

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 542/ Bang /2025
Assessment Year : 2019-20

Shri Dhritiman Roy 1989, Mcechs Layout 2 nd Phase, 2 nd Cross Dr. SRK Nagar, Bangalore – 560064 Karnataka PAN NO : BPDPR5486L	Vs.	Income Tax Officer Ward – 4(2)(1) Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri S.P. Chidambaram, AR
Department by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue

Date of Hearing	:	17.06.2025
Date of Pronouncement	:	11.09.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the ADDL/JCIT(A), Indore dated 21.01.2025 vide DIN & Order No. ITBA/APL/S/250/2024-25/1072365589(1) passed u/s. 250 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2019-20.

2. The assessee has raised following grounds of appeal:

“1. The Appellant objects to the order dated 21 January 2025 under Section 250 of the Income Tax Act, 1961 ('Act') issued by the Additional/Joint Commissioner of Income Tax (Appeals), Indore ['CIT(A)'] and the Intimation order dated 18 March 2021 under Section 143(1) of the Act issued by the Centralized Processing Center ('CPC') for the aforesaid assessment year on the following grounds:

2. *Denial of claim of Foreign tax credit u/s 90 of the Act*

2.1 *The order of the Commissioner of Income Tax (Appeals) ['CIT (A)'] is contrary to law, facts and circumstances of the case.*

2.2 *The learned CIT(A) has failed to understand that the assessee is entitled to claim foreign tax credit as per the Double Taxation Avoidance Agreement ('DTAA') between India and the host jurisdiction even if a Form 67 is filed beyond the due date.*

2.3 *The learned CIT (A) has erred in concluding that DTAA takes precedence over domestic laws only for determining the eligibility for FTC but not with regard to procedural requirements.*

2.4 *The learned CIT (A) has erred in law in denying the relief merely on the ground that Form 67 was not filed before filing the original tax return u/s 139(1) of the Act.*

2.5 *The learned CIT (A) has failed to understand the fact that Rule 128 nowhere provides that if the Form 67 is not filed within the due date of filing return u/s 139(1), the relief as sought by the assessee u/s 90 will be denied.*

2.6 *The learned CIT(A) erred in understanding the fact that filing of Form 67 is a procedural requirement and should therefore not control the claim of foreign tax credit which is otherwise allowed under the provisions of the Act.*

2.7 *The CPC ought to have granted the relief u/s 90 amounting to Rs. 7,83,371 by considering the fact that form 67 was filed along with supporting documents as required under Rule 128 of Income-tax Rules, 1962.*

3. *Miscellaneous*

3.1 *The impugned order passed by the CIT(A) without providing sufficient opportunity for hearing is invalid.*

3.2 *The CPC erred in levying excessive interest under sections 234B and section 234C of the Act amounting to Rs. 2,22,437.*

4. *The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.*

5. *The Appellant craves to add, alter, amend, substitute, rescind, modify and / or withdraw in any manner whatsoever all or any of the foregoing grounds at or before the hearing of appeal."*

3. Brief facts of the case are that the assessee being an individual is a Resident & Ordinarily Resident (ROR) of India for the assessment year 2019-20. The assessee filed his original return of income for the assessment year 2019-20 u/s 139(1) of the Act on 24.8.2019 by declaring total income of Rs.5,54,360/-. Thereafter, the assessee filed his revised return of income u/s 139(5) of the Act on 31.3.2020 by declaring total income of Rs.32,29,400/- and claimed Foreign Tax Credit (FTC) of Rs.7,83,371/-. It was submitted that the assessee travelled on short term assignment to Denmark from 18.2.2018 to 31.1.2019 where he was working with Siemens Gamesa Renewable Energy, Denmark. Thus, being a ROR, the assessee offered the income earned in Denmark also to be taxed in India in his revised income. As the income earned in Denmark was also liable to taxed in Denmark, the assessee claimed relief u/s 90 of the Act amounting to Rs.7,83,371/- on the income subjected to double taxation. The assessee also filed Form No.67 and supporting documents towards the claim of relief u/s 90 of the Act read with Rule 128 of the I.T. Rules, 1962. Thereafter, the revised return was processed and accordingly intimation u/s 143(1) of the Act was passed on 18.3.2021 by accepting the additional salary income earned in Denmark as declared in the revised return however denied the claim of tax relief of Rs.7,83,371/- u/s 90/90A of the Act and accordingly a demand of Rs.10,06,600/- was raised by the Id. ADIT, CPC, Bengaluru.

4. Aggrieved by the aforesaid intimation dated 18.3.2021 passed u/s 143(1) of the Act, the assessee preferred an appeal before the Id. CIT(A)/ADDL/JCIT(A).

5. The Id. Addl/JCIT(A), Indore dismissed the appeal of the assessee by observing that the due date of filing return of income for the assessment year 2019-20 was 31.8.2019. The assessee has

failed to furnish Form No.67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the I.T. Rules. Further, the ld. Addl. JCIT(A) observed that the word “shall” has been used in the Rule 128(9), and therefore, the provision of the Rule 128 is mandatory in nature and not Directory. Further, Addl. JCIT(A) noted that there is no order condoning the delay in filing Form No.67 by the ld. PCIT u/s 119(2)(b) of the Act and as such, the Form No.67 cannot be taken into consideration and accordingly the relief u/s 90/90A of the Act cannot be allowed even if other conditions are fulfilled.

6. Once again aggrieved by the order of ld. Addl/JCIT(A), the assessee has filed the present appeal before this Tribunal. The assessee has also filed case law compendium relied upon by the assessee in support of his case.

7. Before us, the ld. A.R. of the assessee vehemently submitted that the assessee is eligible to claim the credit of the Foreign Tax payment as the Income is also offered in the revised return of income and therefore same cannot be disallowed merely on the ground that the Form No.67 was not filed on or before the due date to file the return of income u/s 139(1) of the Act. The assessee in support of his claim placed reliance on the decision of this Tribunal as well as Hon’ble High Court of Madras in the following cases:

- a) Madan Kumar Sivinigari Vs. ITO (2025) 172 taxmann.com 650 (Bangalore – Trib.)
- b) Basavalinga Sadasivaiah Ajaikumar Vs. ADIT (2024) 169 taxmann.com 397 (Bangalore – Trib.)
- c) Duraiswamy Kumaraswamy (2023) 460 ITR 615 (Madras)

8. The ld. D.R. on the other hand supported the order of the ld. Addl. JCIT(A).

9. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee has filed his revised return u/s 139(5) of the Act on 31.3.2020 declaring additional income of Rs.26,75,040/- (Rs.32,29,400 – Rs.5,54,360/-) and claimed Foreign Tax Credit of Rs.7,83,371/- on the salaried income earned in Denmark, which was also subjected to tax in Denmark. It is also an undisputed fact that the assessee had also filed Form No.67 and supporting documents towards the claim of relief u/s 90 of the Act read with Rule 128 of the Income Tax Rules, 1962. The Assistant Director of Income Tax, CPC, Bangalore while processing the return u/s 143(1) of the Act did not allow the relief claimed u/s 90 of the Act amounting to Rs.7,83,371/- as a result of which the demand of Rs.10,06,600/- including interest u/s 234B & 234C was raised. The Id. Addl. JCIT(A) by holding that the word “shall” has been used in the Rule 128(9) of the I.T. Rules and therefore, the provisions of Rule 128 are mandatory in nature and not directory and accordingly dismissed the appeal of the assessee as Form No.67 was not filed on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act.

9.1 We are of the considered opinion that Rule 128 of the Income Tax Rules, 1962 which governs the claim of FTC does not specify any consequence of non-filing or delayed filing of Form No.67. In the absence of such penal consequences, the requirement should be construed as procedural rather than substantive. The intent of the legislature is reflected in section 90 of the Act as to provide relief from double taxation. The denial of foreign tax credit solely on account of a procedural lapse would defeat this very purpose. The provisions of DTAA override domestic tax laws, as established by various rulings of the Hon’ble Supreme Court.

9.2 We further find that the issue regarding the procedural requirement of filing form No.67 has already been adjudicated by various coordinate benches of the Tribunal, wherein it has been consistently held that the filing of Form No.67 is a directory requirement and not a mandatory pre-condition for claiming FTC.

9.3 This Tribunal in the case of Brinda Ramakrishna Vs. ITO (ITA No.454/Bang/2021 dated 17.11.2021) has held as follows:

1. Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67;
2. Filing of Form No.67 is not mandatory but a directory requirement and;
3. DTAA overwrites the provisions of the Act and Rules cannot be contrary to the Act. Therefore, non-furnishing of Form No.67 before the due date u/s 139(1) of the Act is not fatal to the claim for FTC.

9.4 The relevant finding of the coordinate bench in the above stated case is extracted as under:

2. *“The Assessee is an individual and during the previous year relevant to AY 2018-19 an ordinary resident in India. The Assessee worked with Ernst & Young Australia from 20.11.2017 till 16.05.2019. Since her global income was taxable in India, the Assessee offered to tax salary income earned for services rendered in Australia for the period from December 2017 to March 2018 to tax in India. The Assessee claimed foreign tax credit ("FTC") for taxes paid in Australia.*

3. *There is no dispute that the Assessee is entitled to claim FTC. Rule 128 of the Income Tax Rules, 1962 (Rules) provides for giving FTC and reads thus:*

“Foreign Tax Credit.

128. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule :

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.”

One of the requirements of Rule 128 for claiming FTC is provided by Rule 128 (8) & (9) of the Rules and the same reads thus:

“(8) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:—

- (i) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;
- (ii) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee,—
 - (a) from the tax authority of the country or the specified territory outside India; or
 - (b) from the person responsible for deduction of such tax; or (c) signed by the assessee:

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by,—

- (A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
- (B) proof of deduction where the tax has been deducted.

(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 subsection (1) of section 139, in the manner specified for furnishing such return of income.”

4. The Assessee claimed FTC of Rs. 4,73,779/- u/s. 90 of the Act read with Article 24 of India Australia tax treaty ("DTAA") in a revised return of income filed on 31.8.2018. The Assessee had not filed the Form 67 before filing the return of income. On realising the same, the Assessee filed Form 67 in support of claim of foreign tax credit on 18.04.2020. The revised return of income was processed by

Centralized Processing Centre (CPC) electronically and intimation u/s 143(1) of the Act on 28.05.2020 was passed disallowing the claim of FTC.

5. *The Assessee filed a rectification application before the AO on 15.06.2020 & 25.02.2021 and submitted that credit for FTC as claimed in the return should be given. In the rectification order dated 10.03.2021, the AO upheld the action on the ground that the Assessee has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules.*
6. *On appeal by the Assessee, the CIT(A) vide Order dated 03.09.2021 confirmed the Order of AO. The CIT(A) held that the Assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, and therefore Form 67 is non-est in law. The CIT(A) also held that provisions of Rule 128 are mandatory in nature. The CIT(A) rejected the contention of the Appellant that filing of Form 67 is a procedural requirement and noncompliance thereof does not disentitle the Assessee of the FTC.*
7. *Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee submitted that disallowance of FTC is bad in law. He submitted that Section 90 of the Act provides that Government of India can enter into Agreement with other countries for granting relief in respect of income on which taxes are paid in country outside India and such income is also taxable in India. Article 24 of India Australia DTAA provides for credit for foreign taxes. Article 24(4)(a) is relevant in the present context. Same is extracted below:*

“4. In the case of India, double taxation shall be avoided as follows:

(a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax;”

It was submitted by him that section 90 of the Act read with Article 24(4)(a) provides that Australian tax paid shall be allowed as a credit against the Indian tax but limited to proportion of Indian tax. Neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements. FTC is Assessee’s

vested right as per Article 24(4)(a) of the DTAA read with Section 90 and same cannot be disallowed for non-compliance of procedural requirement that is prescribed in the Rules.

8. *It was further submitted by him that Section 295(1) of the Act gives power to the CBDT to prescribe Rules for various purposes. Section 295(2)(ha) gives power to the Board to issue Rules for FTC. The relevant extract is as follow:*

“(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :—

.....

(ha) the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under this Act;”

9. *It was submitted that the Board has power to prescribe procedure to granting FTC. However, the Board does not have power to prescribe a condition or provide for disallowance of FTC. The procedure prescribed in Rule 128 should therefore be interpreted in this context. Rule 128 is therefore a procedural provision and not a mandatory provision_*
10. *It was further submitted that Rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee u/s 90 of the Act would be denied. The learned counsel for the Assessee submitted that in case the intention was to deny the FTC, either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. It was submitted that that there are many sections in the Act which specifically deny deduction or exemption or relief in case the return is not filed within prescribed time. Reference was made to section 80AC, 80-IA(7), 10A(5) and 10B(5). Such language is not used in Rule 128(9). Therefore, such condition cannot be read into Rule 128(9).*
11. *It was further submitted that Filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement. It was submitted that violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC. Reliance was placed on the decision of the Hon’ble Supreme Court, in the case of*

Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, (1992 Supp (1) Supreme Court Cases 21) wherein it observed that:

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

Further reliance was placed on the decision of the Hon'ble Supreme Court, in the case of Sambhaji and Others v. Gangabai and Others, reported in (2008) 17 SCC 117, wherein it has been held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. The procedures are handmaid and not the mistress. It is a lubricant and not a resistance. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. It was submitted that filing of Form 67 as per the provisions of section 90 read with Rule 128(9) is a procedural law and should not control the claim of FTC.

12. *It was further submitted that even in the context of 80IA(7), 10A(5) etc, wherein there is specific provision for disallowance of deduction/exemption if audit report is not filed along with the return, various High Courts have taken a view that filing of audit report is directory and not mandatory. Reliance in this regard was placed on the following cases:*
 - *CIT vs Axis Computers (India) (P.) Ltd [2009] 178 Taxman 143 (Delhi)*
 - *PCIT, Kanpur vs Surya Merchants Ltd [2016] 72 [taxmann.com](#) 16 (Allahabad)*
 - *CIT, Central Circle vs American Data Solutions India (P.) Ltd [2014] 45 [taxmann.com](#) 379 (Karnataka)*
 - *CIT-II vs Mantec Consultants (P.) Ltd [2009] 178 Taxman 429 (Delhi)*
 - *CIT vs ACE Multitaxes Systems (P.) Ltd [2009] 317 ITR 207 (Karnataka).*

13. *It was submitted 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 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. Reliance in this regard is placed on the following cases and circulars:

o Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC) o CIT v Eli Lily & Co (India) P Ltd (2009) 178 Taxman 505 (SC) o GE India Technology Centre P Ltd v CIT (2010) 193 Taxman 234 (SC) o Engineering Analysis Centre of Excellence P Ltd v CIT (2021) 125 taxmann.com 42 (SC) (Pg 106-109 of PB 2-Para 25 & 26) o CBDT Circular No 333 dated 2/4/82 137 ITR (St.)

It was submitted that when there is no condition prescribed in DTAA that the FTC can be disallowed for non-compliance of any procedural provision. As the provisions of DTAA override the provisions of the Act, the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision.

- 14. The learned DR reiterated the stand of the revenue that rule 128(9) of the Rules, is mandatory and hence the revenue authorities were justified in refusing to give FTC. He also submitted that the issue was debatable and cannot be subject matter of decision in Sec.154 proceedings which are restricted in scope to mistakes apparent on the face of the record.*
- 15. In his rejoinder, the learned counsel for the Assessee submitted that Form No.67 was available before the AO when the intimation u/s.143(1) of the Act dated 28.5.2020 was passed. He pointed out that the AO or the CIT(A) did not dismiss the Assessee application for rectification u/s.154 of the Act on the ground that the issue was debatable but rather the decision was given that the relevant rule was mandatory and hence non furnishing of Form No.67 before the due date u/s.139(1) of the Act was fatal to the claim for FTC.*
- 16. I have given a careful consideration to the rival submissions. I agree with the contentions put forth by the learned counsel for the Assessee and hold that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67; (ii) filing of Form No.67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. I am of the view that the issue was not debatable and there was only one view possible on the issue which is the view set out above. I am also of the view that the issue in the proceedings u/s.154 of the Act, even if it involves long drawn process of reasoning, the answer to the question can be only one and in such circumstances, proceedings u/s.154 of the Act, can be resorted to. Even otherwise the ground on which the revenue authorities rejected the Assessee's application u/s.154 of the Act was not on the ground that the issue was*

debatable but on merits. I therefore do not agree with the submission of the learned DR in this regard.”

9.5 In view of the above detailed discussion and considering the factual matrix of the case and the settled legal position and judicial precedents, we hold that the requirement of filing Form No.67 is directory and not mandatory. The assessee cannot be deprived of foreign tax credit merely on account of a procedural lapse. Accordingly, we set aside the order of Id. Addl./JCIT(A) and direct the AO to allow the claim of FTC amounting to Rs.7,83,371/- as claimed by the assessee after necessary verification. Hence, the grounds of appeal of the assessee are allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11th Sept, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated: 11th Sept, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.