

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VP AND
SHRI NARENDRA KUMAR BILLAIYA, AM**

ITA No.6952/Mum/2024
(Assessment Year: 2020-21)

Suhail Amin Nathani 801, 8 th Floor, Prabhu Kutir, 15, Altamount Road, Mumbai-400 026	Vs.	Asst. CIT Aaykar Bhavan, R. No. 446, M. K. Road, Mumbai-400 020
PAN/GIR No. ACAPN 0531 D		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Gautam Thacker
Respondent by	:	Shri Bhangapatil Pusharaj Ramesh
Date of Hearing	:	27.02.2025
Date of Pronouncement	:	27.02.2025

ORDER

Per Saktijit Dey, VP:

This is an appeal by the assessee against order dated 16.10.2024, passed by the learned Commissioner of Income Tax (Appeals)-5 ('ld.CIT(A) for short), Chennai, pertaining to the assessment year (A.Y.) 2020-21.

2. The sole grievance of the assessee in the present appeal concerns disallowance of Foreign Tax Credit (FTC) due to non furnishing of Form No. 67 within the prescribed time limit.

3. Briefly the facts are, in the return of income filed for the assessment year under dispute, the assessee had claimed FTC in respect of tax paid in foreign jurisdiction. However, while processing the return of income filed by the assessee, Centralized Processing Centre (CPC) disallowed assessee's claim, as the assessee had not furnished Form No. 67 in terms with Rule 128(9) of the I. T. Rules.

4. Being aggrieved with the non-grant of FTC, assessee filed an appeal before first appellate authority. While deciding the appeal, the first appellate authority relied upon the decision of ITAT Vishakapatnam Bench in case of *Muralikrishna Vaddi vs. ACIT/Dy. CIT* [2022] 142 taxmann.com 32 (Vishakapatnam – Trib.) and dismissed the appeal.

5. Before us, learned counsel appearing for the assessee submitted that after processing of return u/s. 143(1) of the Act, the assessee had filed an application seeking rectification and during pendency of rectification application, the assessee had furnished Form No.67. He submitted, despite furnishing of Form 67, assessee's claim of FTC has been disallowed. He submitted, furnishing of Form 67 as per Rule 128(9) is directory and not mandatory. He submitted FTC can be allowed even if the assessee furnishes Form 67 before the Appellate Authorities. In support of such contention, learned counsel relied upon the following decisions:

1. *Duraiswamy Kumaraswamy vs. Pr. CIT* [2023] 156 taxmann.com 445 (Madras)
2. *Bhaskar Dutta vs. Dy. CIT (IT)* [2023] 147 taxmann.com 481 (Delhi-Trib.)
3. *Sumedha Arora vs. ITO* [2023] 154 taxmann.com 535 (Delhi-Trib.)

6. Per contra, learned Departmental Representative ('ld. DR' for short) furnished a written submission, strongly relying upon the observations of the first appellate authority. He also relied upon the decision of the ITAT Vishakapatnam bench in the case of *Muralikrishna Vaddi* (supra).

7. We have considered rival submissions and perused the materials on record. The short issue arising for consideration is whether FTC can be denied merely because of non-furnishing of Form 67 within the prescribed time limit. Having carefully gone

through the judicial precedents cited before us, we find convergence of judicial opinion on the issue that Rule 128(9) is not mandatory but directory in nature. Hence, furnishing of Form 67 at a belated stage would not disentitle the assessee from getting FTC. Though, there is a contrary view expressed by the ITAT Visakapatnam bench in the case of *Muralikrishna Vaddi* (supra) as noted above, however, keeping in view the decision of the Hon'ble Madras High Court and other decisions of the Tribunal relied upon by learned counsel of the assessee, which have taken note of the decision of the ITAT Visakapatnam bench, we are inclined to decide the issue in favour of the assessee. The Assessing Officer is directed to allow FTC after factually verifying Form 67 furnished by the assessee. Hence, grounds are allowed.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 27.02.2025

Sd/-

(Narendra Kumar Billaiya)
Accountant Member

Mumbai; Dated : 27.02.2025

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)
Vice President

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai