

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.491/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2021-22)**

Srikanth Atluri 30-13/1-18, Durgaagraharam Vijayawada – 520002 Andhra Pradesh [PAN:AFRPA5568H]	v.	Income Tax Officer – Ward – 2(3) Vijayawada, Andhra pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	14.05.2025
घोषणा की तारीख/Date of Pronouncement	:	09.06.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067406378(1) dated 07.08.2024 for the

A.Y.2021-22 arising out of order passed 154 of the Income Tax Act, 1961 (in short 'Act') dated 25.05.2023.

2. At the outset, it is noticed from the appeal record that there is a delay of 51 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. Authorised Representative [hereinafter "Ld.AR"] drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

"The appellant respectfully submits the following for the condonation of delay in filing the appeal:

The order under Section 250 of the Income Tax Act, 1961, was passed on 07.08.2024 and uploaded to the IT portal. The appellant, an employee working in the United Kingdom, was unable to act promptly due to unavoidable personal circumstances.

It is stated that the appellant's father passed away on 23.06.2024. Being the son of the deceased father, the appellant had to perform the last rites, including the immersion of ashes in Kashi and other associated rituals, which continued until 20.07.2024. Thereafter, the appellant fell ill with viral fever, cold, and cough, confining him to his home until 04.08.2024. Subsequently, he returned to the United Kingdom on 02.09.2024,

On 18.11.2024, a relative residing in the appellant's house was informed by an Income Tax Inspector about an outstanding demand. Upon receiving this information, the appellant immediately contacted local auditors, M/s. Suresh & Babu, who advised him to approach senior counsel Sri C. Subrahmanyam in Visakhapatnam. Counsel required a week to review the case, and the appeal was eventually filed on 27.11.2024, resulting in a delay of 51 days.

The appeal should have been filed by 06.10.2024 but was delayed due to the above-mentioned circumstances. The appellant submits that the delay was not intentional or due to any mala fide intent but arose from genuine and unavoidable personal reasons.

In light of the above, the Hon'ble Bench is kindly requested to condone the delay of 51 days in filing the appeal and consider the case on its merits”

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 51 days. Therefore, we hereby condone the delay of 51 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are, assessee being a Non-Resident Individual filed his return of income on 30.09.2021 admitting a total income of Rs. 31,51,720/- for the A.Y. 2021-22. While filing the return of income assessee also claimed relief under section 90 of the Act for Rs. 5,73,915/- by filing Form No. 67 belatedly on 19.11.2022. The return was summarily processed on 28.10.2022 without granting relief claimed by the assessee under section 90 of the Act. After filing the Form No 67, the assessee filed a petition under section 154 of the Act on 15.05.2023 seeking reprocessing of the return filed. The Centralized Processing Center, Income Tax Department, while processing the petition filed under section 154 of the Act did not consider the Form No. 67 filed by the assessee thereby disallowing the claim for relief under section 90 of the Act.

5. Feeling aggrieved by the order passed on rectification petition, assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) considering the submissions of the assessee and by relying on the decision of the Co-ordinate Bench of the Tribunal in the case of Muralikrishna Vaddi v. ACIT[142 taxmann.com 32 (Visakhapatnam – Trib.)] observed that assessee has not filed Form No. 67 before the due date for filing the return of income as specified under Rule 128(9) of the I.T. Rules and no proper explanation being furnished by the assessee for the delay and dismissed the appeal of the assessee.

6. Feeling aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising following grounds of appeal: -

“1. That, on the facts and circumstances of the case and in law, the order passed u/s 154 of the IT Act, 1961, dt. 25.05.2023, and upheld by the Learned Commissioner of Income Tax (Appeals) ["CIT(A)], National Faceless Appeal Centre ["NFAC"], vide order passed u/s 250, dt. 07.08.2024, is contrary to the facts of the case and the provisions of law.

2. The learned CIT(A) erred in law and on facts in disallowing the foreign tax credit solely on the ground that Form 67 was not filed within the stipulated time under Rule 128(9) of the IT Rules, 1962 as filing of such form is directory and not mandatory.

3. The learned CIT(A) failed to appreciate that the appellant had filed Form 67 before the application u/s 154 of the IT Act was filed, rectifying the original return.

4. The Ld.CIT(A) erred in not considering judicial precedents that have held that procedural delays should not affect the substantive rights of the taxpayer.

5. *The Ld.CIT(A) erred in disallowing the FTC claim without considering that the appellant has fully discharged its tax liability in the foreign jurisdiction and any disallowance would result in double taxation.*

6. *The Ld. CIT(A) failed to appreciate that Rule 128(9) does not provide for any penal consequence or disallowance in case of delayed filing of Form 67, and hence, the disallowance is arbitrary and unjustified.*

7. *In view of the above, it is respectfully prayed that the Hon'ble Tribunal may kindly allow the foreign tax credit to the appellant and set aside the disallowance made by the CIT(A)."*

7. The only issue agitated by the assessee is with respect to the disallowance of Foreign Tax Credit wherein the Form No. 67 was filed belatedly.

8. At the outset, Ld.AR submitted that filing of Form No. 67 is directory in nature and not mandatory. Further he submitted that the provisions of Double Tax Avoidance Agreement (DTAA) override the Income Tax Act, and hence when the DTAA provides by way of Article 24 for the credit of taxes paid on the same income in another country it cannot be denied to the assessee on the basis of procedural lapses which is arising out of the delay in filing of Form No.67 by the assessee.Ld.AR placed reliance on the following cases:

- i. *Shri Pradeep Lankapalli v. DCIT in ITA No. 560/Bang/2021 dated 31.01.2022.*
- ii. *M/s. 42 Hertz Software India Pvt. Ltd. v. ACIT in ITA No.29/Bang/2021 dated 07.03.2022.*
- iii. *Baburao Atluri v. DCIT in ITA No. 108/HYD/2022 dated 22.07.2022.*
- iv. *Shri Ritesh Kumar Garg v. ITO in ITA No. 261/JP/2022 dated 15.09.2022.*
- v. *Purushothama Reddy v. ADIT (Int. Taxation)-1 in ITA No.526/HYD/2022 dated 05.12.2022.*

- vi. *Atanu Mukherjee v. ITO in ITA No. 439/KOL/2022 dated 20.12.2022*
- vii. *Ashish Agrawal v. ITO in ITA No. 337/HYD/2023 dated 26.09.2023*
- viii. *CES Limited v. DCIT, CIRCLE – 1(1) dated 22.03.2024*
- ix. *Ms. Brinda Rama Krishna v. ITO – 5(3)(1) in ITA No.454/Bang/2021 dated 17.11.2021.*

9. He therefore pleaded that many judicial pronouncements as cited in various case laws above, have held that filing of Form No. 67 is directory and not mandatory. He prayed that the Foreign Tax Credit be allowed to the assessee.

10. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] heavily relied on the orders of the Revenue Authorities. She also pointed out that Ld. CIT(A) relied in the case of Muralikrishna Vaddi v. ACIT (supra) wherein on similar circumstances Foreign Tax Credit was not allowed by this Tribunal. She therefore pleaded that the order of the Ld. CIT(A) be upheld.

11. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee has filed the Form No. 67 belatedly on 19.11.2022 for the AY 2021-22 after the return was processed under section 143(1) of the Act on 28.10.2022. Subsequently, the assessee has filed rectification petition after filing the Form No.67 on 19.11.2022. It was the contention of the Ld.AR that as per Rule 128(9) of the I.T. Rules, Foreign Tax Credit cannot be denied for delay in filing the Form No. 67 which is only a

procedural aspect. It was also further contended by the Ld.AR that there is no specific provision for disallowances of taxes in Rule 128(9) of I.T.Rules if it is not filed on or before the due date or filing the return of income under section 139 of the Act. The Article 24 of the DTAA between India-United Kingdom also allows tax credit to the assessee if taxes have been paid in the other country. On this issue, the CBDT vide notification dated 18.08.2022, amended the I.T. Rules 1962 w.e.f 01.04.2022 wherein Rule 128(9) is substituted, which is reproduced below: -

"(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 end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139.

Provided that where the return has been furnished under sub-section (8A) of section 139, 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) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished."

12. Further, Explanatory Memorandum to the amendment to Rule 128(9) of the I.T. Rules also provides that all the claims of Foreign Tax Credit furnished during the financial year 2022-2023, due to the aforesaid amendment effective from 01.04.2022 shall be allowed even if it is filed belatedly. Explanatory

Memorandum to the amendment to Rule 128(9) of the I.T. Rules is reproduced below for reference:

“Explanatory Memorandum: This amendment is effective from the 1st day of April, 2022 so that it applies to all the claims of foreign tax credit furnished during the financial year 2022-2023. It is hereby certified that no person is being adversely affected by giving retrospective effect to this rule.”

13. From the above amendment we observe that legislature allows the assessee to make the claim for the Foreign Tax Credit even though if it is filed belatedly due to various circumstances. Article 24 of the DTAA also allows the credit for taxes paid in the other countries. Since the amendment being a clarificatory amendment it can be applied retrospectively. Accordingly, we are of the considered view that the Form No. 67 filed belatedly by the assessee i.e., on 19.11.2022 claiming Foreign Tax Credit of Rs. 5,73,915/- under section 90 of the Act deserves to be allowed.

14. The reliance placed by the Ld. DR in the case of jurisdictional Tribunal cannot be applied to the instant case as the facts in that case are distinguishable wherein the assessee has filed the Form No. 67 after a period of more than two years during the scrutiny assessment proceedings. However, in the instant case, assessee realising his mistake filed Form No. 67 immediately on receipt of intimation under section 143(1) of the Act and also filed rectification petition under section 154 of the Act.

15. Respectfully following the various judicial pronouncements as cited by Ld.AR, and also considering the amendment to Rule 128 including the Explanatory Memorandum, we direct the Ld. AO to allow the Foreign Tax Credit of Rs. 5,73,915/- to the assessee, even though the Form No. 67 is filed belatedly. Accordingly, grounds raised by the assessee are thus allowed.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09th June, 2025.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated:09.06.2025

Giridhar, Sr.PS

Sd/-

(एसबालाकृष्णन)

(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Srikanth Atluri**
30-13/1-18, Durgaagraharam
Vijayawada – 520002
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2(3)**
Vijayawada, Andhra pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam