1345/Kol/2024 A.Y. 2020-21 is extracted below :

“7. We have gone through the rival contention and also examined the facts. It was submitted before the Ld. CIT(A) by the assessee that the rerun of income was filed on 25.12.2020 and on 26.12.2020 he had submitted the Form No. 67 after receiving the communication from the e-filing team, Income Tax Department on 25.12.2020 that the return of income was not accompanied by Form No. 67 as mandated by law. Subsequently, since the credit was not allowed, he filed rectification application and Form No. 67 on 03.07.2022 and prior to that rectification requests on 21.05.2022 and on 07.06.2022 were also filed. The credit was not allowed since Form No. 67 was filed beyond the date for filing the return of income under Section 139(1) of the Act. In the case of Mahua Bagchi Vs. ACIT (supra) relied upon by the assessee, it is held as under:

“5. After hearing rival contentions and perusing the material on record, we find that the assessee served abroad and some foreign tax to the tune of Rs. 17,72,470/- was deducted in United Kingdom under DTAA between India and UK and provision of Section 90(2) of the Act. We also note that Rule 128 sub-Rule 9 provides that Form-67 should be filed on or before the due date of filing the return of income. However, we note that nowhere it is stated that in case of delayed filing of Form-67 by way of foreign tax credit which is deducted from the assessee in foreign country i.e U.K. would be denied. Accordingly, we are of the considered view that the assessee is entitled to get this foreign tax credit of Rs. 17,72,470/- u/s 90 of the Act. We also note that the claim in respect of foreign tax was allowed in the order passed u/s 143(1) of the dated 28.03.2019 and was withdrawn by the AO by passing order u/s 154 of the Act when the assessee filed form 67 before the AO. In our opinion the credit in respect of foreign tax cannot be denied to the assessee for the technicality of not filing the form 67 within the due date of return u/s 139(1) of the Act. The case of the assessee finds support from the decision of Coordinate Benches in the case of Atanu Mukherjee Vs. ITO in ITA No. 439/KOL/2022 for AY 2020-21 order dated 20.12.2022 and Sobhan Lal Gangopadhyay Vs. ADIT in ITA No. 782/KOL/2022 for AY 2020-21 order dated 09.05.2023.

6. In the result, the appeal filed by the assessee is allowed.”

8. Further, in the case of Deepak ShimogaPadmaraju Vs. Assistant Director of Income Tax (supra), relying upon the case of Brinda Rama Krishna in ITA No. 454/Bang/2021 for AY 2018-19, order dated

17.11.2021 it has been held that Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67. The relevant extract of the aforesaid order read as under:

“(ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. Therefore, non-furnishing of Form No.67 before the due date u/s 139(1) of the Act is not fatal to the claim for FTC. The findings of this Tribunal are reproduced below: ”

2. The Assessee is an individual and during the previous year relevant to AY 2018- 19 an ordinary resident in India. The Assessee worked with Ernst & Young Australia from 20.11.2017 till 16.05.2019. Since her global income was taxable in India, the Assessee offered to tax salary income earned for services rendered in Australia for the period from December 2017 to March 2018 to tax in India. The Assessee claimed foreign tax credit ("FTC") for taxes paid in Australia.

3. There is no dispute that the Assessee is entitled to claim FTC. Rule 128 of the Income Tax Rules, 1962 (Rules) provides for giving FTC and reads thus: "Foreign Tax Credit. 128. (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: Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India." One of the requirements of Rule 128 for claiming FTC is provided by Rule 128 (8) & (9) of the Rules and the same reads thus: "(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 subsection (1) of section 139, in the manner specified for furnishing such return of income."

4. The Assessee claimed FTC of Rs. 4,73,779/- u/s. 90 of the Act read with Article 24 of India Australia tax treaty ("DTAA") in a revised return of income filed on 31.8.2018. The Assessee had not filed the Form 67 before filing the return of income. On realising the same, the Assessee filed Form 67 in support of claim of foreign tax credit on 18.04.2020. The revised return of income was processed by Centralized Processing Centre (CPC) electronically and intimation u/s 143(1) of the Act on 28.05.2020 was passed disallowing the claim of FTC.

5. The Assessee filed a rectification application before the AO on 15.06.2020 & 25.02.2021 and submitted that credit for FTC as claimed in the return should be given. In the rectification order dated 10.03.2021, the AO upheld the action on the ground that the Assessee has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.

6. On appeal by the Assessee, the CIT(A) vide Order dated 03.09.2021 confirmed the Order of AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is nonest in law. The CIT(A) also held that provisions of Rule 128 are mandatory in nature. The CIT(A) rejected the contention of the Assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue

in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

9. Further, similar issue arose in the case of *Sukhdev Sen Vs. ACIT, Circle -1, Kolkata (ITA No. 78/Kol/2014, dated 26.03.2024)*. The relevant extract of the aforesaid order is as under:

"7. Before proceeding further, we would like to reproduce rule 128 of the Income-tax Rules, 1962 (the Rules) which relates with foreign tax credit as under:

"Foreign Tax Credit. 128 (1) An assessee, being a resident shall be allowed 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:

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India"

8. We further note that section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 25 of DTAA between India and USA provides for credit for foreign taxes. Article 25(2)(a) is relevant in the present context. Same is extracted below:

"Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States"

9. Thus, Section 90 of the Act read with Article 25(2)(a) of the DTAA provides that tax paid in USA shall be allowed as a credit against the tax payable in India but limited to the proportion of Indian tax. Neither section 90 nor the DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirement. Foreign Tax Credit is an assessee's vested right as per Article 25(2)(a) of the DTAA and Section 90 and same cannot be disallowed for non-compliance with procedural requirement that is prescribed in the rules.

10. Further, we would like to mention that rule 128(9) provides that Form No. 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the rule nowhere provides that if the said Form No. 67 is not filed within the required time frame, the relief as sought by the assessee u/s 90 of the Act would be denied. It is therefore evident that if the intention of the legislature were to deny the foreign tax credit, either the Act or the rules would have specifically provided that the foreign tax credit would be disallowed if the assessee does not file Form No. 67 within the due date prescribed under section 139(1) of the Act. We further note that Filing of Form No. 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC. In support of the claim, the assessee has relied upon several decisions including the following decision:

- i. CIT vs. G.M. Knitting Industries (P) Ltd. 71 Tuxmann.com 35(SC)
- ii. Brinda Ramakrishna vs. IPO 193 ITD 840 (Bang)
- iii. 42 Hertz Software India Pvt. Ltd vs Asst. CIT. Ita No. 29. Hang/2001
- iv. Duraiswamy Kumaraswamy vs. PCIT, W.P No.5834 of 2022

11. Hon'ble Supreme Court, in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, [1992 Supp (1) Supreme Court Cases 21] in respect of compliance with the procedural requirements have observed that:

"The mere fact that it is statutory does not matter one way of that other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the nonobservance of all conditions irrespective of the purposes they were intended to serve."

12. Further, in the case of Engineering Analysis Centre of Excellence Private Limited vs the Commissioner of Income -tax & Anr. Civil Appeal Nos. 8733-8734 of 2018 & Ors. Hon'ble Supreme Court have

held as under that the provisions of DIIA shall override the provisions of the Income-tax Act unless they are more beneficial to the assessee:

165. The conclusions in the aforesaid paragraph have no direct relevance to the facts at hand as the effect of section 902) of the Income Tax Act wat explanation 4 thereof, is to treat the DTAA provisions as the low that must be followed by Indian courts, notwithstanding what may be contained in the Income Tax Act to the contrary, unless more beneficial to the assessee.

13. We have gone through the decisions of the coordinate Benches and concur with their findings in this regard that filing of Form No. 67 is directory and not mandatory and the credit for foreign taxes paid cannot be denied merely on the delay in filing the Form No. 67. In the case of M/s 42 Hertz Software India Pvt Ltd. Vs the Assistant Commissioner of Income Tax, Circle 3 (1)(1), Bangalore, ITA No. 29/Bang/2021 ITAT. BANGALORE it is held that:

6. There is no dispute that the Assessee is entitled to claim FTU On perusal of provisions of Rule 128 (8) & (9), it is clear 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. In our view, 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 This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms. Brindu Kumar Krishna us. ITO in ITA no. 454/ Bang/2021 by order dated 17/11/2021.

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P) Ltd reported in (2021) 432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

14. In Vikash Daga Vs ACIT Circle-3 (1) Gurgaon ITA No.2536/Del/2022, the ITAT DELHI BENCH 'H', NEW DELHI vide order dated 14/06/2023 have held that:

8 We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs. 1887114/- In our considered opinion filing of form 67 is a procedural / directory requirement and is not a mandatory requirement Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules 3 does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory het directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. 9. In the result, the appeal filed by the assessee is allowed.

15. Similarly, in the case of Ashish Agrawal Vs. Income Tax Officer, Ward-12(1), Hyderabad ITA No. 337/Hyd/2023 ITAT HYDERABAD BENCHES "B", have held vide order dated 26/09/2023 that:

11. As far as the issue of FTC is concerned, learned AR placed reliance on the decision in the case of Ms. Brinda Rama Krishna (supra) in the case of Ms Brinda Rama Krishna (supra), the Bench considered the issue in the light of the provisions of 10 ITA No. 1345/Kol/2024 Anindya Sarkar : AY: 2020-21 DTAA, section 295(1) of the Act, the decisions of the Hon'ble Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner (1992 Supp (1) SCC 21), Sambhaji Vs. Gangabai (2008) 17 SCC 117 and a lot many decisions of the Hon'ble Apex Court including the case m Union of India Vs. Azadi BachaoAndolan (2003) 263 ITR 706 (SC) etc. and reached a conclusion that since Rule 128(9) of the Rules does not provide for disallowance of FTC in the case of delay in filing Form 67 and such filing within the time allowed for filing the return of income under section 139(1) of the Act is only directory, since DTAA over rides the Act, and the Rules cannot be contrary to the Act.

