

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.161/Nag./2025
(Assessment Year : 2021-22)

Shri Akshay Devidas Tajane
Ekori Ward, Near Shri Talkies Chowk
Chandrapur 442 402 PAN – ANOPT0814C

..... Appellant

v/s

Income Tax Officer
Ward-1, Chandrapur

..... Respondent

Assessee by : Shri Mahavir Atal
Revenue by : Shri Surjit Kumar Saha

Date of Hearing – 13/05/2025

Date of Order – 27/05/2025

ORDER

Captioned appeal preferred by the assessee challenging the impugned order dated 10/01/2025, passed by the learned Commissioner of Income Tax (Appeals)-1, Gurugram, [*"learned CIT(A)"*], for the assessment year 2021-22.

2. Following grounds have been raised by the assessee:-

<i>Sr. no.</i>	<i>Section</i>	<i>Issue</i>	<i>Grounds of Appeal</i>
1.	253	<i>Denial of relief u/s 90 at ₹ 1,94,852</i>	<i>The filing of Form no.67, is a procedural / directory requirement and is not a mandatory requirement</i>
2.	253	<i>Denial of relief u/s 90 at ₹ 1,94,852</i>	<i>In any case, the delay in filing Form no.67, should have been condoned.</i>

3.	253	Denial of relief u/s 90 at ₹ 1,94,852	The CPC/Addl. JCIT(A)-1, Guru-gram is not justified in denying the relief under section 90, without giving any reason and also opportunity
4.	253	Denial of relief u/s 90 at ₹ 1,94,852	It is submitted that disallowance of FTC is bad in law.
5.	253	General	That the appellant please be permitted to raise add, alter, modify any grounds of appeal at the time of hearing.

3. Facts in Brief:– The assessee is a salaried entity and during the year he was employed with M./s. Cognizent Technology Solutions India Pvt. Ltd. The assessee was sent abroad and posted in Netherlands for service by his employer, where he derived salary and paid the taxes of that country of which Form-67 had been filed by the assessee on 28/02/2022, claiming relief of ₹ 1,94,852, under section 90 of the Income Tax Act, 1961 ("*the Act*"). The return of income was prepared by the assessee himself which was uploaded and uploaded disclosing the total income of ₹ 27,238,60. There was no change in the income returned at ₹ 27,23,860, as computed under section 143(1) of the Act on 13/10/2022, however, the relief claimed under section 90 of the Act at ₹ 1,94,852, was denied.

4. Subsequently, the assessee filed an application under section 154 of the Act, with a request to allow the relief claimed at ₹ 1,94,852, under section 90 of the Act, however, on 25/01/2023, the said claim of the assessee also denied the Central Processing Centre. Upon issuance of such denial by way of the impugned order passed by the CPC, the assessee being aggrieved filed appeal before the National Faceless Appeal Centre, Delhi, i.e., first appellate authority.

5. The first appellate authority dismissed the appeal filed by the assessee with the following observations:-

"5.2.1 The appellant in his reply reproduced above, was employed with M/s COGNIZENT TECHNOLOGY SOLUTIONS INDIA PVT LTD. and during F.Y. 2020-21 posted in Netherlands for service by his employer where he received salary for the A.Y 2021-22 and paid the taxes of that country of which Form 67 had been filed by the appellant on dt 28.02.2022, under Acknowledgement No. 2703111680280222 and claimed relief of Rs. 1,94,852/- under section 90 of the Act.

5.2.2 On perusal of reply reproduced above as well as record available on system, the appellant had filed his income tax return and Form 67 for the A.Y. 2021-22 after due date prescribed in the provision under section 139(1) of the Act i.e. on 28.02.2022 whereas the extended due date for filing of ITR was 31.12.2021. Further, it is relevant to mention here that as per Rule 128 of the Income Tax Act Rules, clause (9) of rule 128, the 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 which is reproduced here under:-

"(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"

5.2.3 Keeping in view the facts of the case, documents available on record and provisions contained in Rule 128(9) of Income Tax Rules, applicable for the year under consideration, the processing done by the CPC is correct and the benefit of Foreign Tax Credit has been denied as per the provision contained in Income Tax Act and Rules. It is pertinent to mention here that the amended provision of Rule 128(8) is not applicable for the year under consideration. Considering the facts and circumstances of the case, I am of the view that as no wrong can be attributed to AO, CPC, the grounds taken by the appellant are not maintainable and thus liable to be dismissed."

Consequent upon passing of the impugned order so passed by the first appellate authority, the assessee being aggrieved is in further appeal before the Tribunal.

6. Before me, the learned Counsel, Shri Mahavir Atal, appearing on behalf of the assessee, assailing the impugned order so passed by the first appellate authority, reiterated the submissions made before the authorities below. He drew the attention of the Bench towards the Co-ordinate Bench decision of

the Tribunal, Delhi Bench, rendered in Suchi Agrawal v/s ITO, ITA no.601/Del./2024, A.Y. 2020–21, vide order dated 31/05/2024, wherein the Tribunal has decided the very same and identical issue in favour of the assessee and against the Revenue, by holding as under:-

"6. There is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the ITA No.- 601/Del/2024 Suchi Agrawal 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 M/s 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.

As such, we would like to contend that the CPC was not right in disallowing the claim of FTC solely on the ground that Form 67 was filed belated.

9. That in support of our above contentions above, we would like to rely upon the following decisions of the coordinated Benches of ITAT:-

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

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.

*ITA No.- 601/Del/2024 Suchi Agrawal * 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 assessee, 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. In the case of Vikash Daga vs. ACIT (supra), held as under:-

"8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs.1887114/-. In our considered opinion filing of form 67 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. We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act."

9. In the light of foregoing discussions, we are of the opinion that filing of Form 67 is a directory not mandatory and violation of procedural norm does not adversely affect the substantive rights or claims.

10. On the basis of discussion, submissions and abovementioned binding precedents, we set aside the orders of authorities below and ITA No.-601/Del/2024 Suchi Agrawal restore the matter to the file of Ld. AO with the direction to verify the assessee's claim in respect of foreign tax credit as per law after admitting / accepting Form 67 and decide the issue in accordance with law.

11. Consequently, the appeal of assessee is allowed as indicated above for statistical purpose."

7. The learned Departmental Representative, Shri Surjit Kumar Saha, on behalf of the Revenue could not controvert the above findings of the Tribunal on identical issue and relied upon the impugned order so passed by the first appellate authority. Moreover, I am also not convinced with the arguments put forth by the learned D.R. in view of the substantial legal jurisprudence. Consequently, I set aside the impugned order passed by the first appellate authority and direct the Assessing Officer to give credit of foreign tax credit by admitting Form no.67, after due verification.

8. In the result, assessee's appeal is allowed for statistical purposes in terms indicated above.

Order pronounced in the open Court on 27/05/2025

NAGPUR, DATED: 27/05/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur