IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.2513/Bang/2024
Assessment Year: 2021-22

Mrs. Indira Veluri Villa No.789, Phase 3 Adarsh Palm Retreat Bellandur Bangalore 560 103 **PAN NO : AFAPI8965B**	**Vs.**	ITO Ward-4(2)(3) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Pavan Kumar, A.R.
Respondent by	:	Sri Ganesh R Gale, Standing counsel for department

Date of Hearing	:	23.01.2025
Date of Pronouncement	:	21.04.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. Addl/JCIT(A)-2, Ludhiana dated 29.03.2024 vide DIN & Order No. ITBA/APL/S/250/2023-24/1063630074(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the AY 2021-22.

2. At the outset, the ld. A.R. of the assessee submitted that there is a delay of 201 days in filing the appeal before this Tribunal. The ld. A.R. of the assessee also drew our attention on application for condonation of delay for the AY 2021-22 along with affidavit sworn before the notary public dated 19/12/2024 which are reproduced below for ease of reference and record:

BEFORE THE INCOME TAX APPELLATE TRIBUNAL AT BANGALORE
ITA No.--
AY -2021-22

BETWEEN: Mrs. Indira Veluri
APPLICANT/APPELLANT

AND: Commissioner of Income Tax,
(Appeals) Faceless, Bangalore
RESPONDENT

The Applicant/Appellant submits that for the reasons stated in accompanying Affidavit, this Hon'ble Tribunal may be pleased to condone the delay in the interest of justice and equity.

Indira Veluri

BANGALORE
DATE: 16.12.2024

APPLICANT/APPELLANT

AFFIDAVIT

I, Indira Veluri, the Appellant, aged about 53 years, residing at No.789, Phase-3, Adarsh palm Retreat, Bellandur, Bangalore, Karnataka – 560103 do hereby state on oath as under;

1. The appellant submits that the appeal under section 250 of the Income Tax Act, 1961 (the Act) was completed by the learned Commissioner of Income tax, Appeals Faceless vide order dated 29-03-2024.

2. In these circumstances, the appellant now as preferred an appeal against the order dated 29-03-2024 passed by the Learned CIT Appeal Faceless, which was filed on 16.12.2024.

3. The said order of the Learned CIT Appeals Faceless was received by the appellant on 29-03-2024 and the appeal should have been filed before 28-05-2024. As such, there is a delay of 201 days in filing the appeal.

4. The reason for the delay in filing the appeal is as follows:

   a. I received notice u/s 250 on 29th March 2024. Not knowing the tax regulations fully, I missed to file appeal to ITAT initially only. Instead, As directed by the CIT(APPEALS) Faceless, I approached the Income Tax Department with an application u/s 119(2)(b) of the Income Tax Act, and in good faith, believing that the provisions of that section would provide us with the required relief. However, the relief sought u/s 119(2)(b) was not granted and the order for the same was passed on 24.10.2024. Not knowing the further proceedings, on the suggestion of professional consultants, I am filing appeal with H'NBLE TRIBUNAL u/s 250 of the Income Tax Act with the request of condonation of delay.

   b. The lack of complete understanding and awareness regarding tax regulations and uncertainty about the appropriate procedures resulted in significant delay in the filing of the appeal.

   c. Due to the above reasons, there was an inadvertent delay in filing the present appeal. The delay was caused by our reasonable belief and atmost good faith that, the relief under Section 119(2)(b) would resolve the matter, and I did not anticipate the need for an appeal u/s 250.

5. The appellant submits that the delay in filing the appeal papers is not intentional. We submit that the time limit fixed for filing the appeal is not meant to destroy the right of the parties. They are meant to see that the parties do not resort to dilatory tactics.

6. The appellant submits that the reason for delay is a bonafide reason, which will fall under the scope of "reasonable cause" for the said delay.

Indira Veluri

NOTARY
K. V. BACHI REDDY
B.A., LL.B.
BENGALURU CITY
Reg. No. law-1:
LCL 97
GOVT. OF KARNATAKA

7. The appellant submits that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. We submit that the expression "sufficient cause employed by the Legislature is adequately flexible to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice.

8. The appellant submits that a liberal and judicious approach guided by the paramount consideration of not depriving a litigant ordinarily of adjudication of right on merits. We further submit that the appellate should not be refused condonation of the delay which may result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated.

9. The appellant submits that if the delay is not condoned, undue injustice would be caused to the appellant. We further submit that by not condoning the delay and deciding the issues on merits, the appellant would be put to irreparable hardship.

In view of the above, the appellant approaches your goodself to kindly accept the appeal in Form 36 and condone the delay of 201 days.

Identified by me.

IDENTIFIED BY ME
S. BHANUPRAKASH
ADVOCATE
City Civil Court, Bengaluru

Bangalore

Date: 19.12.2024

Indira Veluri
Deponent

NOTARY
K. V. BACHI REDDY
B.A., LL.B.
BENGALURU CITY
Reg. No. law-11
LCL 97
GOVT. OF KARNATAKA

SWORN TO BEFORE ME

K. V. BACHI REDDY, B.A., LL.B.,
ADVOCATE & NOTARY
102, Sri Krishna Building, Avenue Road,
BENGALURU - 560 002.

19/12/2024

3. Further the ld. AR of the assessee submitted that the delay is unintentional and the time limit fixed for filing the appeal is not meant to destroy the right of the parties & they are meant to see that the parties do not resort to dilatory tactics. The AR further submitted that the reason for delay is a Bonafide reason and accordingly prayed to condone the delay and requested to consider the issue raised by the assessee on merits.

4. On the contrary the ld. D.R. vehemently objected for granting the condonation of delay.

5. We have perused the details filed by the assessee by way of affidavit to justify the delay and we are satisfied that there is sufficient cause without any malafide intention on the part of the assessee in filing the appeal belatedly before us. It is to be noted that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it has established that there exists a sufficient cause on the part of the assessee for not presenting the appeals within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflect sufficient and reasonable cause on the part of the assessee in not filing this appeal within the prescribed time.

5.1 While considering a similar issue the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) *'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.*

(4) *When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.*

(5) *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

(6) *It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

5.2 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of nondeliberate delay. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalize injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalizing an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorized by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalize an illegal and unconstitutional order passed by the lower authority.

5.3 Further, in the case of People Education & Economic Development Society Vs/ ITO reported in 100 ITD 87 (TM) (Chen), wherein held that "when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay".

5.4 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not

filing the appeal. We have to see the cause for the delay. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal. When compared to 21 years, 201 days cannot be considered to be inordinate or excessive. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay. Therefore, in our opinion, by preferring the substantial justice, the delay of 201 days for the AY 2021-22 has to be condoned and accordingly we condone the delay and admit the appeal for adjudication.

6. The assessee has raised the following grounds of appeal:

1. For that the order of the learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The learned CIT (A) ought to have considered that Appellant's claim for FTC is in accordance with the provisions of the Income Tax Act and the relevant DTAA, and the denial of the same is unjustified.

3. The learned CIT (A) failed to appreciate that Filing/ furnishing of the tax credit proof (form-67) along with the return of income, as per Rule 128, is directory and not mandatory in nature, as **rules cannot enlarge scope of legislation and deny the benefits provided by the basic legislation**. Hence not allowing credit of tax paid u/s 90 is bad in law.

4. The appellant pleads that her case is squarely covered by the decision of the jurisdictional Tribunal in the case of **Brinda Ramakrishna vs. Income Tax Officer (ITA No. 454/Bang/2021)**, held that ***'a procedural lapse does not negate or extinguish the substantive right of the assessee to claim Foreign Tax Credit (FTC)'***.
The Appellant respectfully submits that the same principle should be applied in the present case, where the substantive entitlement to FTC under Section 90/90A of the Income Tax Act, 1961, and the relevant Double Taxation Avoidance Agreement (DTAA) should not be denied due to an inadvertent procedural delay.

5. The Appellant respectfully submits that Ld CIT(A) is not justified in denying the Foreign Tax Credit (FTC) of Rs. 6,62,622 claimed by the Appellant under applicable DTAA with USA, which is in line with Section 90/90A of the Income Tax Act, 1961.

6. The appellant prays before the Hon'ble Income Tax Appellate Tribunal (ITAT), that they may be permitted to add, to alter or to amend any grounds at the time of hearing.

7. Brief facts of the case are that the assessee was working as an employee in Rivulet Applications INC during financial year 2020-21 and received salary in USA and paid the taxes on such salary in USA itself. The assessee filed her return of income for the AY 2021-22 on 25.12.2021 u/s 139(1) of the Act by declaring total income of Rs.27,48,790/- whereby the assessee claim foreign tax credit of Rs.6,62,622/- paid in United States of America(USA). Thereafter, the return of income was processed and accordingly the intimation u/s 143(1) of the Act dated 22.3.2022 was passed by the ADIT, CPC by accepting the total income as declared by the assessee in her return of income but disallowed the claim of foreign tax credit amounting to Rs.6,62,622/- and raised a demand of Rs.7,75,600/-by levying interest u/s 234B and 234C of the Act. As submitted by the ld. A.R., the assessee was completely unaware of the fact that for claiming foreign tax credit , Form No.67 has to be filed on or before furnishing the return of income. Further, ld. A.R. also submitted that the assessee being an illiterate person in tax rules and related filing procedure did not file Form 67 inadvertently on or before the due date for filing the return of income. The assessee realized her mistake after receiving the intimation u/s 143(1) of the Act and after consulting the professional, the assessee filed an rectification application u/s 154 of the Act on 26.12.2022 by declaring the same total income Rs.27,48,790/- along with Form 67 for claiming foreign tax credit but the AO CPC had denied the foreign tax credit of Rs.6,62,622/- claimed.

7.1 However, aggrieved by the intimation passed u/s 143(1) of the Act, the assessee preferred an appeal before ld. ADDL/JCIT(A).

8. The ld. ADDL/JCIT(A)-2, Ludhiana dismissed the appeal of the assessee by holding that the assessee has not filed form 67 till the

processing of return. The ld. ADDL/JCIT(A)-2, Ludhiana observed that it was in fact filed on 29.7.2022 i.e. much after the prescribed due date of filing the return. Further, ld. ADDL/JCIT(A)-2, Ludhiana held that the assessee had also not filed any letter for condonation of delay in filing the Form 67 before the jurisdictional PCIT. Lastly, the ld. ADDL/JCIT(A)-2, LUDHIANA suggested that to take the relief, the assessee may file an application for the condonation of delay regarding the delay in filing of Form 67 before the jurisdictional PCIT. If the condonation is granted the assessee may again apply for rectification before the jurisdictional AO.

9. Aggrieved by the order of ld. ADDL/JCIT(A)-2, Ludhiana the assessee filed the present appeal before this Tribunal. The assessee has also filed a paper book comprising 59 pages containing therein written submissions along with tax payment evidences and foreign tax credit circular as well as various case laws relied upon by the assessee.

10. Before us, the ld. A.R. of the assessee vehemently submitted that the ld. Addl/JCIT(A)-2, Ludhiana failed to appreciate that filing of tax credit proof (Form 67) along with the return of income as per Rule 128 is only directory and not mandatory in nature. Further, the ld. A.R. of the assessee submitted that the rules cannot enlarge scope of legislation and deny the benefit provided by the basic legislation. Lastly, the ld. A.R. submitted that ld. Addl/JCIT(A)-2, Ludhiana is not justified in denying the foreign tax credit of Rs.6,62,622/- claimed by the assessee under applicable DTAA with USA which is in line with section 90/90A of the Act.

11. Ld. D.R. on the other hand, vehemently supported the order of ld. Addl/JCIT(A)-2, Ludhiana and submitted that as the Form no.67 was not filed by the assessee on or before the due date of filing the

return, the authorities below have rightly denied the foreign tax credit.

12. We have heard the rival submissions and perused the materials available on record. We take a note of the fact that the AO,CPC has disallowed the foreign tax credit amounting to Rs.6,62,622/- as claimed u/s 90/90A of the Act while passing the intimation u/s 143(1) of the Act. Further the assessee has also filed the rectification application as per provision contained u/s 154 of the Act on 26.12.2022 by declaring same total income of Rs.27,48,790/- along with the Form 67 for claiming foreign tax credit. But the AO, CPC while passing the rectification order u/s 154 of the Act also denied the claim of the Foreign tax credit of Rs.6,62,622/-.

12.1 Further, we also take a note of the fact that as per the suggestion of ld. Addl/JCIT(A)-2, Ludhiana vide order dated 29.3.2024, the assessee has also filed a petition u/s 119(2)(b) of the Act on 24.6.2024 for the AY 2021-22 for condoning the delay in filing Form 67. However, the ld. PCIT Bangalore-3 vide order dated 24.10.2024 had rejected the application for condonation of delay in filing ITR u/s 119(2)(b) of the Act by observing that there is no mention of condonation of delay in filing Form 67 in CBDT circular no.9/2015 and no other similar circular has been issued by the Board for condoning such delay. Accordingly, the ld. PCIT Bangalore-3, held that the delay in filing Form 67 for the AY 2021-22 is rejected.

12.2 We also take a note of the fact that the main reason as cited by the assessee for not filing the Form 67 on or before the due date of filing the return of income was due to the fact that assessee was completely unaware of the fact of filing of Form 67 in order to claim foreign tax credit. Further, assessee being an illiterate person in tax

rules and related filing procedure inadvertently could not file Form 67 on or before filing the return of income.

12.3 We also take a note of the fact that after realizing that the demand has been made by the CPC while passing intimation u/s 143(1) of the Act, she took help of professional and immediately filed Form 67 for claiming foreign tax credit along with his rectification application u/s 154 of the Act.

12.4 We are of the considered opinion that filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not extinguish the substantive right of claiming the credit of foreign tax paid. There is no dispute that the assessee is entitled to claim foreign tax credit. On perusal of the 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 the assessee on or before the due date of filing the returns. Therefore, 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 67.

12.5 This view is fortified by the decision of the coordinate bench of this Tribunal in the case of Brinda Ramakrishna Vs. ITO (ITA No.454/Bang/2021, dated 17.11.2021) reported in 193 ITD 840 (Bangalore Trib.), the relevant portion of which is reproduced below for ease of reference and convenience:

> *16. "I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules*

cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard."

12.6 Further, similar issue also came for consideration before this Tribunal in the case of Sanjiv Gopal Vs. ADIT reported in 198 ITD 411 (Bangalore Trib.), wherein the Tribunal held as under:

"The only issue under consideration in the instant appeal is that the NFAC denied of FTC available to the assessee merely because there was a delay in filling Form 67 i.e., it was filed after the due date for filling original return of prescribed under section 139(1). The said issue under consideration is no longer res integra. It is to that on identical issue, the co-ordinate Bench of Tribunal, Bangalore in the case of -Ifs. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 held that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67; (ii) filing of Form No. 67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. Therefore, non-furnishing of Form No. 67 before the due date under section 139(!) is not fatal to the claim for FTC. [Para 6]

The aforesaid decision has also been followed by a Division Bench of Tribunal Surat Bench in the case of Sanjay Patil v. Assessing Officer [IT Appeal No. 189/SRT/2021, dated 18-5-2022]. Following the view expressed in the aforesaid decision, it is to be held that the assessee is entitled to FTC and the Assessing Officer is to be directed to allow the claim. [Para 7]"

12.7 We find that similar issue came for consideration before this Tribunal in the case of Vinod Kumar Lakshmipathi in ITA No.680/Bang/2022 for the assessment year 2018-19, the Tribunal vide order dated 6.9.2022 held as under:

"4. We have heard the rival submissions and perused the materials available on record. The claim of the assessee has been denied while processing return of the assessee u/s 143(1) of the Income-tax Act,1961 ['the Act' for short] dated 11.6.2020 on the reason that assessee has not filed the Form No.67 along with return of income so as to claim the foreign tax credit. However, the same has been filed before the Ld. CIT(A) on 22.9.2018. The assessee has made the contention before Ld. CIT(A) that assessee has offered the foreign income of Rs.2,01,024/- and also paid tax on it at Rs.63,342/- and levying of additional tax of Rs.28,431/- is amounting to double taxation. In our opinion, the plea of the assessee is justified. The assessee has filed the copy of Form No.67 before Ld. CIT(A). He ought to have given direction to give credit for foreign tax which has been paid as per Form 67.

