

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.852/Chny/2025  
निर्धारण वर्ष/Assessment Year: 2020-21

Shri Ramasamy Jayakumar, No.5074, Block-5, Mapleton, 45, Velachery Main Road, Medavakkam, Kancheepuram-600 100.	v.	The DCIT, NCC-17(1), Chennai.
[PAN: AFSPR 6891 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S.P. Chidambaram, Advocate
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, Jaipur, (hereinafter referred to as "the Ld.CIT(A)"), dated 31.05.2024 for the Assessment Year (hereinafter referred to as "AY") 2020-21.



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**2.** At the outset, it is noted that there is a delay of '238' days in filing of the appeal. The Ld. Counsel for the assessee has explained the cause for the delay with supporting relevant materials; and therefore, we excuse the delay in filing of appeal for '238' days and proceed to hear the appeal on 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, claims to be a Resident and Ordinarily Resident (ROR) of India for the Assessment Year (AY) 2020-21. The assessee filed the original Return of Income (RoI) for AY 2020-21 under section 139(1) of the Income-tax Act, 1961 ("the Act") on 16<sup>th</sup> December 2020, declaring an income of Rs.58,04,949/- and claiming a Foreign Tax Credit ('FTC') of Nil. Thereafter, the assessee had filed a revised RoI for AY 2020-21 u/s.139(5) of the Act on 31 March 2021, declaring a higher income of Rs.60,54,600/- while claiming the FTC of Rs.4,13,409/- along with Form 67. According to the assessee, he was on an assignment to United States of America (USA) from 06<sup>th</sup> February 2020, where he worked for Ford Motor Company ('Ford USA'). Being an ROR, the assessee offered his income earned in USA (employment income) to tax in India. As the income earned in USA was at



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Rs.25,37,912/-, which was also taxed in USA, the assessee claimed relief u/s.90 of the Act amounting to Rs.4,13,409/-. The assessee filed Form 67 on 30.03.2021 supporting documents towards the claim of relief u/s.90 of the Act read with Rule 128 of the Income Tax Rules, 1962 (the Rules). The assessee received an intimation u/s.143(1) of the Act dated 25<sup>th</sup> November 2021 from the CPC/AO denying the relief claimed u/s.90 of the Act amounting to Rs.4,13,409/-.

**5.** On appeal, the Ld.CIT(A) has confirmed the action of the AO. It is noted that the assessee has filed ITR for AY 2020-21 on 16.12.2020 declaring income of Rs.58,04,949/- and then filed revised return u/s.139(5) of the Act on 31.03.2021 declaring Rs.60,54,600/- while claiming FTC of Rs.4,13,409/- [which was remitted/withheld by the foreign company in USA] along with Form 67. The assessee while filing ITR initially 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 filing ITR u/s.139(1) of the Act and noted to have not claimed FTC. However, it is not disputed that the assessee had filed belatedly Form 67 on 30.03.2021 along with revised return u/s.139(5) of the Act and brought to the notice of the Ld.CIT(A) that he has filed Form 67 albeit on 30.03.2021 [i.e. before the CPC had processed the ITR on 25.11.2021]. But, the CPC passed the intimation on 25.11.2021 denying the claim only on the ground that the assessee didn't file Form 67 before the due date of



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filing of the ITR u/s.139(1) of the Act, which action has been confirmed by the Ld CIT(A). We don't countenance this action of the Ld.CIT(A)/CPC, in the light of the settled position on this issue as held by the Hon'ble Madras High Court in the case of Duraiswamy Kumaraswamy (WP No.5834 of 2022 & ors. order dated 06.10.2023), wherein it was held by their Lordship 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. On this issue, we also note that the Mumbai Tribunal, in its decision, titled as Sonakshi Sinha vs. CIT (142 Taxmann.com 414), 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 taken by a coordinate division bench in Vinodkumar Lakshmipathi 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



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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 judicial precedents cited supra, 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 intimation u/s.143(1) of the Act was passed, the FTC claim ought to have been allowed. Hence, we direct Ld. CIT(A) to grant 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 07<sup>th</sup> 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: 07<sup>th</sup> July, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF