

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1498/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Balasubramanian
Saravanan,**
New No.116, Old No.74,
Kalavai Street,
Chennai – 600 002.

The Income Tax Officer,
Vs. Non-Corporate Ward 17(7),
Chennai.

PAN: ATQPS 8851E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Abhishek Murali, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR. V. Sreenivasan, CIT

सुनवाई की तारीख/Date of Hearing

: 16.07.2025

घोषणा की तारीख/Date of Pronouncement

: 21.07.2025

आदेश/ ORDER

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of Addl/JCIT(A)-1, Ludhiana, dated 29.03.2024 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. There is a delay of 360 days in filing the appeal. The assessee has filed a petition for condonation of delay and affidavit stating there in the reasons for belated filing of this appeal. The reason stated is that the assessee was pursuing alternative remedy for condonation of delay in filing Form 67 through a condonation petition u/s.119(2)(b) of the Act. However, the condonation petition was rejected on 18.03.2025. Upon rejection, immediately the assessee filed appeal before the Tribunal resulting in a delay of 360 days. On perusal of the same, we find there is sufficient cause for delay in filing this appeal before the Tribunal. Hence, we condone the delay in filing the appeal and proceed to dispose off the appeal on merits.

3. Brief facts of the case are as follows: The assessee is an individual. For the assessment year 2017-18, return of income was filed u/s.139(1) of the Act 31.07.2017 declaring total income of Rs.22,68,354/-. Subsequently, the assessee filed a revised return on 09.02.2018 returning an income of Rs.19,00,020/-. The return was processed and intimation was issued u/s.143(1) of the Act on 30.03.2019 wherein Foreign Tax Credit u/s.90/90A of the Act amounting to Rs.2,34,995/- claimed in the return of income was denied. On receipt of intimation issued u/s.143(1) of

the Act, the assessee had sought for rectification of the same, which was not considered by the CPC.

4. Aggrieved by the intimation issued u/s.143(1) of the Act for denying the claim of Foreign Tax Credit, the assessee filed appeal before the First Appellate Authority (FAA). The FAA confirmed the disallowance of FTC stating that the assessee has not filed the Form 67 till the processing of return. The Form 67 was filed only on 08.02.2022 i.e., after approximately 3 years of processing of return.

5. Aggrieved by the FAA's order passed u/s.250 of the Act, the assessee has filed the present appeal before the Tribunal. The Id.AR submitted that the issue in question is covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court judgment in the case of Shri Kuthoore Natarajan Venkatasubramanian vs. PCIT in W.P No.12578 of 2024 (judgement dated 26.09.2024) and order of the Bangalore Bench of the Tribunal in the case of Vinodkumar Lakshmi pathi vs. CIT(A) in ITA No.680/BANG/2025 (order dated 06.09.2022). The Ld.AR submitted that Form 67 was filed before the filing of appeal before the FAA. The Ld.AR submitted that in above two

judicial pronouncement, assessee had filed Form No.67 along with appeal filed before the FAA.

6. Per contra, the Id.DR supported the order of the First Appellate Authority.

7. We have heard rival submissions and perused the material on record. The assessee had filed the Form 67 only on 08.02.2022. The claim of FTC in Form 67 was denied for the reason that it was filed belatedly (not within the due date prescribed u/s.139(1) of the Act). On identical facts, the Hon'ble Madras High Court in the case of Shri Kuthoore Natarajan Venkatasubramanian, *supra* had held that filing of Form 67 is directory in nature and it is not a mandatory requirement. The relevant finding of the Hon'ble Jurisdictional High Court in the case of Vinodkumar Lakshmipathi, *supra* reads as under:-

“3. Learned Senior Standing Counsel for the respondents would strongly oppose stating that the petitioner should have filed Form-67 along with ROI, which was filed on 21.09.2020, whereas, the petitioner filed Form~67 only on 08.10.22 after the lapse of a period of two years. Therefore the revisional authority has rightly rejected the claim of the petitioner and the writ petition is liable to be dismissed.

4. I have considered the rival submissions made on either side and perused the materials available on record.

5 In the present case, the petitioner, who was working in foreign country, had filed his ROI for the assessment year 2020~21 on 21.09.2020 in India, but due to Covid out break he could not get necessary documents from foreign country and file Form~67 along with ROI. But, the petitioner uploaded the Form~67 on 08.10.2022. The reasons stated by the petitioner appears to be reasonable and genuine and further this Court in a similar case reported in (2024) 460 ITR 615 (Duraismwamy Kumaraswamy vs. Principal Commissioner of Income Tax and Other) passed the following order.