5. Further, we note that on identical issue, This Tribunal in the case of Brinda Rama Krishna (in ITA No. 454/Bang/2021 for AY.2018-19), order dated 17.11.2021 held that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. Therefore, non-furnishing of Form No.67 before the due date u/s 139(1) of the Act is not fatal to the claim for FTC. The findings of this Tribunal are reproduced below:

> *"2. The Assessee is an individual and during the previous year relevant to AY 2018-19 an ordinary resident in India. The Assessee worked with Ernst & Young Australia from 20.11.2017 till 16.05.2019. Since her global income was taxable in India, the Assessee offered to tax salary income earned for services rendered in Australia for the period from December 2017 to March 2018 to tax in India. The Assessee claimed foreign tax credit ("FTC") for taxes paid in Australia.*
>
> *3. There is no dispute that the Assessee is entitled to claim FTC. Rule 128 of the Income Tax Rules, 1962 (Rules) provides for giving FTC and reads thus:*
>
> *"Foreign Tax Credit.*
> *128. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:*
>
> *Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India."*
>
> *One of the requirements of Rule 128 for claiming FTC is provided by Rule 128 (8) & (9) of the Rules and the same reads thus:*

"(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;

(ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,—

(a) from the tax authority of the country or the specified territory outside India; or

(b) from the person responsible for deduction of such tax; or

(c) signed by the assessee:

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by,—

(A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;

(B) proof of deduction where the tax has been deducted.

(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 subsection (1) of section 139, in the manner specified for furnishing such return of income."

4. The Assessee claimed FTC of Rs. 4,73,779/- u/s. 90 of the Act read with Article 24 of India Australia tax treaty ("DTAA") in a revised return of income filed on 31.8.2018. The Assessee had not filed the Form 67 before filing the return of income. On realising the same, the Assessee filed Form 67 in support of claim of foreign tax credit on 18.04.2020. The revised return of income was processed by Centralized Processing Centre (CPC) electronically and intimation u/s 143(1) of the Act on 28.05.2020 was passed disallowing the claim of FTC.

5. The Assessee filed a rectification application before the AO on 15.06.2020 & 25.02.2021 and submitted that credit for FTC as claimed in the return should be given. In the rectification order dated 10.03.2021, the AO upheld the action on the ground that the Assessee has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.

6. On appeal by the Assessee, the CIT(A) vide Order dated 03.09.2021 confirmed the Order of AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is nonest in law. The CIT(A) also held that provisions of Rule 128 are mandatory in nature. The CIT(A)rejected the contention of the Assessee that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.

7. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee submitted that disallowance of FTC is bad in law. He submitted that Section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 24 of India Australia DTAA provides for credit for foreign taxes. Article 24(4)(a) is relevant in the present context. Same is extracted below:

"4. In the case of India, double taxation shall be avoided as follows:

(a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax;"

It was submitted by him that section 90 of the Act read with Article 24(4)(a) provides that Australian tax paid shall be allowed as a credit against the Indian tax but limited to proportion of Indian tax. Neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements. FTC is Assessee's vested right as per Article 24(4)(a) of the DTAA read with Section 90 and same cannot be disallowed for non-compliance of procedural requirement that is prescribed in the Rules.

8. It was further submitted by him that Section 295(1) of the Act gives power to the CBDT to prescribe Rules for various purposes. Section 295(2)(ha) gives power to the Board to issue Rules for FTC. The relevant extract is as follow:

"(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:—
……

(ha) the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under this Act;"

9. It was submitted that the Board has power to prescribe procedure to granting FTC. However, the Board does not have power to prescribe a condition or provide for disallowance of FTC. The procedure prescribed in Rule 128 should therefore be interpreted in this context. Rule 128 is therefore a procedural provision and not a mandatory provision.

10. It was further submitted that Rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee u/s 90 of the Act would be denied. The learned counsel for the Assessee submitted that in case the intention was to deny the FTC, either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. It was submitted that that there are many sections in the Act which specifically deny deduction or exemption or relief in case the return is not filed within prescribed time. Reference was made to section 80AC, 80-IA(7), 10A(5) and 10B(5). Such language is not used in Rule 128(9). Therefore, such condition cannot be read into Rule 128(9).

11. It was further submitted that Filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement. It was submitted that violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC. Reliance was placed on the decision of the Hon'ble Supreme Court, in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, (1992 Supp (1) Supreme Court Cases 21) wherein it observed that:

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

Further reliance was placed on the decision of the Hon'ble Supreme Court, in the case of Sambhaji and Others v. Gangabai and Others, reported in (2008) 17 SCC 117, wherein it has been held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. The procedures are handmaid and not the mistress. It is a lubricant and not a resistance. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. It was

submitted that filing of Form 67 as per the provisions of section 90 read with Rule 128(9) is a procedural law and should not control the claim of FTC.

12. It was further submitted that even in the context of 80IA(7), 10A(5) etc, wherein there is specific provision for disallowance of deduction/exemption if audit report is not filed along with the return, various High Courts have taken a view that filing of audit report is directory and not mandatory. Reliance in this regard was placed on the following cases:

- *CIT vs Axis Computers (India) (P.) Ltd [2009] 178 Taxman 143 (Delhi)*
- *PCIT, Kanpur vs Surya Merchants Ltd [2016] 72 taxmann.com 16 (Allahabad)*
- *CIT, Central Circle vs American Data Solutions India (P.) Ltd [2014] 45 taxmann.com 379 (Karnataka)*
- *CIT-II vs Mantec Consultants (P.) Ltd [2009] 178 Taxman 429 (Delhi)*
- *CIT vs ACE Multitaxes Systems (P.) Ltd [2009] 317 ITR 207 (Karnataka).*

13. It was submitted 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 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. Reliance in this regard is placed on the following cases and circulars:
Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)
CIT v Eli Lily & Co (India) P Ltd (2009) 178 Taxman 505 (SC)
GE India Technology Centre P Ltd v CIT (2010) 193 Taxman 234 (SC)
Engineering Analysis Centre of Excellence P Ltd v CIT (2021) 125 taxmann.com 42 (SC) (Pg 106-109 of PB 2-Para 25 & 26)
CBDT Circular No 333 dated 2/4/82 137 ITR (St.)

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.

14. The learned DR reiterated the stand of the revenue that rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to give FTC. He also submitted that the issue was debatable and cannot be subject matter of decision in Sec.154 proceedings which are restricted in scope to mistakes apparent on the face of the record.

15. In his rejoinder, the learned counsel for the Assessee submitted that Form No.67 was available before the AO when the intimation u/s.143(1) of the Act dated 28.5.2020 was passed. He pointed out that the AO or the CIT(A) did not dismiss the Assessee application for rectification u/s.154 of the Act on the ground that the issue was debatable but rather the decision was given that the relevant rule was mandatory and hence non-furnishing of Form No.67 before the due date u/s.139(1) of the Act was fatal to the claim for FTC.

16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard.

17. In the result, the appeal is allowed."

6. In view of the above order of the Tribunal, we direct the AO to give credit for foreign tax as per Form 67 filed on 22.9.2018 before Ld. CIT(A) after due verification.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes."

12.8 In view of the above, respectfully following the decisions of the coordinate bench we hold that the foreign tax credit cannot be denied to the assessee. Assessee is directed to file relevant details/evidences in support of her claim. We thus, remand this issue back to the AO to consider the claim of the assessee in accordance with law based on the verification carried out in respect of the supporting documents filed by the assessee. It is ordered accordingly.

13. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21st Apr, 2025

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 21st Apr, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.