

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT

&

SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.461/Viz/2024

(निर्धारणवर्ष/ Assessment Year : 2020-21)

Deputy Commissioner of Income Tax, Circle-3(1),
Visakhapatnam.

Vs. M/s. SSNR Projects Private
Limited,
Visakhapatnam.

(अपीलार्थी/ Appellant)

PAN: AARCS 2464 C

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

:

Sri Samuel Nagadesi

प्रत्यर्थीकीओरसे/ Revenue by

:

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

:

17/12/2024

घोषणाकीतारीख/Date of

:

31/01/2025

Pronouncement

O R D E R

PER SHRI DUVVURU RL REDDY, VICE PRESIDENT:

The captioned appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2024-25/1068837722(1), dated 19/09/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2020-21.

2. Briefly stated the facts of the case are that the assessee has filed its return of income on 15/02/2021 admitting a total income of Rs.20,13,04,190/-. The assessee claimed foreign tax credit of Rs. 3,11,32,299/- while filing the return of income but has not filed Form-67 as prescribed under Rule 128(9) of the IT Rules, 1962 within the due date as prescribed U/s. 139 of the Act. Thereafter, the return was summarily processed by the CPC Bangalore wherein the CPC disallowed the assessee's claim of relief U/s. 90 / 90A of the Act with regard to foreign tax credit. Subsequently, the assessee filed the Form-67 online belatedly but the CPC Bangalore did not consider the same and passed the intimation U/s. 143(1) of the Act on 24/12/2021 wherein the Ld. AO invoked the provisions of Rule 128(9) of the IT Rules, 1962 and disallowed the foreign tax credit amounting to Rs. 3,11,32,299/-for belated filing of Form-67 before the due date of filing of the return of income U/s. 139(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notices were issued and served upon te assessee. Considering the submissions made by the assessee, the Ld. AO passed the assessment order U/s. 143(3) r.w.s 144B of the Act, dated 23/09/2022 and made addition of Rs. 3,11,32,329/-. Further, the Ld. AO also made addition of Rs.

56,58,265/- U/s. 36(1)(va) of the Act on account of late deposit of employees' contribution towards PF/ESI. Thus, the Ld. AO determined the assessed income of the assessee at Rs. 23,80,94,684/- against the returned income of Rs. 20,13,04,190/-. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT (A)-NFAC. On appeal, the Ld. CIT(A)-NFAC confirmed the addition of Rs.56,58,265/- made by the Ld. AO. With respect to the issue of claim of Foreign Tax Credit ("FTC"), the Ld. CIT(A)-NFAC allowed the grounds raised by the assessee and thus, partly allowed the appeal. Aggrieved by the decision of the Ld. CIT(A)-NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in deleting the disallowance of claim U/s. 90 of the IT Act to the tune of Rs. 3,11,32,229/- for AY 2020-21 even though the assessee had not filed Form-67 belatedly.*
3. *The Ld. CIT(A) erred in not appreciating the fact that eligibility of the claim U/s. 90 of the Act with reference to the Rule 128(9) of the IT Rules wherein it was clear that the Form 67 shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act.*
4. *The Ld. CIT(A) ought to have appreciated the word "shall" used in the Rule 128(9) tantamount to filing of Form-67 on or before the due date specified for*

furnishing the return of income U/s. 139(1) of the Act is mandatory in nature and not directory.

5. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal.*
6. *For these and other grounds that may be urged at the time of hearing, it is prayed that the disallowance / additions made by the Assessing Officer be restored.”*

3. In this appeal, the only issue raised by the Revenue vide its grounds of appeal is with respect to the allowance of Foreign Tax Credit where the assessee has filed Form-67 belatedly. At the outset, the Ld. DR while fully supporting the order of the Ld. AO relied on the decision of this Bench of the Tribunal in the case of Muralikrishna Vaddi vs. ACIT in ITA No. 269/Viz/2021 (AY 2018-19), dated 14/6/2022. The Ld. DR vehemently argued that since Form-67 was filed belatedly, the Foreign Tax Credit should not be allowed to the assessee.

