IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA 1753/MUM/2025
(A.Y. 2019-20)

Jaico Publishing House, A-2 Jash Chambers, Sir Phirozshah Mehta Road, Fort, Mumbai - 400 001, Maharashtra	v/s. बनाम	Income Tax Officer, Ward Circle – 17(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAFJ4986G		
Appellant/अपीलार्थी	..	**Respondent**/प्रतिवादी

Appellant by :	Shri Harsh Kothari, AR
Respondent by :	Ms. Kavitha Kaushik, (Sr. DR)

Date of Hearing	05.05.2025
Date of Pronouncement	14.05.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal emanating from the appellate order dated 27.01.2025 is filed by the assessee against the order passed by the Learned ADDL/JCIT(A)-6 Delhi [hereinafter referred to as "CIT(A)"] pertaining to the Intimation order passed u/s143(1) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 29.03.2021 for the Assessment Year [A.Y.] 2019-20.

2. The grounds of appeal are as under:-

1. *The Learned Addl./ Joint Commissioner of Income-tax (Appeals) ("CIT(A)") erred in not directing the Centralised Processing Centre, Bangalore ("CPC") to grant foreign tax credit of Rs. 9,41,448 under section 90 of the Income Tax Act, 1961 ("the Act") in respect of taxes paid in United States of America ("USA").*
2. *The CIT(A) erred in not appreciating that the assessee is eligible for claim of tax relief u/s. 90 of the Act in respect of taxes paid in USA and the action of CPC in not granting the same in intimation issued u/s. 143(1) of the Act is bad in law and unjustified.*
3. *The CIT(A) erred in not appreciating that Form 67 claiming foreign tax credit was filed by the assessee before the due date of filing return of income and was subsequently revised on noticing an inadvertent error in it.*
4. *The CIT(A), after having held that denial of foreign tax credit was not justified once revised form 67 was filed and error rectified, erred in directing the assessee to file a petition under section 119(2)(b) before the Principal Commissioner of Income Tax seeking condonation of delay in revising Form 67 and directing the Assessing Officer to verify and allow the foreign tax credit subject to the decision on the condonation application.*

3. Brief facts of the case are that the assessee, a partnership firm engaged in the business of publishing, printing and sale of books filed its return of income for the relevant year on 16 October 2019 i.e. within the due date specified under section 139(1) of the Act as extended by order no. F.No. 225/157/2019/ITA.II dated 27th September 2019.It had earned foreign income in respect of sale of e-books outside India on which foreign taxes credit('FTC') of Rs. 9,41,448/- were deducted at source from the payments made to it. In the return of income filed, it claimed FTC as per the provisions of section 90 of the Act. In compliance with the provisions of Rule 128 of the Income Tax Rules, 1962 ('the Rules'), it electronically filed FTC on the income tax portal on

26thSeptember 2019 i.e. before the due date specified for furnishing the return of income under section 139(1) of the Act. However, it is stated that inadvertently, the assessee wrongly mentioned in relevant Form that FTC of Rs.9,41,448/- was being claimed under section 91 of the Act in place of under section 90 of the Act. Its return of income was processed under section 143(1) of the Act and an intimation was issued on 29thOctober 2021 wherein the assessee was not given credit for FTC of Rs. 9,41,448/- under section 90 of the Act. It challenged the intimation before the ld.CIT(A). **Further, realizing the inadvertent mistake which had crept in Form no. 67, the assessee filed a revised Form no. 67 on 9th November 2022 claiming FTC of Rs. 9,41,448/- under section 90 of the Act as opposed to wrong section 91 mentioned in the original Form no. 67.**

4. The ld.CIT(A) passed an order observing inter alia that the denial of FTC was based on an apparent discrepancy in Form no. 67 where the claim was erroneously reflected under section 91 instead of section 90 of the Act which was subsequently rectified by filing revised FTC after the issuance of the intimation under section 143(1) of the Act. He admitted that denial of FTC is not justified when revised FTC has been filed and error rectified. However, given the procedural error in Form no. 67, it was suggested that the assessee may file a condonation petition

under section 119(2)(b) of the Act before the Principal Commissioner of Income Tax. Such a petition would allow the appellant to seek condonation of the delay in revising Form No. 67 which was filed after order u/s 143(1) was passed and such condonation of delay shall enable the authority to reconsider the FTC claim on merits.

5. Being aggrieved by the above directions of the CIT(A), the assessee has preferred an appeal before this Bench claiming that having filed the original FTC within the specified time, the revised Form no. 67 filed subsequently to rectify the mistake in the original form has to be treated as simply substituting the original FTC from the date of filing the original Form and, accordingly, the revised form must be treated as having been filed within the time limits specified in Rule 128.Without prejudice to this contention, it is pleaded that even assuming that the revised form filed after the due date of filing return of income does not substitute the original form from the date of filing of original form, the assessee has place reliance on certain judicial decisions wherein a view has been consistently taken that filing of FTC is not mandatory but a directory requirement for claiming FTC and that non-filing thereof within the specified time cannot deprive an assessee of FTC. In the case of Brinda Rama Krishna v. ITO (2022) 193 ITD 840 (Bangalore)it was held that Rule 128(9) does not provide for disallowance of FTC in case of

delayed filing of Form as it is not mandatory but a directory requirement and that DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. It further relied on Sonakshi Sinha vs CIT(A) (2022) 197 ITD 263 (Mum), Sumeet Subhash Narang vs DCIT (ITA no. 818/Mum/2024), Power and Energy Consultants India (P) Ltd. v. ITO (2024) 159 taxmann.com 645 (Delhi-Trib.) and Rohan Hattangadi v. CIT(A) (ITA no. 1896/Mum/2022).

5.1 Per contra the ld. Departmental Representative has placed reliance on the orders of the authorities below.

6. On careful consideration of the facts culled from the records, it is evident that the FTC was denied while processing the return by CPC only on a technical ground arising due to incorrect mentioning of relevant provision of section in the prescribed form. However, though the ld.CIT(A) appreciated this inadvertent mistake he did not grant any relief to the assessee once again on technicalities even without disputing the fact that subsequently the assessee had submitted a revised form correcting its earlier mistake. We find that similar issue has been under consideration in a catena of decisions by various courts of law and more specifically before coordinate benches of Tribunal across the country

and there is consistency in the decisions that such bonafide mistakes cannot deprive the assessee a genuine claim of it.

7. In the case of **Brinda RamaKrishna v. ITO (2022] 193 ITD 840** (Bangalore ITAT) ,the assessee claimed FTC under section 90 in the revised return of income filed for the AY 2018-19 on 31 August 2018 but did not file Form 67 by oversight. On realizing the same, she filed Form 67 on 18 April 2020. The CPC disallowed the FTC claim, which was upheld by the appellate authority. The Hon'ble ITAT 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."

7.1 In the case **of Sonakshi Sinha vs CIT (2022] 197 ITD 263 (Mumbai ITAT)**,the assessee filed Form 67 on 20.01.2020 during the course of assessment proceedings. FTC credit was disallowed on the ground that the appellant had failed to comply with Notification No. 9 dated 19 September 2017 as well as provisions of Rule 128(9). The Tribunal relying on the Bangalore Tribunal decision in case of Brinda Ramakrishna v. ITO (supra) held

"that assessee was eligible for FTC. The Tribunal held that while laying down a particular procedure, if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory."

7.2 In the case of **Rameshwar Prasad Shrivastava vs. ITO** in **ITA, No. 1839/Del/2023)** held as under:-

"5. That the claim of FTC was made by the assessee in terms of section 90 of the Income Tax Act. It is a settled principle that where is there is special agreement/ DTAA signed by the government, the specific provisions made in such agreement shall prevail over the general provisions contained in the Income Tax Act. The CBDT vide its Circular No. 333 dated 02/04/1982 has held that:-

SECTION 90. AGREEMENT WITH FOREIGN COUNTRIES [CORRESPONDING TO SECTION 40A OF THE 1922 ACT]

627. Specific provisions made in double taxation avoidance agreement Whether it would prevail over general provisions contained in Income- tax Act

1. It has come to the notice of the Board that sometimes effect to the provisions of double taxation avoidance agreement is not given by the Assessing Officers when they find that the provisions of the agreement are not in conformity with the provisions of the Income-tax Act, 1961.

2. The correct legal position is that where a specific provision is made in the double taxation avoidance agreement, that provisions will prevail over the general provisions contained in the Income-tax Act. In fact that the double taxation avoidance agreements which have been entered into by the Central Government under section 90 of the Income-tax Act, also provide that the laws in force in either country will continue to govern the assessment and taxation of income in the respective countries except where provisions to the contrary have been made in the agreement.

3. Thus, where a double taxation avoidance agreement provides for a particular mode of computation of income, the same should be followed, irrespective of the provisions in the Income-tax Act. Where there is no specific provision in the agreement, it is basic law, i.e., the Income-tax Act, that will govern the taxation of income.

6. 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 overrides the provisions of the Act, the assessee has vested right to claim the FTC under the tax treaty, and the same cannot be disallowed for mere delay in compliance of a procedural provision. In other words, we would like to submit 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 only 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.

7. That the lower authorities intends to disallow the claim of the assessee in terms of Rule 128(9), however as stated above, the provisions laid down in the Income Tax Rules shall stand to be overridden by the specific provisions mentioned in the DTAA more so to the extent that the same is beneficial to the tax payer. And as such, since the DTAA does not specifically state to disallow the claim of FTC on mere delay in filing of Form 67, we would submit that the disallowance made by the CPC and further confirmed by the CIT(A) is arbitrary, unjustified and fit to be deleted.

8. That lastly, we would like to contend that this being a debatable issue, the disallowance made by CPC was uncalled as the same cannot be termed as an adjustment in terms of section 143(1). In a similar matter before the Hon'ble ITAT Kolkata Bench in the case of **Surendra steel Pvt Ltd Vs CPC in ITA No. 78/Kol/2022 dated 20/05/2022,** it was held as below:-

"*We have duly considered rival contentions and perused the material available on record. To our mind there are two issues involved. First being the procedural irregularity and second the legitimate quantification for disallowance. If the adjustment has been made on the basis of first defect i.e., for procedural irregularity then according to the decisions referred by the Id. Counsel for the assessee, this irregularity is not fatal enough to deny the claim of deduction u/s 80IC of the Act. More so, when in response to the first proposed adjustment, the assessee has reiterated submission of Form 10CCB. As far as the arguments raised by the Id. D/R is concerned, if a disallowance is to be made after filing of Form 10CCB, then it is a debatable issue and the same is not permissible u/s 143(1) in a prima facie adjustment and the assessee should have been given a notice for that. In other words, if a disallowance is required to be established by arguments and long drawn process of reasoning on points, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment. In view of the above discussion, we delete the disallowance of deduction u/s ITA No.- 601/Del/2024 Suchi Agrawal 80IC of the Act, made by the Assessing Officer and upheld by the Ld. CIT(A) and allow the appeal of the assessee.*"

7.3 In the case of **Vinod Kumar Lakshmipati Vs CIT(NFAC) Delhi - 145 taxmann.com 235 - ITAT Bangalore**, it was held that:-

"Section 90, read with section 90A, of the Income-tax Act, 1961 and ride 128 of the Income-tax Rules, 1962 Double Taxation Relief - Where agreement exists (Foreign tax credit) Assessment year 2018- 19-Assessee claimed foreign tax credit under section 90/90A Assessing Officer disallowed claim, on ground that assessee had not filed Form No. 67 along with return Assessee filed Form No. 67 before Commissioner (Appeals) Commissioner

(Appeals) held that since assessee had failed to file Form No. 67 within due date specified for filing return under section 139(1), Assessing Officer had rightly disallowed claim for foreign tax credit - It was noted that Bangalore Bench of Tribunal on identical issue in case of Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 held that non-furnishing of Form No. 67 before due date specified for furnishing return under section 139(1) was not fatal to claim for foreign tax credit - Whether Assessing Officer was to be directed to give credit for foreign tax as per Form No. 67 filed before Commissioner (Appeals) Held, yes [Paras 5 and 6] [In favour of assessee]

7.4 In **Ritesh Kumar Garg Vs ITO** in ITA No. 261/JP/2022 dated 15/09/2022 - ITAT Jaipur Bench held that:-

"filing of Form 67, in my view, is a procedural/directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. There are no conditions prescribed in DTAA that FTC can be disallowed for non compliance of any procedural provision, therefore, the provisions of DTAA override the provisions of the Act. As the assessee has vested right to claim the FTC under the tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision."

7.5 In **Sanjeev Agarwal Vs DCIT** in **ITA** No. **71/JP/2023 dated 10/05/2023** - ITAT Jaipur bench held that:-

"Form 67 filed by the respective assessees, even after the end of the relevant assessment year makes the assessee entitled to claim FTC. Therefore, considering the facts of the present case, the FTC deserves to be allowed to the assessee even if Form 67 was filed by the assessee after the due date of filing the return under section 139(1) of the IT Act, 1961, and in our view not allowing foreign tax credit by AO (CPC) was nothing, but a mistake apparent on record. Therefore, we direct the revenue to allow the claim of the assessee."

7.6 In the case of **Hertz Software India Pvt Ltd. Vs the Assistant Commissioner of Income Tax, Circle 3 (1)(1), Bangalore, in ITA No. 29/Bang/2021 ,** the coordinate Bench held that:

> *"6. 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 This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms. Brindu Kumar Krishna us. ITO in ITA no.454/ Bang/2021 by order dated 17/11/2021."*

7.7 In the case of **Anand Mahabal Shetty, Mumbai vs Assistant Director of Income Tax, CPC**. **In ITA NO. 593/Mum/2025** dated 18 March, 2025, it was held as below:

> *"3. .....We are of the view that vested right of the assessee for claim of foreign tax credit cannot be denied for some procedural lapse. Therefore, in the interest of justice, we condone the delay in filing such Form No. 67 and restore the matter back to the file of Ld. Assessing Officer for allowing the credit of foreign taxes paid after due verification under the provisions of law. Ground No. 1 & 2 of the appeal are accordingly allowed."*

8. In the light of foregoing discussions, we are of the considered opinion that filing of Form-67 is a directory not mandatory requirement and violation of procedural norm does not adversely affect the substantive rights or claims. The ld.CIT(A) was not justified in rejecting the claim of the assessee even though he admitted that the assessee had a deserving case. His action is in violation of principle of natural justice and fair tax proceedings. Since in the present case the claim of the assessee was denied on a technical aspect without going into the merits of the FTC, therefore, we deem it fit to restore the issue to the files of the ld.AO who is directed to decide *de novo* the claim of foreign tax credit as

per the provisions of the law after admitting/accepting Form -67 and also after affording fair opportunity of hearing to the assessee.

9. In the result, the appeal is allowed for **statistical purposes.**

Order pronounced in the open court on 14/05/2025.

Sd/-	**Sd/-**
AMIT SHUKLA	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 14.05.2025
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.