

आयकर अपीलीय अधिकरण, हैदराबाद पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri Manjunatha G., Accountant Member**  
**and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.1121/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2021-22)

Loveen Babu Vuppala Secunderabad [PAN : ALPPV1796E]	Vs.	Income Tax Officer Ward-9(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		
राजस्व द्वारा / Revenue by:		
सुनवाई की तारीख / Date of hearing:		
घोषणा की तारीख / Date of Pronouncement:		

आदेश / ORDER

**PER. MANJUNATHA G., A.M:**

This appeal filed by the assessee is directed against the order dated 30.08.2024 of the learned Commissioner of Income Tax (Appeals) [Ld.CIT(A)], Kolkata, pertaining to A.Y.2021-22 on the following grounds :

- 1. The CIT(A) erred in not condoning the delay and not admitting the appeal*
- 2. The CIT(A) erred in holding that there was no sufficient cause for condoning the delay in filing the appeal*

3. *The CIT(A) has erred in going beyond the scope of his authority u/s 119(2)(b) in not considering of application for condonation of delay in filing the appeal*
4. *CIT(A) erred in upholding the intimation and denial of foreign tax credit by CPC*
5. *The order of the CIT(A) is in gross violation of principles of natural justice*
6. *CIT(A) erred in upholding the demand of Rs.85,52,980 raised by CPC*
7. *CIT(A) erred in upholding the interest charged u/s 234A, 234B & 234C by CPC*
8. *Any other ground that may be urged at the time of hearing*

2. The brief facts of the case are that the assessee, an individual, deriving income from salary in India and outside India from his employment, filed his return of income for the A.Y.2021-22 on 31.01.2022, declaring total income of Rs.3,18,99,930/- and also claimed foreign tax credit of Rs.67,29,287/- towards taxes paid on income earned from his employment from outside India. The AO/CPC processed the return of income filed by the assessee and issued intimation u/s 143(1) of the Act on 13.10.2022 and determined net tax payable at Rs.85,52,980/-, by denying foreign tax credit of Rs.67,29,287/- for not filing relevant Form 67 as required under Rule 128 of Income Tax Rules, 1962 on or before the due date for furnishing the return of income u/s 139(1) of the Act.

3. Being aggrieved by the order of the AO/CPC, the assessee preferred an appeal before the Ld.CIT(A) and such appeal has

been filed with the delay of 159 days. The assessee has explained the reasons for the delay in filing the appeal and according to the assessee, since he was pursuing alternative remedy by filing petition u/s 154 of the Act and hopeful of getting relief from the Assessing Officer could not file appeal before the first appellate authority in time. Since the Ld.AO did not consider the petition filed by the assessee u/s 154 of the Act, even though it is a fit case for rectification of mistake, the assessee has taken steps to file the appeal, which caused delay in filing the appeal, which was neither intentional nor for wanton of any undue benefit, but due to the reasons beyond the control of the assessee and therefore, the delay in filing should be condoned.

4. The Ld.CIT(A), after considering the petition filed by the assessee for condonation of delay and also taking note of certain judicial precedents, held that the reasons given by the assessee do not come under sufficient cause for condoning the delay and thus, rejected the appeal in 'liminie' for the delay in filing the appeal. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

5. Learned counsel for the assessee submitted that the Ld.CIT(A) erred in rejecting the appeal filed by the assessee in limine, even though the assessee has explained the reasons for the delay, which comes under reasonable cause. Therefore, she submitted the delay in filing the appeal before the Ld.CIT(A) should be condoned and the appeal should be decided on merits. She further submitted that the assessee has filed the

return of income for the year under consideration on 31.01.2022, beyond the due date provided u/s 139(1) of the Act. The assessee had also filed Form 67 on 30.01.2022. The Assessing Officer passed order u/s 143(1) on 13.10.2022 and by the time, the Form 67 was available on record. Since the Rule 128 of Income Tax Rules, 1962 is directive in nature and not mandatory, the Assessing Officer ought to have considered the Form 67 filed by the assessee, when the said form was available with the Assessing Officer when he passed order u/s 143(1) of the Act. In this regard, she relied upon the decision of ITAT Hyderabad Benches in the case of CES Ltd. Vs. DCIT[2024] 161 taxmann.com 200 (Hyderabad-Trib).

6. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A), submitted that there is no dispute with regard to the fact that the appellant has filed the return of income beyond the due date provided u/s 139(1) of the Act and further, Form 67 required to be filed under Rule 128 of the Income Tax Rules, 1962 has also been filed beyond the due date. The Assessing Officer after considering the relevant facts has rightly denied credit for foreign taxes paid on income from outside India. The Ld.CIT(A) after considering the relevant facts has rightly dismissed the appeal filed by the assessee and therefore, the order of the Ld.CIT(A) should be upheld.

7. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. As regards the delay in filing the appeal before the Ld.CIT(A), we find that the assessee has filed the appeal with the delay of 159

days before the first appellate authority. The assessee has filed petition and explained the reasons for delay in filing of the appeal. According to the assessee, he was pursuing alternative remedy by filing application u/s 154 of the Act for rectification of mistake and hopeful of getting relief from the Assessing Officer, however, when the Assessing Officer rejected the application filed by the assessee u/s 154 of the Act, even though, it was a case for rectifying mistake, the assessee has filed appeal which caused delay of 159 days. In our considered view, the reasons given by the assessee that he was under the bonafide belief that the Assessing Officer would allow relief towards foreign tax credit on the application filed by the assessee u/s 154 of the Act is bonafide and reasonable and further, it comes under reasonable cause as provided under the Act for condonation of delay. Therefore, in our considered view, the Ld.CIT(A) ought to have condoned the delay in filing the appeal. Since the Ld.CIT(A) rejected the appeal filed by the assessee without assigning proper reasons, in our considered view, the delay in filing the appeal before the Ld.CIT(A) needs to be condoned. Thus, we condone the delay of 159 days before the Ld.CIT(A).

8. Having said so, let us come back to the issue involved in the appeal. Admittedly, the assessee derived income from salary and his global income from salary has been offered to tax in India. It is also an admitted fact that the assessee has earned income from outside India and on the said income, the country, from where the assessee earned income has deducted TDS and issued Form 67. The assessee had also filed Form 67 and

proved that he has paid a sum of Rs.67,29,287/- towards taxes on income earned outside India and the same has been offered to tax in India. There is no dispute on these aspects. The dispute is only with regard to the date of filing the return of income and filing of Form 67 in terms of Rule 128(9) of Income Tax Rules, 1962. As per Rule 128 of Income Tax Rules, 1962, the assessee needs to file relevant Form 67 for claiming foreign tax credit on or before the due date for filing of the return of income u/s 139(1) of the Act. In the present case, the due date for filing the return of income for the A.Y.2021-22 was 31.12.2021, whereas, the assessee has filed his return of income on 31.01.2022. The assessee had also filed Form 67 on 31.01.2022. Admittedly, the assessee has not filed Form 67 on or before the due date for filing the return of income u/s 139(1) of the Act. However, the said Form 67 has been filed on 31.01.2022 before the Assessing Officer passed the order u/s 143(1) on 13.10.2022. Therefore, the issue needs to be decided, whether filing Form 67 for claiming foreign tax credit on or before the due date for furnishing return of income u/s 139(1) of the Act is mandatory or if such Form is filed on or before the Assessing Officer passed order u/s 143(1), is sufficient compliance under Rule 128 of Income Tax Rules, 1962. This issue is no longer res integra. The Hon'ble High Court of Madras in the case of Shri Kuthoore Natarajan Venkatasubramanian Vs. PCIT in W.P.No.12578 OF 2024 dated 26.09.2024 has considered a very similar issue of belated filing of Form 67 for claiming foreign tax credit and by following the decision of Hon'ble Supreme Court in the case of CIT Vs. G.M.Knitting Industries (P.) Ltd. in Civil Appeal No.10782 of 2013 and 4048

of 2014 dated 24.07.2015 held that filing of Form 67, in terms of Rule 128 is directory in nature and if such Form is filed on or before the Assessing Officer passed his order u/s 143(1)/143(2), then it is sufficient compliance of Rule 128 and the Assessing Officer should allow credit for taxes paid outside India. The relevant findings of the Hon'ble High Court are as under :

*“4. I have considered the rival submissions made on either side and perused the materials available on record.*

*5. In the present case, the petitioner, who was working in foreign country, had filed his ROI for the assessment year 2020-21 on 21.09.2020 in India, but due to Covid out break he could not get necessary documents from foreign country and file Form-67 along with ROI. But, the petitioner uploaded the Form-67 on 08.10.2022. The reasons stated by the petitioner appears to be reasonable and genuine and further this Court in a similar case reported in (2024) 460 ITR 615 (Duraiswamy Kumaraswamy vs. Principal Commissioner of Income Tax and Other) passed the following order.*

*“9. In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of India from the assessment years 2018-2019 and 2019-2020. The petitioner admitted the fact that he has filed his return in India on August 10,, 2019. The intimation under Section 143(1) was issued on March 26, 2020. However, he has filed the return without Form 67 which is required to be filed under Rule 128 to claim the benefit of foreign tax credit and the same came to be filed on February 2, 2021 which was well before the completion of the assessment year. The intimation under Section 143(1) was issued from the Centralized Processing Centre only on March 26, 2021.*

*10. According to the learned counsel appearing for the respondent, the procedure under rule 128 is mandatory and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income-tax and claimed the benefits of foreign tax credit. However, the petitioner would submit that it is not mandatory. The rule cannot make anything*

*mandatory and it can be directory in nature, that too before the assessment, the claim to avail the benefits of foreign tax credit is filed. Therefore, it would amount to due compliance under the Act. The petitioner referred to the Judgment of the hon'ble Supreme Court in the case of CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 2015, wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.*

*11. The law laid down by the hon'ble apex court in CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without foreign tax credit, however the same was filed before passing of the final assessment order. The filing of foreign tax credit 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 subsequent to the passing of the assessment order.*

*12. Further, in the present case, the intimation under Section 143(1) was issued on March 26, 2021, but the foreign tax credit was filed on February 2, 2021. Thus, the respondent is supposed to have provided the due credit to the foreign tax credit of the petitioner. However, the foreign tax credit 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 January 25, 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*

*foreign tax credit filed by the petitioner on February 2, 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 foreign tax credit claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of foreign tax credit claim within a period of 8 weeks from the date of receipt of copy of this order.*

6. *This Court, by following the judgment of the Hon'ble Supreme Court, held that filing of foreign tax credit in terms of Rule 128 is only directory in nature and not mandatory. In the present case the petitioner was working in United Kingdom and earned Rs.43,06,224/-. The petitioner filed return of income in India for the assessment year 2020-2021 on 21.09.2020 showing the income earned in the foreign country, in which he claimed Rs.6,27,023/- being TDS credit before United Kingdom, as FTC under Section 90 of the Income Tax Act. But the petitioner uploaded Form 67 with delay, which he suppose to upload while filing the return of income. It is to be noted that Section 90, Section 90A and Section 91 of the Income Tax Act of 1961 have been drafted specifically to avoid the burden of double taxation.*

7. *In the present case, even though the petitioner had not uploaded Form-67 while filing return of tax, later he uploaded the same with delay and that too due to Covid out break he was not able to get necessary documents from the foreign country, which appears to be genuine. Therefore this Court is inclined to condone the delay in filing Form 67 and the impugned order is liable to be set aside.*

8. *Accordingly, this Court passes the following order:-*

*(i) The impugned order dated 07.03.2024 is set aside subject to the payment of Rs.10,000/- to the Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code: IDIB000M157, within a period of 2 weeks from the date of receipt of copy of this order. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the foreign tax credit filed by the petitioner.*

*(ii) Upon production of proof with regard to the payment of a sum of Rs.10,000/- as stated above, the respondent is directed to give due credit to the United Kingdom 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 foreign tax credit claim made by the petitioner and hence, the respondent concerned is directed to consider only on the aspect of rejection of foreign tax credit claim within a period of 8 weeks from the date of receipt of copy of this order.*

*9. With the above directions, this writ petition is allowed.*

9. Similar view has been taken by ITAT Hyderabad Benches in the case of CES Ltd. Vs. DCIT (supra), wherein, it has been held that foreign tax credit cannot be disallowed for delay in filing Form 67 as filing of Form 67 is directory requirement.

10. In view of this matter and considering the facts and circumstances of the case and also by respectfully following the decision of Hon'ble High Court of Madras in the case of Kuthoore Natarajan Venkatasubramanian Vs. PCIT (supra), we are of the considered view that, where Form 67 is filed on or before the Assessing Officer passed the order u/s 143(1) of the Act, then the Assessing Officer should consider relevant Form 67 filed by the assessee and allow credit for taxes paid outside India, if the other conditions are satisfied. In this case, there is no dispute with regard to the fact that the assessee has satisfied the conditions for claiming foreign tax credit. Therefore, we are of the considered view that the Ld.CIT(A) erred in not allowing foreign tax credit as claimed by the assessee by filing Form 67 in terms of Rule 128 of Income Tax Rules, 1962. Thus, we set aside the order of the Ld.CIT(A) and direct the Assessing Officer

to allow foreign tax credit as claimed by the assessee in accordance with Form 67 filed in terms of Rule 128 of Income Tax Rules, 1962.

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

Order pronounced in the Open Court on 30<sup>th</sup> December, 2024.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad,  
Dated 30<sup>th</sup> December, 2024  
**L.Rama, SPS**

Copy to:

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1	Shri Loveen Babu Vuppala, Plot No.253/B, 202, Suresh Harivillu Apartments, Konda Reddy Street, West Marredpally, Secunderabad
2	The Income Tax Officer, Ward-9(1), Income Tax Towers, AC Guards, Masab tank, Hyderabad
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

*By Order*