4. Per contra, the Ld. AR argued that debatable disallowances cannot be made through intimation U/s. 143(1) of the Act. It was further submitted by the Ld. AR that the assessee filed its return of income on 15/02/2021 for the AY 2020-21 by claiming Foreign Tax Credit of Rs. 3,11,32,229/-. Further, the Ld. AR submitted that the assessee has filed its Form-67 on 16/03/2021. The Ld. AR further submitted that Form-67 even though filed belatedly, it

was filed before the passing of intimation U/s. 143(1) of the Act by the CPC, Bangalore. The Ld. AR referred to the Intimation U/s. 143(1) of the Act wherein the date of order is mentioned as 24/12/2021. It was further submitted that there was a delay in obtaining the Foreign Tax Credit Certificate from Nepal Tax Authorities and hence the assessee could not file Form-67 within the time as prescribed under Rule 128(9) of the IT Rules, 1962. The Ld. AR further submitted that Article 23 of the DTAA between India and Nepal provides relief to the taxes paid outside India. The Ld. AR relied on the Notification issued by the Central Board of Direct Taxes [CBDT] dated 18/8/2022. The Ld. AR therefore, pleaded that filing of Form-67 is only a procedural aspect and can be considered as a directory in nature and not mandatory for claiming the Foreign Tax Credit. The Ld. AR also submitted that under the identical facts and circumstances, this Bench of the Tribunal has allowed the issue in favour of the assessee in the assessee's own case in ITA No. 161/Viz/2022 for the AY 2019-20, dated 28/02/2024. The Ld. AR therefore pleaded that the grounds raised by the assessee may be allowed and the order of the Ld. CIT(A)-NFAC be upheld.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the decision of this Tribunal in the assessee's own case in ITA No.161/Viz/2022 for the AY 2019-20, dated 28/02/2024 wherein the identical issue was decided by the Tribunal in favour of the assessee after discussing the issues at length. For the sake of reference, relevant paras of the Tribunal's order dated 28/02/2024 (supra) are extracted herein under:

"5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. In the instant case, admittedly the return of income for the AY 2019-20 was filed on 31/10/2019 being the extended due date for filing of the return of income for that assessment year. In the impugned Intimation U/s. 143(1) of the Act passed on 13/3/2021 and the written submissions filed by the Ld. AR, we find that Form-67 was submitted on 17/2/2021. There is no dispute on the fact that Form-67 has been filed before the generation of Intimation U/s. 143(1) of the Act. It is pertinent to mention here that under the similar facts and circumstances, recently the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy vs. The Principal Commissioner of Income Tax – 8, Chennai and others in W.P.No.5834 of 2022 and W.M.P.Nos.5925 and 5927 of 2022, dated 06.10.2023 has held as under:

"8.

9.

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 FTC. 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 FTC is filed. Therefore, it would be the amounts to due compliance under the Act. The petitioner referred to the Judgment of the Hon'ble Supreme Court in the case of 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, 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 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 remit 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.”*
6. *In the instant case, Form-67 was filed on 17/2/2021 while the intimation U/s. 143(1) was passed on 13/3/2021. The facts of the case decided by the Hon'ble Madras High Court (supra) are squarely applicable to the facts of the instant case. We therefore respectfully following the decision of the Hon'ble Madras High Court (supra), find no infirmity in the order of the Ld. CIT(A)-*

NFAC and accordingly the grounds raised by the Revenue deserves to be dismissed. The case relied on by the Ld. DR in the case of Muralikrishna Vaddi vs. ACIT (supra), the facts are distinguishable and hence not considered.

7. *In the result, appeal filed by the Revenue is dismissed.”*

6. Respectfully following the decision of this Tribunal in the assessee's own case in ITA No 161/Viz/2022, AY 2019-20, dated 28/02/2024 and also following the principle of consistency, we have no hesitation to come to a conclusion that there is no infirmity in the order of the Ld. CIT(A)-NFAC while directing the Ld. AO to accept Form-67 filed by the assessee with regard to the relief sought by the assessee U/s. 90 of the Act and allow FTC as per law. Accordingly, we hereby uphold the order of the Ld. CIT(A)-NFAC and allow the grounds raised by the assessee.

7. In the result, appeal filed by the Revenue is dismissed.

Pronounced in the open Court on 31ST January, 2025.

Sd/-
(एस. बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(दुव्वूरु आर.एल. रेड्डी)
(DUVVURU RL REDDY)
उपाध्यक्ष/VICE PRESIDENT

Dated :31/01/2025

OKK - SPS

Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. SSNR Projects Private Limited, D.No. 51-8-40, Behind BOC Limited, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530013.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Circle-3(1), 35, 50-92-35, Sankara Matam Road, Opp. Reliance Fresh, Near by Main Road, Madhuranagar, Dwaraka Nagar, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam