

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRABENCH, AGRA**

**BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
And
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No. 195/Agr/2024
Assessment Year: 2018-19**

Mrs.Ankita Paliwal, H.No. 3/249/1420, Pragati Nagar, Gali No. 2 Near ADA Colony, Part-I, Ramghat Road, Aligarh-202001 (U.P.)	v.	ACIT, 4(1)(1), Aayakar Bhawan Marris Road Aligarh, U.P.
PAN :AYZPP3923E		
(Appellant)		(Respondent)

Assessee by	Ms. Akshi Singhal, C.A.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	16.01.2025
Date of pronouncement	06.02.2025

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No. 195/Agr/2024 for the assessment year 2018-19 filed by the assessee has arisen from the appellate order dated 10.04.2024 [DIN & Order No. ITBA/NFAC/S/250/2024-25/1064036413(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which appeal before Id. CIT(A) has in turn arisen from the rectification order dated 09.03.2021 passed by learned

Assessing Officer u/s. 154 of the Income-tax Act, 1961(DIN & Letter No. ITBA/COM/F/17/2020-21/1031354866(1)).

2. Grounds of appeal raised by the assessee in the Memo of appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under :

“1. That the Ld Commissioner of Income tax (Appeals) is bad and erroneous both on facts and in law.

2. That the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that not allowing credit of tax paid in USA on salary income received in USA would result in double taxation of income which is contrary to the provisions of the Act as also the treaty.

3. That the Ld Commissioner of Income Tax (Appeals) erred on facts and in law in sustaining the assessment order and in denying the Foreign Tax Credit (FTC) for default in filling Form 67 under Rule 128.

4. That the Ld Commissioner of Income Tax (Appeals) has erred on facts and in law in denying FTC to the assessee by ignoring the law that provisions of DTAA cannot be overridden by Rule 128 and Form 67.

5. That the Ld. Commissioner of Income Tax (Appeals) erred in law in levying interest under section 234A, 234B, 234C of the Act.

6. That each of the above mentioned grounds are without prejudice to one another and the appellant craves leave to add/amend to the grounds in interest of justice at any time before the disposal of the appeal.”

3. Brief facts of the case are that the assessee filed her return of income on 25.07.2018, declaring income of Rs.15,83,040/-. Assessee has claimed relief of Rs. 2,82,020/- (FTC) u/s. 90 of the Act against taxes to the tune of Rs.3,05,437/- paid in USA from the income earned from salary to the tune of Rs.10,77,512/- from TCS, USA in USA. Return of

income of the assessee was processed by CPC,Bengaluru u/s. 143(1) vide intimation/order dated 20.03.2020 , wherein returned income was accepted by Revenue , but credit of foreign taxes prepaid in USA being relief u/s. 90 to the tune of Rs.2,82,020/- was denied to the assessee purportedly on the ground that the assessee has not filed form No. 67 along with return of income. The assessee filed rectification application u/s. 154 dated 22.10.2020 wherein the assessee claimed that she had filed form No. 67 on 18.09.2020 after completion of processing of return of income u/s 143(1) on 20/03/2020. But since the Form No. 67 was filed after processing of the return of income by CPC , Bengaluru u/s. 143(1) on 20.03.2020, the same was not available during the course of processing of ITR, therefore, it was held by the Assessing Officer that it is not a fit case to covered u/s 154 as it is not a mistake apparent from record and hence, the rectification application filed by the assessee u/s 154 was rejected by the AO vide order dated 09.03.2021.

4. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals) ,and learned CIT(A) dismissed the appeal of the assessee by referring to Rule 128(8) and 128(9) of the Income-tax Rules, 1962, wherein the delay in filing form No. 67 was not condoned by the Id. CIT(Appeals) and, it was held by learned CIT(A) that the assessee cannot be granted foreign

tax credit (FTC) . Thus, the appeal of the assessee stood dismissed by the Id. CIT(Appeals).

5. Still aggrieved, the assessee has filed appeal with the Tribunal, and the Id. Counsel for the assessee submitted that the assessee has worked with Tata Consultancy Services in USA from January 2018 to March, 2018 and earned salary income of Rs.10,77,512/- in USA , on which TDS was deducted of Rs. 2,82,020/- in USA. The assessee is resident in India. The assessee filed its return of income within time allowed u/s. 139(1) wherein, the global income was disclosed and due credit of tax paid in USA was also deducted in view of the provisions of section 90 of the Act. It was submitted that there was delay in filing form No. 67 which was filed on 18.09.2020. The return of income was processed by Revenue on 20.03.2020 by CPC u/s. 143(1) and the FTC paid by the assessee of Rs.2,82,020/- was disallowed. The assessee filed form No. 67 with the revenue on 18.09.2020 as per Rule 128 declaring the foreign income and foreign tax paid. The assessee filed rectification application u/s. 154 of the Act on 22.10.2020, but the claim of the assessee for FTC was denied by the Assessing Officer on the ground that there was no mistake apparent from record in the intimation issued by the CPC u/s. 143(1) of the Act. The Assessing Officer referred to Rule 128(8) and 128(9) of the Rules and denied the credit of foreign taxes paid by the

assessee. Ld. CIT(Appeals) upheld the order of the Assessing Officer. Ld. Counsel for the assessee submitted that the assessee has filed paper book, in which complete details have been given wherein pay-in-slips of the assessee issued by TCS, USA for the months of January to March, 2018 are enclosed at page Nos. 42 to 49. Form-67 filed with Revenue alongwith acknowledgment is placed in paper book pages 60-62. It was submitted that filing of form-67 is directory in nature and not mandatory. It was submitted that as per DTAA read with section 90 of the Act, the assessee is eligible for claiming deduction of pre-paid taxes in USA on his salary earned. The assessee is resident in India and assessee has included global income including salary income from TCS, USA to the tune of Rs.10,77,512/- in the return of income filed with the Revenue and hence, the assessee is eligible for claiming FTC in accordance with DTAA and section 90 of the Act. The assessee relied upon the decision of ITAT Delhi Bench in the case of Suchi Agarwal v. ITO dated 31.03.2024 (ITA No. 601/Del/2024), wherein it was held that filing of Form-67 is directory and not mandatory. The assessee has also relied upon the following judicial precedents in the written submissions filed before the ITAT, as under:

- a) Order passed by Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy v. PCIT (Mad. HC), WP no. 5834 of

2022.

b) Appellate order passed by ITAT, Bangalore in the case of Vinodkumar Lakshmipathi v. CIT(A) (2022) 145 taxmann.com 235,

c) Appellate Order passed by ITAT, Bangalore in the case of Brinda Ramakrishna v. ITO (Bang. ITAT) in ITA no. 454/Bang/2021

d) Appellate order passed by ITAT, Mumbai in the case of Mr. John Arunkumar Diaz v. DCIT in ITA no. 3647/Mum/2023

e)Appellate Order passed by ITAT, Jaipur in the case of Sanjeev Aggarwal v. DCIT in ITA no. 71/JP/2023 for assessment year 2018-19

5.2 Learned Sr. DR, on the other hand, submitted that Rule 128(8) of the Income-tax Rules, 1962 is very clear and the assessee is required to file form No. 67 strictly under Rule 128(8) and 128(9), which shall be furnished on or before due date of filing return u/s. 139(1) of the Act as was prevailing at that point of time. There was an amendment in the said Rule, but that is effective from 01.04.2022.

6. We have considered rival contentions and perused material on record including cited case laws. We have observed that the assessee filed its return of income on 25.07.2018 for the impugned assessment year ,declaring income of Rs.15,83,040/- after claiming deduction under Chapter VIA. The income from salary was declared to the tune of

Rs.16,97,467/-. The assessee has claimed that salary income constituted income from salary from TCS, India to the tune of Rs.6,19,954/- , while income from salary from TCS, USA was to the tune of Rs. 10,77,512/-. The assessee has claimed relief of FTC u/s. 90 of the Act of Rs.2,82,020/- ,in the return of income filed with the Revenue. The said foreign tax credit(FTC) was denied to the assessee by CPC while processing the return of income u/s. 143(1) on 20.03.2020, purportedly on the ground that Form No. 67 was not filed by the assessee. The assessee has claimed to have declared income from salary from TCS India as well as TCS,USA in return of income , and claimed the FTC to the tune of Rs.2,82,020/- deducted in USA. The said credit was denied to the assessee on the ground that Form -67 was not filed on or before the due date of filing of return of income u/s 139(1). The assessee filed rectification application before AO u/s. 154 of the Act on 22.10.2020. Prior to filing of aforesaid rectification application u/s 154, the assessee had filed Form-67 with Revenue on 18.09.2020. The Assessing Officer dismissed the rectification application on 09.03.2021 on the ground that there is no mistake apparent on the face of record and also that Form No. 67 was filed on 18.09.2020 only after completion of processing of return of income u/s 143(1) on 20.03.2020 . The FTC cannot be allowed keeping in view Rule 128(8) and 128(9). The Id. CIT(Appeals) has

dismissed the appeal of the assessee as the Form No. 67 was not filed in time on or before the due date as prescribed u/s 139(1) as directed under Rule 128(8) and 128(9) of the 1962 Rules. The Rule being mandatory in nature .The assessee has relied upon the appellate order of the Delhi-Tribunal in the case of Suchi Agarwal v. ITO (supra), in which under the similar circumstances, the Tribunal has granted relief to the assessee by holding that filing of Form-67 is directory and not mandatory ,by holding as under:-

“8. During the course of hearing, the Ld. AR humbly prayed that the impugned order dated 30.12.2023 passed by Ld. CIT(A) should be set aside and the present appeal filed by the assessee should be allowed and in support of his argument / claim, Ld. AR relied on orders of the co-ordinate Benches of ITAT, as follows:

- Order dated 04.04.2024 in the case of Isha Mago vs. Asstt. Director of Income Tax, Central Processing Centre in ITA No. 173/Del/2024.
- Order dated 11.09.2023 in the case of Rameshwar Prasad Shrivastava vs. ITO, in ITA No. 1839/Del/2023.
- Order dated 14.06.2023 in the case of Vikash Daga vs. ACIT in ITA No. 2536/Del/2022.
- Order dated 17.04.2023 in the case of Ajay Kumar Mishra vs. DCIT in ITA No. 1835/Del/2022.

8.1 For the ease of ready reference we reproduced the decisions of the Co-ordinate Benches of ITAT, as under:

In the case of Isha Mago vs. Asstt. Director of Income Tax (supra), held as under:

“5.2. It is also noticed that under similar facts and circumstances the ITAT Delhi Bench 'B' in the case of Eastman Industries Ltd. vs. ACIT (supra) has adjudicated identical issue, observing as under:

"7. Since in the present case the claim of the assessee was denied on this technical aspect without going into the merits of the FTC, therefore, we deem it fit to restore the issue to the files of the AO. The AO is directed to decide the claim of foreign tax credit as per the provisions of the law after admitting / accepting form -67. This common grievance is also allowed for statistical purpose.

In the case of Rameshwar Prasad Shrivastava vs. ITO (supra), held as under:-

"5. That the claim of FTC was made by the assessee in terms of section 90 of the Income Tax Act. It is a settled principle that where there is a special agreement/ DTAA signed by the government, the specific provisions made in such agreement shall prevail over the general provisions contained in the Income Tax Act. The CBDT vide its Circular No. 333 dated 02/04/1982 has held that:-

**SECTION 90. AGREEMENT WITH FOREIGN COUNTRIES
[CORRESPONDING TO SECTION 40A OF THE 1922 ACT]**

627. Specific provisions made in double taxation avoidance agreement Whether it would prevail over general provisions contained in Income-tax Act

1. It has come to the notice of the Board that sometimes effect to the provisions of double taxation avoidance agreement is not given by the Assessing Officers when they find that the provisions of the agreement are not in conformity with the provisions of the Income-tax Act, 1961.

2. The correct legal position is that where a specific provision is made in the double taxation avoidance agreement, that provision will prevail over the general provisions contained in the Income-tax Act. In fact that the double taxation avoidance agreements which have been entered into by the Central Government under section 90 of the Income-tax Act, also provide that the laws in force in either country will continue to govern the assessment and taxation of income in the respective countries except where provisions to the contrary have been made in the agreement.

3. Thus, where a double taxation avoidance agreement provides for a particular mode of computation of income, the same should be followed, irrespective of the provisions in the Income-tax Act. Where there is no specific provision in the agreement, it is basic law, i.e., the Income-tax Act, that will govern the taxation of income.

Circular: No. 333 [F. No. 506/42/81-FTD] dated 2-4-1982.

6. There is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the assessee has vested right to claim the FTC under the tax treaty, and the same cannot be disallowed for mere delay in compliance of a procedural provision. In other words, we would like to submit that as per the provisions of section 90(2) of the Act, where the Central Government of India has entered into a DTAA, the provisions of the Act would apply only to the extent they are more beneficial to a taxpayer. Therefore, the provisions of DTAA override the provisions of the Act, to the extent they are beneficial to the assessee.

7. That the lower authorities intend to disallow the claim of the assessee in terms of Rule 128(9), however as stated above, the provisions laid down in the Income Tax Rules shall stand to be overridden by the specific provisions mentioned in the DTAA more so to the extent that the same is beneficial to the tax payer. And as such, since the DTAA does not specifically state to disallow the claim of FTC on mere delay in filing of Form 67, we would submit that the disallowance made by the CPC and further confirmed by the CIT(A) is arbitrary, unjustified and fit to be deleted.

8. That lastly, we would like to contend that this being a debatable issue, the disallowance made by CPC was uncalled as the same cannot be termed as an adjustment in terms of section 143(1). In a similar matter before the **Hon'ble ITAT Kolkata Bench in the case of M/s Surendra steel Pvt Ltd Vs CPC in ITA No. 78/Kol/2022 dated 20/05/2022, it was held as below:-**

We have duly considered rival contentions and perused the material available on record. To our mind there are two issues involved. First being the procedural irregularity and second the legitimate quantification for disallowance. If the adjustment has been made on the basis of first defect i.e., for procedural irregularity then according to the decisions referred by the Id. Counsel for the assessee, this irregularity is not fatal enough to deny the claim of deduction u/s 80IC of the Act. More so, when in response to the first proposed adjustment, the assessee has reiterated submission of Form 10CCB. As far as the arguments raised by the Id. D/R is concerned, if a disallowance is to be made after filing of Form 10CCB, then it is a debatable issue and the same is not permissible u/s 143(1) in a prima facie adjustment and the assessee should have been given a notice for that. In other words, if a disallowance is required to be established by arguments and long drawn process of reasoning on points, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment. In view of the above discussion, we delete the disallowance of deduction u/s 80IC of the Act, made by the Assessing

Officer and upheld by the Ld. CIT(A) and allow the appeal of the assessee.

As such, we would like to contend that the CPC was not right in disallowing the claim of FTC solely on the ground that Form 67 was filed belated.

