

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 3012/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-19

**Shri Kolambur Sambamurthy,**  
9, Bhaskarapuram,  
Mylapore,  
Chennai -600 004.

**The Deputy Commissioner  
of Income Tax,**  
Vs. Non-Corporate Circle 7(1),  
Chennai.

**PAN: BJWPS 0074A**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Ms. S.K. Vyashnavee, CA  
: Shri S. Easwar, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.01.2025

घोषणा की तारीख/Date of Pronouncement

: 22.01.2025

**आदेश /O R D E R**

**PER GEORGE GEORGE K, VICE PRESIDENT:**

This appeal at the instance of the assessee is directed against the Addl/JCIT(A)-2, Mumbai order dated 30.09.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The solitary issue raised is whether the CIT(A) has erred in confirming the denial of Foreign Tax Credit ('FTC') of Rs.70,455/- for the reason of belated filing of Form 67.

3. Brief facts of the case are as follows:

The assessee is an individual had filed the return of income for assessment year 2018-19 on 05.12.2018. Form No.67 was also filed on 05.12.2018 claiming FTC of Rs.70,455/-. The, intimation u/s.143(1) of the Act was issued on 08.04.2020 denying the claim of FTC apparently for the reason that there is delay in filing Form 67.

4. Aggrieved by the denial of FTC, the assessee filed appeal before the First Appellate Authority (FAA). The Addl./JCIT(A) dismissed the appeal of the assessee. The CIT(A) held that the due date for filing the return was 31.08.2018 and there was no express powers vested with any authority to condone the delay in filing Form 67. Hence, the FAA confirmed the disallowance / denial of FTC amounting to Rs.70,455/-.

5. Aggrieved by the FAA's order passed u/s.250 of the Act, the assessee has filed the present appeal before the Tribunal. The

Id.AR submitted that the issue in question is covered in favour of the assessee by the Hon'ble Jurisdictional High Court judgment in the case of Duraiswamy Kumaraswamy vs. PCIT in W.P No.5834 of 2022 (judgment dated 06.10.2023).

6. Per contra, the Id.DR supported the order of the First Appellate Authority.

7. We have heard rival submissions and perused the material on record. The assessee had filed the return of income belatedly on 05.12.2018 along with Form 67. The claim of FTC in Form 67 was denied for the reason that it was filed belatedly (not within the due date prescribed u/s.139(1) of the Act i.e., 31.08.2018). The Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy, *supra* had held that filing of Form 67 is directory in nature and it is not a mandatory requirement. The relevant finding of the Hon'ble Jurisdictional High Court in the case of Duraiswamy Kumaraswamy, *supra* reads 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 FTC, 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.*

*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 FTC 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.”*

Following the above judgment of Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy, *supra*, the Chennai Benches of the Tribunal in the following cases have decided the issue in favour of the assessee:-

1. Shri Senthil Nathan Ramakrishna Babu vs. ITO in ITA No.1990/CHNY/2024
2. Shri Satishkumar Ekambaram vs. ITO in ITA No.2069 & 2070/CHNY/2024
3. Shri Jerry Nirmal Francis vs. ADIT in ITA No.846/CHNY/2022

In the case of Shri Jerry Nirmal Francis, (*supra*) the Chennai Bench of ITAT allowed the FTC by observing as under:-

*“We are of the considered view that, the AO is completely erred in denying credit for foreign tax for non-filing of Form 67 within the due date specified u/s.139(1) of the Act. The CIT(A), without appreciating facts simply sustained additions made by the AO and thus, we direct the AO to allow credit for foreign tax paid in other countries as per Form 67 filed by the assessee.”*

7. In light of the above mentioned judicial pronouncements, since assessee had filed Form No.67 much prior to the intimation issued u/s.143(1) of the Act, we hold that assessee is entitled to FTC of Rs.70,455/-. It is ordered accordingly.

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

Order pronounced in the open court on 22<sup>nd</sup> January, 2025 at Chennai.

Sd/-

(अमिताभ शुक्ला)

**(AMITABH SHUKLA)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 22<sup>nd</sup> January, 2025

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(जॉर्ज जॉर्ज के)

**(GEORGE GEORGE K)**

उपाध्यक्ष /VICE PRESIDENT