12. We find from Article 25(2)(a) of the DTAA that where a resident of India derives income which, in accordance with the provision of the convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of the resident an amount equal to the income tax paid in the United States, whether directly or by deduction in view of this provision over riding the provisions of the Act, according to us, Rule 128(9) of the Rules has to be read down in conformity thereof Rule 128(9) of the Rules cannot be read in isolation. Rules must be read in the context of the Act and

the DTAA impacting the rights, liabilities and disabilities of the parties.

13. In the case of Purushothama Reddy Vankireddy (supra) also the Co-ordinate Bench of the Tribunal, in the similar circumstances, allowed the appeal of assessee for FTC claim. Respectfully following the same, we are of the considered Page 6 of 8 ITA No. 337/Hyd/2023 opinion that the decisions relied upon by the assessee are applicable to the facts of the case and the grounds raised by the assessee are accordingly allowed.

14. In the result, appeal of the assessee is allowed.”

16. We have also gone through the decision of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy us. PCIT (supra) and found that the facts are identical to the facts of the case of the assessee and the decision is squarely applicable to the facts of the case of the assessee. In that case, the petitioner was resident of India and had filed Indian ITR and claimed benefit of FTC u/s 90/91 of the Act row. Article 24 of the India-Kenya DTAA. During the year, he had income of both Kenya and India but while filing the Indian ITR for the impugned assessment year 2019-20, the Form No. 67 prescribed in rule 128 of the rules for claiming FTC was inadvertently not uploaded along with the ITR which was uploaded on 02.02.2021 The return was processed on 26.03.2021, however, the credit of FTC was not given effect to and the request made to the CPC to give effect to the FTC was not accepted and intimation along with notices of demand was received. The assessee also could not succeed with the rectification application filed and approached the CIT u/s 264 of the Act and at the same time filed a writ petition before the Hon'ble Madras High Court. It was stated by the respondent- department that rule 128 is mandatory and cannot be considered as directory in nature. The petitioner referred to the judgment of the Hon'ble Supreme Court in the case of CIT vs. G.M. Knitting Industries (P) Ltd. Civil Appeal Nos. 10782 of 2013 and 4048 of 2014 dated 24.06.2015 The Hon'ble High Court allowed the Writ Petition in favour of the assessee by holding as under.

“11. The law laid down by the Hon'ble Apex Court in Commissioner of Income Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos. 10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FIC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature

This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order. W.P. No 5834 of 2022.

12 Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the PTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore, the impugned order is liable to be set aside.

13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order"

17. Respectfully following the order of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. PCIT (supra) and concurring with the views held by the coordinate Benches of the Tribunal (supra), we hold that merely because the assessee could not file Form No. 67 within the prescribed time limit as per the provisions of rule 128(9) of the Income-tax rules, 1962, as it stood during the year under consideration, will not preclude the assessee from claiming the benefit of the foreign tax credit in respect of taxes paid outside India. Therefore, the claim of the assessee is allowed and the Assessing Officer is directed to give benefit of foreign tax credit in respect of tax paid outside India by the assessee in accordance with law and the DTAA between India and the USA. Accordingly, grounds no. 2,3,4 of the appeal are allowed."

10. The relevant extract of Article 25 of India Singapore Double Taxation Avoidance Agreement (DTAA) is as under:

"1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Singapore, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Singapore tax paid, whether directly or by deduction. Where the income is a dividend paid by a company which is a resident of Singapore to a company which is a resident of India and which owns directly or indirectly not less than 25 per cent of the share capital of the company paying the dividend, the deduction shall take into account the Singapore tax paid in respect of the profits out of which the dividend is paid. Such deduction in either case shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Singapore.”

11. Since the provision of DTAA override the provision of Section 90 of the Act as they are more beneficial to the assessee, in view of the judicial pronouncements in this regard and since the rule 128(a) does not preclude the assessee from claiming the credit for FTC is a vested right of the assessee and since form 67 was filed in response to the query received from CPC as contended by the assessee, therefore there is no justification for not allowing the credit for FTC. Hence respectfully following the decisions cited in the preceding paragraphs, ground no.1 and 2 of the appeal are allowed and AO is directed to allow the FTC in accordance with DTAA between India and Singapore and as per Law.”

6. Since the facts of the case at hand is materially similar as that of the case decided by the Coordinate Bench above, we therefore respectfully following the same set aside the order of Id. CIT(Appeals) and direct the Id. Assessing Officer to allow credit of foreign tax credit to the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 02/12/2024.

Sd/-

Sd/-

**(Duvvuru RL Reddy)
Vice-President (KZ)**

**(Rajesh Kumar)
Accountant Member**

Kolkata, the 2nd day of December, 2024

- Copies to :*(1) *Debanjan Chatterjee,*
C-3/14, East Enclave Cooperative Society,
Rajarhat, Kolkata-700156
- (2) *Deputy Director of Income Tax,*
CPC, Bengluru,Bangalore-560500
- (3) *Commissioner of Income Tax*
(Appeals),Kolkata-22;
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

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By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.