9. That in support of our above contentions above, we would like to rely upon the following decisions of the coordinated Benches of ITAT:-

*** Vinod Kumar Lakshmipati Vs CIT(NFAC) Delhi - 145 taxmann.com 235 - ITAT Bangalore - It was held that:-**

Section 90, read with section 90A, of the Income-tax Act, 1961 and rule 128 of the Income-tax Rules, 1962 Double Taxation Relief - Where agreement exists (Foreign tax credit) Assessment year 2018- 19- Assessee claimed foreign tax credit under section 90/90A Assessing Officer disallowed claim, on ground that assessee had not filed Form No. 67 along with return Assessee filed Form No. 67 before Commissioner (Appeals) Commissioner (Appeals) held that since assessee had failed to file Form No. 67 within due date specified for filing return under section 139(1), Assessing Officer had rightly disallowed claim for foreign tax credit - It was noted that Bangalore Bench of Tribunal on identical issue in case of Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 held that non-furnishing of Form No. 67 before due date specified for furnishing return under section 139(1) was not fatal to claim for foreign tax credit - Whether Assessing Officer was to be directed to give credit for foreign tax as per Form No. 67 filed before Commissioner (Appeals) Held, yes [Paras 5 and 6] [In favour of assessee]

*** Ritesh Kumar Garg Vs ITO in ITA No. 261/JP/2022 dated 15/09/2022 - ITAT Jaipur Bench held that:-**

Held that filing of Form 67, in my view, 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. There are no conditions prescribed in DTAA that FTC can be disallowed for non compliance of any procedural provision, therefore, the provisions of DTAA override the provisions of the Act. As the assessee has vested right to claim the FTC under the tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision.

*** Sanjeev Agarwal Vs DCIT in ITA No. 71/JP/2023 dated 10/05/2023 - ITAT Jaipur bench held that:-**

Form 67 filed by the respective assessee, even after the end of the relevant assessment year makes the assessee entitled to claim FTC.

Therefore, considering the facts of the present case, the FTC deserves to be allowed to the assessee even if Form 67 was filed by the assessee after the due date of filing the return under section 139(1) of the IT Act, 1961, and in our view not allowing foreign tax credit by AO (CPC) was nothing, but a mistake apparent on record. Therefore, we direct the revenue to allow the claim of the assessee.

In the case of Vikash Daga vs. ACIT (supra), held as under:-

“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 does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act.”

9. In the light of foregoing discussions, we are of the opinion that filing of Form 67 is a directory not mandatory and violation of procedural norm does not adversely affect the substantive rights or claims.

10. On the basis of discussion, submissions and abovementioned binding precedents, we set aside the orders of authorities below and restore the matter to the file of Ld. AO with the direction to verify the assessee's claim in respect of foreign tax credit as per law after admitting / accepting Form 67 and decide the issue in accordance with law.

11. Consequently, the appeal of assessee is allowed as indicated above for statistical purpose.”

6.2 The appeal in the case of Deepak Shimoga Padmaraju v. ADIT reported in (2024) 162 taxmann.com 96(Bang. Tribunal) arose before ITAT, Bangalore , from the rectification order passed by Id. AO u/s 154 and dismissal of the appeal by Id. CIT(A) , and in the similar circumstances as in the impugned appeal before us, the ITAT, Bangalore

held that this issue of allowability of relief of FTC wherein the Form No. 67 was filed beyond the due date prescribed u/s 139(1) is not a debatable issue , and is covered by provisions of Section 154, and the appeal of the assessee was allowed by ITAT by holding that filing of Form No. 67 with in the prescribed time is directory in nature .

6.3 Respectfully following the aforesaid decisions, we hold that the filing of form no. 67 on or before the due date for filing return of income u/s 139(1) is directory in nature and not mandatory, and violation of procedural norms does not adversely affect the substantive rights or claims. Thus, the assessee is eligible for FTC and the matter is restored back to the file of Id. AO with the direction to verify assessee's claim in respect of Foreign Tax Credit as per law after admitting/accepting Form No. 67 and to decide the issue as per law. We order accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes as indicated above.

Order pronounced in the open court on 06.02.2025

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 06.02.2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra