

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,  
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA 6144/MUM/2024  
(A.Y. 2020-21)**

Shilpa Prabhakar Kulkarni, Neelsagar, 1280 Prabhadevi, Seaface Mumbai, 400 025 Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Centralized Processing Center, Mumbai, DCIT, Circle – 42(3)(1), KautilyaBhavan, BandraKurla Complex, Bandra (East), Mumbai 400051, Maharashtra
3, JalanIstimeva, Singapore – 278 387 Phone No. +65 82026463		
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: BRHPK8129D</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	Ms.Chandni Shah a/w Shri HardikNirmal and Ms. Hinal Shah
Respondent by :	Ms. Nidhi Agarwal (Sr. DR)

Date of Hearing	07.01.2025
Date of Pronouncement	13.01.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order dated 08.10.2024 is filed by the assessee against the order passed by the Learned ADDL/JCIT (A)-6 Chennai [hereinafter referred to as “ADDL/JCIT(A)”] pertaining to the order passed u/s. 143(1) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 16.12.2021 the CPC, Bengaluru for the Assessment Year [A.Y.] 2020-21.



2. The grounds of appeal are as under:

**1. Ground no. 1- General ground**

*On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals), Addl/JCIT(A)-6, Chennai [Ld. CIT(A)] erred in upholding the intimation under section 143(1) passed by the Assistant Director of Income-tax, Centralized Processing Centre (the CPC) and passing the order under section 250 of the Act which is erroneous, devoid of facts and contrary to the provisions of the law and accordingly, liable to be quashed.*

**2. Ground no. 2-Non-grant of Foreign Tax Credit**

*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the CPC in denying/non-granting the foreign tax credit amounting to INR 19,96,823 as claimed by the Appellant in its Return of Income.*

**3. Ground no. 3-Impermissible adjustment made under section 143(1) of the Act**

*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have held that non-grant of the foreign tax credit is not a permissible adjustment under section 143(1) of the Act.*

**4. Ground no. 4-Incorrect computation of interest under section 234A of the Act**

*On the facts and in the circumstances of the case and in law, the CPC has erred in levying interest of Rs. 3,53,470 under section 234A of the Act.*

**5. Ground no. 5-Incorrect computation of interest under section 234B of the Act**

*On the facts and in the circumstances of the case and in law, the CPC has erred in levying interest of Rs. 6,19,970 under section 234B of the Act.*

**6. Ground No. 6-Incorrect computation of interest under section 234C of the Act**

*On the facts and in the circumstances of the case and in law, the CPC has erred in levying interest of Rs. 1,78,316 under section 234C of the Act without appreciating the fact that interest under section 234C of the Act is computed on the returned income.*

3. From the facts of the case on record, it appears that the main bone of contention pertains to denial of Foreign tax credit of Rs. 19,96,823/- and consequential computation of total income and tax thereon. The assessee filed the return of income showing Rs



1,89,73,480/-, a part of which comprised of income from India of Rs 52,46,833/- and Rs 1,37,26,647/- from Singapore. Since the assessee was resident during the year consideration u/s 6 of the Act, she offered income from Singapore and claimed credit Rs 19,96,823/- for the taxes paid there. However, the credit was disallowed by CPC vide intimation u/s 143(1)/154 of the Act. The CPC did not allow credit of FTC, as claimed by the assessee on account of non-submission of Form 67 within the extended time limit for filing the return of income u/s.139(1) i.e. 10.01.2021 for the AY 20-21.

4. In the course of appeal proceedings, the assessee was asked to establish the fact of filing of Form 67 to claim relief of taxes u/s 90. In response to the same, she submitted that the relief u/s 90 could not be denied for the belated filing of Form 67 and relied on certain judgements of the tribunal. Facts of the case and compliance to the Rules laid down u/r. 128(8)(1) and 128(9) of the Income tax Rules, 1962 have been reproduced by in the appellate order as below:

*“Rule 128(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.***



**“Rule 128(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.”**

4.1 From the perusal of above Rules of IT Rules, it was observed by him that it is mandatory on the part of appellant to file Form 67 within due date to get the credit of FTC. It is an admitted fact that Form no.67 has neither been filed by the Appellant at the time of filing of RoI nor before the time limit as specified u/s. 139(1) for AY 2020-21 and such omission is attempted to be justified by the Appellant on the ground that filing of Form No.67 is not mandatory by relying on certain judgements of the Tribunal. It is pertinent to note that there are divergent views of the different Tribunals on this subject as Hon'ble ITAT Vizag bench in the case of Muralikrishna Vaddi v. Asstt. CIT/Dy. CIT [IT Appeal No.269 (Viz.) of 2021, dated 14-6-2022] held the issue in favour of revenue. In such scenarios of divergent views, it is always appropriate to go by the statutes. From the plain reading of Rule 128(8)(i) and 128(9) of the IT Rules, it is clear that the statement in 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 to claim FTC. Therefore, since the word "shall" have been used in the Rule 128(9), it is mandatory to file Form 67 within due date and not directory as claimed.



4.2 It is further stated by the appellate authority that the relied on Hon'ble Madras High Court decision in the case Duraiswamy Kumaraswamy v. PCIT (W.P. No. 5834 of 2022) dated 06 October 2022 wherein the return of income was filed without Form 67 but before the passing of the final assessment order, the Hon'ble High Court held that the filing of FTC in terms of Rule 128 is only directory in nature. The facts of the case had been perused. It is found that in that case, the assessee had filed the RoI well before the due date u/s 139(1) of the Act whereas, in the present case, the appellant had not filed the ROI before the due date u/s 139(1) of the Act. Hence, the facts of the cases are different. It is also pertinent to mention that the Hon'ble Supreme Court in catena of cases had held that any benefit under the provisions of the Act can be claimed only when the RoI and the related Forms are filed within the timelines prescribed by the Act. Accordingly, it was held that having failed to file the Form 67 within the stipulated time period by the assessee, the FTC could not be allowed and hence, there was no infirmity found in the order of CPC.

5. The learned DR has relied on the decision of the lower authorities. Per contra, the learned Authorised representatives of the assessee have contended that due to COVID-19 the due date for filing of return u/s 139(4) of the Act was extended from 31.03.2021 to



31.05.2021. Accordingly, the return was filed by the assessee on 05.05.2021 u/s 139(4) and claimed FTC in view of section 90 r.w. Article 25 of India-Singapore DTAA. Form no.67 was therefore filed on 06.05.2021 one day after the return and within the extended due date for 139(4) of the Act.

5.1 The AR has placed heavy reliance on the facts stated before the appellate authority as also on a plethora of decisions of various co-ordinate Benches of Tribunal claiming that the issue on similar facts and circumstances has been decided in favour of assesses. It is argued that DTAA overrides the Act.FTC is a vested right as per Article 25 of DTAA r.w section 90 of the Act and the same cannot be disallowed for procedural requirements. Reliance is placed on **Ritesh Kumar Garg vs IT in ITA No.261 of 2022(Jaipur ITAT),Sanjeev Agrawal vs DCIT(ITA No.71 of 2023 Jaipur ITAT, Rohan Hattangadi vs CIT in ITA No.1896 of 2022(Mumbai-ITAT)**.It is further contented that Rule 128 is clarificatory and not mandatory as held in Duriaswamy Kumaraswamy(WP 5834 of 2022 (Madras High Court), Ritesh Kumar Garg(supra) and Sonakshi Sinha vs CIT 197 ITD 263(Mumbai ITAT).

5.2 It is further argued that Rule 128(9) has been amended w.e.f. 01.04.2022 providing that the Form 67 can be filed on or before



the time specified u/s 139(1) or 139(4) of the Act. The amendment being beneficial and curative in nature should be applied retrospectively. Reliance is placed on **Shivn Vinod Mehra ITA No.725 OF 2024(Mumbai ITAT), Sonakshi Sinha(supra) and Rohan Prakash Shah in ITA No.2789 OF 2022 Mumbai ITAT**. Further the assessee has placed reliance on certain cases where even the return was delayed, yet the tribunal allowed the credit as in the case of **Shivan Vinod Verma(supra)** where belated return was filed u/s 139(4) of the Act.

6. We have carefully considered the facts of the case, relevant orders, provisions of the Act in this regard and also the cited decisions relied by the assessee as also by the Revenue. As stated in foregoing paras, there are plethora of decisions of various co-ordinate benches of Tribunal where identical issue has been dealt with and decided in favours of assesses. It would be worthwhile to reproduce the relevant extracts of the decision of co-ordinate bench of Mumbai Tribunal on its recent decision **dated 31.05.2024** in the case of **Shivan Vinod Mehra in ITA No.725/Mum/2024** wherein facts are exactly similar to that of the assessee and decided in favour of the assessee:

*“2. The assessee is aggrieved by denial of foreign tax credit of Rs.20,86,652/- u/s.90 of the Act by **the CPC in the intimation u/s.143(I)**.*



3. The brief facts are that assessee is an individual and was working with Timex Nederland B.V. Sequel Services, Hong Kong. The assessee was earning his income from salary earned in Hong Kong on which he has paid taxes in Hong Kong on the said salary income for the A.Y.2021-22, which was claimed as relief in terms of FTC u/s.90 of the Act to the extent of Rs.20,80,652/-. The assessee has filed Form 67 on 31/03/2022 along with certificates / statements specifying the nature of income and amount of tax paid as per Rule 128 of the Income Tax Rules, 1962. The assessee had filed the return of income in India u/s.139(4) on 31/03/2022 and alongwith the return he has filed Form No.67 on the same date. The return filed by the assessee was processed and intimation was received on 17/11/2022, whereby it was informed vide order dated 03/10/2022 u/s.143(1), the CPC has raised demand including interest of Rs.26,29,760/-. The CPC has not computed the relief u/s.90 of the Act and no FTC was given of Rs.20,80,652/- claimed by the assessee.

4. Before the Id. CIT(A) assessee submitted that the assessee had come to India in F.Y.2020-21 to visit his father in India and due to Covid-19 pandemic, lockdown was imposed and he could not return to Hong Kong and only for this reason for the A.Y.2021-22 assessee was deemed to be resident and ordinarily resident for tax purpose in India. Since assessee was under bonafide belief that he won't be liable to pay tax in India on the income earned in Hong Kong as the same was already taxed in Hong Kong, therefore he could file return on the due date of return u/s 139(1). Later on, assessee took advice from a tax consultant in India, who advised that since he has overstayed in India for more than 183 days, therefore, he has to file return for A.Y. 2021-22 in India. Accordingly, he compiled his data and filed the return of income which was earned in Hong Kong on 31/03/2022. It was return filed u/s.139(4) declaring total income of Rs.1,56,58,090/- which mostly included income earned in Hong Kong of Rs.1,53,04,989/-. The main income was purely on account of salary received in Hong Kong and small amount of capital gain interest income earned declared as other sources in India. He had paid taxes including interest of Rs.41,38,154/-. The Id. CIT(A) after incorporating the entire submission and bonafide explanation of the assessee from pages 2-9 of his order, observed that the due date of filing of return u/s.139(1) was 31st August 2021 which was extended up to 31/12/2021 and therefore, assessee was liable to file Form No.67 before the due date of filing of return of income i.e. 31/12/2021, whereas assessee has filed return u/s.139(4) alongwith Form No.67 on 31.03.2022. Thus, **there was delay of 3 months in filing the Form No. 67.** The Id. CIT(A) while dismissing the assessee's claim for FTC on his taxable income has relied on the CBDT Notification No.100/2022/F.No.370142/35/2022-TPL, which for sake of ready reference, scan copy is reproduced hereunder:-.

5. Id. CIT(A) held that since this notification is applicable from 01/04/2022 and since assessee's appeal pertain to A.Y. 2021- 22, therefore aforesaid notification is not applicable and accordingly, he denied the foreign tax credit of Rs. 20,86,652/-.

6. After considering the aforesaid facts and the order of the Id. CIT(A), we find there is no dispute that the assessee's major income which was declared in the return of income in India was salary earned in Hong Kong of Rs.1,53,04,989/- out of total income declared of Rs.1,56,58,090/-. Due to adverse circumstances of second wave of Covid-19 Pandemic and circumstances beyond his control, assessee who had come to



India to visit his father had over stayed because of complete lockdown all across. Thus due to this reason, he was treated as resident and ordinarily resident for tax purpose in India. Later on, on the advice of tax consultant in India, assessee filed return of income which was belated return u/s.139(4) on 31/03/2022 and alongwith said return of income assessee had filed Form 67 as required in terms of Rule 128 of the Income Tax rules. **From the bare perusal of the CBDT notification, it is seen that sub-rule (9) of Rule 128 was amended wherein it was provided that statement in Form No.67 can be furnished on or before the time specified under sub-section (1) or sub-section (4) of Section 139. Explanatory Memorandum clearly states that this amendment is effective from 01/04/2022. If such notification has been issued to include the due date up till the date of filing of return u/s.139(4), which is beneficial to the assessee and to remove the rigours, then same should be held to be applied retrospectively. Otherwise also during the Covid period, the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation reported in 411 ITR 722 had given relaxation for initiation of any kind of proceedings and applications and statutory compliances till March 2022. This judgment has overriding effect in all such situations. Before us various judgments of Co-ordinate Benches of ITAT have been cited wherein it has been held that filing of Form 67 is directory in nature and not mandatory and mere delay in filing of Form No.67 will not preclude the assessee from getting benefit of tax credit and the above amendment in Rule 128 is curative in nature and therefore, it has to apply retrospectively. Accordingly, we direct the ld. AO to allow the foreign tax credit of Rs.20,86,652/.**

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

6.1 Respectfully following the decisions above and more specifically on the case of Shivan Vinod Mehra(supra),we hold that in view of various judgments of Co-ordinate Benches of ITAT cited wherein it has been held that filing of Form 67 is directory in nature and not mandatory and mere delay in filing of Form No.67 will not preclude the assessee from getting benefit of tax credit and the above amendment in Rule 128 is curative in nature and therefore, it has to apply retrospectively. Accordingly, we direct the ld. AO to allow the Foreign Tax credit of Rs.19,96,8213/- as claimed by the assessee.



7. Rest of the grounds relating to charging of interest under various sections of the Act being consequential in nature, the Id.AO is directed to compute as per the provisions of the Act in this regard.

8. In the result, the appeal is **allowed**.

**Order pronounced in the open court on 13/01/2025.**

Sd/-

**SANDEEP GOSAIN**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.01.2025

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