“9.In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of India from the assessment years 2018-2019 and 2019-2020. The petitioner admitted the fact that he has filed his return in India on August 10, 2019. The intimation under Section 143(1) was issued on March 26, 2020. However, he has filed the return without Form 67 which is required to be filed under Rule 128 to claim the benefit of foreign tax credit and the same came to be filed on February 2, 2021 which was well before the completion of the assessment year. The intimation under Section 143(1) was issued from the Centralized Processing Centre only on March 26, 2021.

10.According to the learned counsel appearing for the respondent, the procedure under rule 128 is mandatory and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income-tax and claimed the benefits of foreign tax credit. However, the petitioner would submit that it is not mandatory. The rule cannot make anything mandatory and it can be directory in nature, that too before the assessment, the claim to avail the benefits of foreign tax credit is filed. Therefore, it would amount to due compliance under the Act. The petitioner referred to the Judgment of the hon-ble Supreme Court in the case of CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 2015, wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.

11. The law laid down by the hon-ble apex court in CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without foreign tax credit, however the same was filed before passing of the final assessment order. The filing of foreign tax credit in terms of the rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the hon-ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed subsequent to the passing of the assessment order.

12. Further, in the present case, the intimation under Section 143(1) was issued on March 26, 2021, but the foreign tax credit was filed on February 2, 2021. Thus, the respondent is supposed to have provided the due credit to the foreign tax credit of the petitioner. However, the foreign tax credit was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore the impugned order is liable to be set aside.

13. Accordingly the impugned order dated January 25, 2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the foreign tax credit filed by the petitioner on February 2, 2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of foreign tax credit claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of foreign tax credit claim within a period of 8 weeks from the date of receipt of copy of this order.

6 *This Court, by following the judgment of the Hon-ble Supreme Court, held that filing of foreign tax credit in terms of Rule 128 is only directory in nature and not mandatory. In the present case the petitioner was working in United Kingdom and earned Rs.43,06,224/~. The petitioner filed return of income in India for the assessment year 2020~2021 on 21.09.2020 showing the income earned in the foreign*

country, in which he claimed Rs.6,27,023/~ being TDS credit before United Kingdom, as FTC under Section 90 of the Income Tax Act. But the petitioner uploaded Form 67 with delay, which he suppose to upload while filing the return of income. It is to be noted that Section 90, Section 90A and Section 91 of the Income Tax Act of 1961 have been drafted specifically to avoid the burden of double taxation.

7 In the present case, even though the petitioner had not uploaded Form~67 while filing return of tax, later he uploaded the same with delay and that too due to Covid out break he was not able to get necessary documents from the foreign country, which appears to be genuine. Therefore this Court is inclined to condone the delay in filing Form 67 and the impugned order is liable to be set aside.

8. On identical facts, the Chennai Bench of the Tribunal in the case of Smt. Chengam Durga, in ITA No.1491/CHNY/2023 by following the judgment of the Hon'ble Jurisdictional High Court in the case of Duraiswamy Kumaraswamy vs. PCIT [2024] 460 ITR 615 (Madras) decided the issue in favour of the assessee. The relevant finding of the Chennai Bench of Tribunal reads as follows:-

"2. The assessee filed return of income on 09.09.2021 and claimed relief u/s 90 for Rs.1.51 Lacs. The return was processed by CPC u/s 143(1) on 05.07.2022 wherein this credit was denied since the assessee did not file applicable Form No.67 to claim the said relief. The assessee filed Form No.67 along with rectification application u/s 154 on 18.07.2022 in respect of her claim. However, CPC again denied the same in an intimation issued u/s 154. Upon further appeal, Ld. CIT(A), relying on the decision of Bangalore Tribunal in the case of Brinda Ramakrishna vs ITO (ITA No.454/Bang/2021 dated 17.11.2021), directed Ld. AO to grant the credit as per Form No.67. Aggrieved, the revenue is in further appeal before us.

3. We find that this issue is squarely covered by the cited decision of Bangalore Tribunal. Recently, Hon'ble High Court of Madras in the case of Duraiswamy Kumaraswamy (WP No.5834 of 2022 & ors. order dated 06.10.2023) held that filing of aforesaid form in terms of Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the act and it will always be directory in nature. Respectfully following the same, we dismiss the appeal.”

9. In light of the aforesaid judicial pronouncements, we hold that filing of Form 67 under Rule 128 of the Income Tax Rules, 1962 is directory in nature and not mandatory. Hence, we direct the AO to grant Foreign Tax Credit amounting to Rs.2,34,995/-. It is ordered accordingly.

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

Order pronounced in the open court on 21st July, 2025 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 21st July, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.