

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.853/Chny/2025
निर्धारण वर्ष/Assessment Year: 2020-21

Nanda Kumar Parthasarathy, 315, Ramaniyam Katima, 148, Pillaiyar Koil Street, Thuraipakkam, Chennai-600 097.	v.	The ITO, Non-Corporate Ward-15(1), Chennai.
[PAN: CDJPP 3991 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Y. Sridhar, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Gautham S. Mukundan, IRS
सुनवाईकीतारीख/Date of Hearing	:	03.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	07.07.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), Addl./JCIT (A)-1, Delhi, (hereinafter referred to as "the Ld.CIT(A)"), dated 11.03.2025 for the Assessment Year (hereinafter referred to as "AY") 2020-21.

2. At the outset, the assessee brought to our notice that the Ld.CIT(A) has refused to condone the delay of '100' days in filing of his appeal



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before him and therefore, didn't even adjudicate on the merits of the grounds of appeal. Having gone through the application for condonation of delay filed before the Ld.CIT(A), it is noted that assessee due to Covid-19 was suffering from acute pulmonary infection, which prevented him from filing of appeal, which we find to be excusable and therefore, we condone the delay in filing of appeal before the Ld.CIT(A) and proceed to examine the appeal on its merits.

3. The only grievance of the assessee is against the action of the Ld.CIT(A) denying the Foreign Tax Credit (FTC) as claimed by the assessee.

4. The brief facts are that the assessee, an individual, filed his return of income (RoI) for the AY 2020-21 on 18.11.2020 (within the extended time given by the CPC) declaring taxable income of Rs.49,33,060/- under the head income from salaries which the assessee received Rs.49,32,060/- as salary from a Australian company (M/s.Total Clarify Group PTY Ltd., Sydney) incorporated in Australia. The withholding tax of Rs.5,02,109/- made by the foreign company was duly claimed as relief u/s.91 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the ITR. However, the assessee inadvertently omitted to file Form 67, as required under Rule 128 of the Income Tax Rules, 1962, on or before the due date of filing the ITR u/s.139(1) of the Act. Hence, the CPC while



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processing the RoI/ITR denied the credit of Foreign Tax paid in Australia to the tune of Rs.5,02,109/-. According to the assessee, the said Form was later filed voluntarily on 25.11.2022 on coming to know about the omission. During the processing of the RoI, the CPC didn't ask the assessee 'as to why' the FTC claim should not be denied since Form 67 was not filed within the stipulated date. And in such an event, according to the Ld.AR, the assessee would have immediately uploaded Form No.67. Failure to give notice by the CPC before passing the intimation/demand order, was assailed as violation of natural justice.

5. On appeal, the Ld.CIT(A) has confirmed the action of the AO by refusing to condone the delay of '100' days, which we have condoned (supra). It is noted that the assessee has filed ITR for AY 2020-21 on 18.11.2020 declaring income of Rs.49,33,060/- and claimed FTC of Rs.5,02,109/- which amount was remitted/withheld by the foreign company in Australia, while giving assessee salary of Rs.49,33,060/-. The assessee while filing ITR inadvertently omitted to file Form 67 as required under Rule 128(9) of the Income Tax Rules, 1962 on or before the due date of ITR u/s.139(1) of the Act. However, it is not disputed that the assessee had filed belatedly Form 67 on 25.11.2022 and brought to the notice of the Ld.CIT(A) that he has filed Form 67 on 25.11.2022 during the course of first appellate proceedings. However, the Ld.CIT(A) dismissed the appeal without going into the merits of the grounds of



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appeal. We don't countenance this action of the Ld.CIT(A)/CPC. In the light of the settled position on the issue in hand, we are of the view that the condition prescribed for filing Form 67 along with RoI u/s.139(1) is directory in nature, and since, the assessee has filed the same before the first appeal was filed, the FTC claim ought to have been allowed since filing of Form 67 is directory and not mandatory. For such a proposition, we rely on the decision of the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy (WP No.5834 of 2022 & ors. order dated 06.10.2023), wherein their Lordships held that filing of this Form in terms of Rule 128 was only directory in nature. And further observed that the Rule is only for the implementation of the provisions of the Act and it would always be directory in nature. We also take note of the decision of Mumbai Tribunal, in its decision, titled as Sonakshi Sinha vs. CIT (142 Taxmann.com 414), wherein it was held as under: -

12. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question in this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income-tax Rules, 1962 provides that 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. We find that coordinate bench in 42 Hertz Software India (P.) Ltd. (Supra) wherein following its earlier order in the case of Ms. Brinda Rama Krishna (supra) it was held 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 and that 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 ITA No.990/Chny/2022 - 3 - Form No. 67. Same view is also



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taken by a coordinate division bench in Vinodkumar Lakshmiipathi v. CIT(A) [IT Appeal No. 680/Bang/2022, 6-9-2022. It is well settled 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. Admittedly, Rule 128 does not prescribe denial of credit of FTC. Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). Here it is not the case of violation of any of the provisions of the act but of the rule, which does not provide for any consequence, if not complied with. Therefore, respectfully following the decisions of the coordinate bench on this issue, we hold the assessee is eligible for foreign tax credit, as she has filed form number 67 before completion of the assessment, though not in accordance with rule 128 (9) of The Income-tax Rules, which provided that such form shall be filed on or before the due date of filing of the return of income. Accordingly, ground number 2 of the appeal of the assessee is allowed.

In the absence of any contrary decision on record and respectfully following the consistent view of Tribunal on this issue, we direct lower authorities to grant the foreign tax credit as claimed by the assessee.

5. The appeal stand allowed.

Respectfully following the same, we direct the Ld. CIT(A) to grant impugned Foreign Tax Credit to the assessee after verifying Form No.67.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 07th day of July, 2025, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,
दिनांक/Dated: 07th July, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF