

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
I.T.A. No. 6641/Mum/2024
Assessment Year: 2020-21

Sudhir Sudarshan Gaur 1101, Ambrosia, Hiranandani Gardens, Powai, Maharashtra-400076 PAN: AGZPG4869N (Appellant)	Vs.	The Income-Tax Officer, 26(2)(1), Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051 (Respondent)
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Appellant by	Shri. Satish Mody
Respondent by	Shri. Sajit Nair, SR. D.R.

Date of Hearing	13.02.2025
Date of Pronouncement	20.02.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the assessee arises out of order dated 28.10.2024 passed by CIT(A)-54, for assessment year 2020-21.

Brief facts of the case are as under:

2. The Ld.AR submitted that the only issue that arises in the present appeal is regarding denial of foreign tax credit claimed by assessee u/s. 90 amounting to Rs.6,57,234/- in respect of

foreign taxes outside India. It is submitted that the CPC neither issued notice 143(1)(a) nor notice under section 139(9) before disallowing the claim.

3. The Ld.AR submitted that assessee had furnished Form 67 on 01/04/2021 while filing the return belatedly on 31/03/2021. However the CPC passed the intimation denying the FTC claimed by the assessee in an order u/s. 154 of the Act as the assessee did not file ROI u/s. 139(1) of the Act.

4. Against the order by CPC the assessee filed appeal before the Ld.CIT(A).

4.1 The Ld.CIT(A) upheld the disallowance by holding that Rule 128 has to be strictly complied with and the assessee should have filed Form 67 before the timeline specified u/s. 139(1) and that any omission would prevent assessee from claiming the FTC. Aggrieved by the order of the Ld.CIT(A)/NFAC, the assessee is in appeal before this *Tribunal*.

5. The Ld.DR on the contrary has supported the orders passed by the authorities below. He submitted that fulfilment of requirement under rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to FTC.

I have perused the submissions advanced by both sides in the light of records placed before this *Tribunal*.

6. It was submitted that when 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, the same cannot be disallowed for mere delay in compliance of a procedural provision. The Ld.AR placed

reliance on the decision of *Hon'ble Madras High Court* in case of WP No. 5834 of 2022 and WPS No. 5295 & 5297 of 2022 in case of *Duraiswamy Kumarswamy vs. Ld.PCIT* vide order dated 06/10/2023 in support of his claim.

7. There is no dispute that the assessee is entitled to claim FTC. On perusal of provisions of Rule 128 (8) & (9), it is clear that, one of the requirements of Rule 128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns. In our view, this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67.

8. I also refer to the decision of *Hon'ble Bangalore Tribunal* in case of *M/s. 42 Hertz Software India Pvt. Ltd. vs. ACIT* reported in (2022) 139 *taxmann.com* 448. This view is fortified by the decision of coordinate bench of this *Tribunal* in case of *Ms.Brinda Kumar Krishna vs.ITO* in *ITA no.454/Bang/2021* by order dated 17/11/2021. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various *High Courts*, which has also been approved by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence (P.) Ltd.* reported in (2021) 432 *ITR* 471.

9. I am thus of the view that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 20/02/2025

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai:

Dated: 20/02/2025

Poonam Mirashi/Dragon
Stenographer

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai