

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.3669/MUM/2025
(Assessment Year:2023-2024)**

Dipti Jagdish Satwani

Flat 402, Moru Mahal Building,
Dr. Ambedkar Road, Bandra West, S.O.
Mumbai - 400050. Maharashtra.
[PAN:DKKPS4789B]

..... **Appellant**

Vs

**Income Tax Officer, Ward 23(1)(1),
Mumbai**

Mumbai - 400012. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri V. Balaji
For the Respondent/Department : Shri Annavarani Kosuri

Date

Conclusion of hearing : 25.09.2025
Pronouncement of order : 30.09.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 22/03/2025, passed by the Additional Commissioner of Income Tax/Joint Commissioner of Income Tax (Appeals) - 2, Chennai [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Intimation Order, dated 11/12/2024, passed under Section 143(1) of the Income Tax Act, 1961 for the Assessment Year 2023-2024.
2. The Assessee has raised following grounds of appeal :

"Ground No.1:

On the facts and circumstances of the case and in law, the Ld. Additional/Joint Commissioner of Income-tax (Appeals)-2, Chennai [ADDL/JCIT(A)] has erred in confirming the action of the Ld. Assessing

Officer, CPC (Ld. AO) of not allowing Foreign Tax Credit ('FTC') of Rs.3,36,850 allowable as per Section 90 of the Act read with Article 25 of the India-USA Double Taxation Avoidance Agreement ('DTAA') read with CBDT circular 333 dated 02 April 1982, in the Intimation under Section 143(1) of the Income Tax Act 1961 ("the Act").

It is prayed that the Ld. Jurisdictional Assessing Officer ('JAO') be directed to allow FTC of Rs.3,36,850 as the order of the Ld. ADDL/JCIT(A) is contrary to the Order of Mumbai Bench of the Hon'ble Income Tax Appellate Tribunal (ITAT) in the case of Anuj Bhagwati vs. Deputy Commissioner of Income Tax-Circle - 1(1)(1), Mumbai (ITA No.1844 & 1845/MUM/2022) as well as several Judicial Precedents including the following relied upon before the Ld. ADDL/JCIT(A):

- *Ms. Sonakshi Sinha vs. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (ITA No.1704/Mum/2022)*
- *Ms. Brinda RamaKrishna vs. The Income Tax Officer, Ward 5(3)(1), Bangalore (ITA No.454/Bang/2021)*
- *Mr. Vinodkumar Lakshmi pathi vs. CIT(A), NFAC [ITA No.680/Bang/2022]*
- *Income-tax officer, Ward 1(1), Asansol v. Sandip Choubey (I.T.A.No.742/Kol/2022)*
- *Neetu Agarwal vs ITO, Kolkata (ITA No.1898/Kol/2024)*

Ground No.2:

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT(A) ought to have held the entire 143(1) proceedings as invalid in law as the Ld. AO had not followed the provisos to Section 143(1)(a) of the Act of giving opportunity to the Appellant to defend her case.

It is prayed that the Order of the Ld. ADDL/JCIT(A) is contrary to the following Orders of Hon'ble ITAT relied upon before the Ld. ADDL/JCIT(A):

- *Arham Pumps v. Deputy Commissioner of Income Tax (CPC), Bengaluru (ITA No.206/Ahd/2021).*
- *Erst & Young Merchant banking Services LLP vs ADIT, CPC (ITA No.2333/MUM/2022)*

Ground No.3: Orders of Hon'ble ITAT not followed by the Ld. ADDL/JCIT(A)

On the facts and circumstances of the case and in law, the Ld. ADDL/JCIT(A) has erred in not following the Judicial Pronouncements

mentioned in Ground No.1 and 2 above relied upon during the appellate proceedings before the Ld. ADDL/JCIT(A).

It is prayed that the order of the Ld. ADDL/JCIT(A) of not following the above-mentioned Judicial Precedents is contrary to the following judicial pronouncements:

- *Decision of the Hon'ble Supreme Court in the case of Assistant Collector of Central Excise vs. Dunlop India Ltd. [(1985) 154 ITR 172 (SC)]*
- *Decision of the Hon'ble Telangana High Court in case of Mylan Laboratories Limited v. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer National Faceless Assessment Centre, Income Tax Department, Delhi & Another [TS-46-HC-2022 (TEL)]*
- *Order of the Hon'ble ITAT in case of Northern Coalfields Limited Vs. Assistant Commissioner of Income Tax, Circle 2(1), Jabalpur (I.T.A.No.18/Jab/2014).*

It is, therefore, prayed that the Ld. JAO be directed to allow FTC of Rs.3,36,850.

Ground No.4: On the facts and circumstances, the Ld. ADDL/JCIT(A) directing the Ld. JAO to allow TDS credit after verifying whether the corresponding income has been offered to tax

It is prayed that the Ground relating to TDS credit was not pressed before the Ld. ADDL/JCIT(A) as TDS credit was allowed in the rectification order u/s.154 of the Act. Hence, the Ld. JAO be directed not to give effect to the directions of the Ld. ADDL/JCIT(A) relating to TDS credit."

3. The relevant facts in brief are that the Assessee, resident individual had filed return of income for the Assessment Year 2023-2024, claiming foreign tax credit of INR.3,36,850/- under Section 90 of the Act read with Article 25 of the Double Taxation Avoidance Agreement between India and USA. While processing return of income the aforesaid foreign tax credit was denied to the Assessee since the Form No.67 was not filed by the Assessee within the due date of filing return of income under Section 139(1) of the Act. The Assessee challenged the intimation, dated 29/08/2024, issued under Section 143(1) of the Act denying the aforesaid foreign tax credit in appeal

before the CIT(A). Before the CIT(A), it was contended on behalf of the Assessee that the Assessee was resident in India for the relevant previous year, and had offered to tax foreign sourced income of INR.21,37,514/- in India as well as in USA. In order to avoid double taxation of such foreign sourced income, the Assessee claimed foreign tax credit of INR.3,36,850/- in accordance with Section 90 of the Act read with Article 25 of the Double Taxation Avoidance Agreement between India and USA [*for short 'DTAA'*] in the return of income. Thereafter, the Assessee filed Form 67 to support the claim for foreign tax credit. However, prior thereto, the return for the relevant previous year was processed under Section 143(1) of the Act and Assessee's claim for foreign tax credit was denied without putting the Assessee to notice. It was submitted on behalf of the Assessee that delay in filing Form 67 was not fatal to the claim for foreign tax credit. It was further contended that intimation under Section 143(1) of the Act was issued without following giving proper opportunity to the Assessee to defend its case as per the first proviso to Section 143(1)(a) of the Act. In support the Learned Authorized Representative for the Assessee placed reliance on the following decisions:

- a) *Decision of the Tribunal in the case of Ms. Anuj Bhagwati Vs. Deputy Commissioner of Income Tax - Circle - 1(1)(1), Mumbai [ITA No.1844&1845/Mum/2022]*
- b) *Decision of the Tribunal in the case of Ms. Brinda RamaKrishna Vs. The Income Tax Officer, Ward 5(3)(1), Bangalore [ITA No.454/Bang/2021]*
- c) *Decision of the Tribunal in the case of M/s.42 Hertz Software India Pvt. Ltd. Vs. ACIT, Circle 3(1)(1), Bangalore [ITA No.29/Bang/2021]*
- d) *Decision of the Tribunal in the case of Ms. Sonakshi Sinha Vs, CIT(A), NFAC [ITA No.1704/Mum/2022]*
- e) *Decision of the Tribunal in the case of Mr. Vinodkumar Lakshmiipathi Vs. CIT(A), NFAC [ITA No.680/Bang/2022]*
- f) *Decision of the Tribunal in the case of Income Tax Officer, Ward 1(1), Asansol Vs. Mr. Sandip Choubey [ITA No.742/Kol/2022]*

g) Decision of the Hon'ble Telangana High Court in the case of Mr. Mylan Laboratories Limited Vs. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income-Tax Officer National Faceless Assessment Centre, Income Tax Department, Delhi & Another [TS-46-HC-2022 (TEL)]

h) Decision of the Tribunal in the case of Ernst & Young Merchant banking Services LLP Vs. ADIT [ITA No.2333/Mum/2022]

The aforesaid submissions did not find any favour with the Ld. CIT(A) as the CIT(A) agreed with the Assessing Officer and confirmed the order passed by the Assessing Officer denying foreign tax credit.

4. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal.
5. We have considered the rival submissions and have perused the material on record. It is not disputed by the Revenue that Assessee had paid taxes of INR.3,36,850/- in USA in respect of income offered to tax. The sole reason for denial of foreign tax credit claimed by the Assessee is that the Assessee had failed to file the Form 67 within the time period specified in filing the return under Section 139(1) of the Act. In this regard we find that it is admitted position that for the relevant assessment year only intimation was issued under Section 143(1) of the Act and no assessment was framed on the Assessee. Further, we note that the Form 67 was filed by the Assessee on 13/09/2024 (*i.e. before the expiry of time specified under Second Proviso to Section 143(1) of the Act*). The Assessee was also not put to notice about the proposed variation in terms of first proviso to Section 143(1) of the Act.
6. We find that the Bangalore Bench of the Tribunal had, in the case of **Ms. Brinda RamaKrishna vs. Income-tax Officer [2022] 193 ITD 840 (Bangalore - Trib.) [17-11-2021]** held non-furnishing of Form No. 67 before the due date under Section 139(1) of the Act is not fatal to the claim for foreign tax credit. The Tribunal observed that

Rule 128(9) of the Income-Tax Rules, 1962 (for short '**IT Rules**') does not provide for disallowance of foreign tax credit in case of delay in filing Form No. 67; (ii) filing of Form No. 67 is not mandatory but a directory requirement and (iii) the provisions of double taxation avoidance agreements override the provisions of the Act and the Rules cannot be contrary to the Act.

7. After taking into consideration the above decisions of the Tribunal, the Mumbai Bench of the Tribunal has, in **Sonakshi Sinha vs. Commissioner of Income-tax (Appeals) [2022] 197 ITD 263 (Mumbai - Trib.) [20-09-2022]**, while dealing with a similar issue wherein the taxpayer filed Form No. 67 after the due date for filing the return of income under section 139(1), held as under :

"012. 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 v. ACIT [2022] 139 taxmann.com 448 (Bangalore - Trib) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358 (Bang Trib) it was held that "one of the requirements of Rule128 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 Form No. 67. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmi pathi v. CIT(A) NFAC ITA 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."

8. Further in the case of **Anuj Bhagwati v. Dy. CIT [IT Appeal Nos. 1844 and 1845 (Mum) of 2022, dated 20-9-2022]**, the Co-ordinate Bench of the Tribunal has, while deciding a similar issue, held that section 90/91 of the Act has not been amended insofar as grant of foreign tax credit is concerned and Rules cannot override the Act and therefore, filing of Form No. 67 is not mandatory but it is directory. The relevant findings of the coordinate bench of the Tribunal in the aforesaid decision are as under:

"8. We considering the facts, circumstances provisions of the Act and judicial decisions are of the opinion that there is no amendment on these aspects in the Section 90 of the Act and the Rules cannot override the Act and therefore the filing of Form No 67 is not mandatory but it is directory. Accordingly, We restore the disputed issue to the file of the CIT(A) to adjudicate afresh on merits considering the observations in above paragraphs and the ratio of judicial decisions. Further the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal and allow the grounds of appeal of the assessee for statistical purposes."

9. The above decision has since been following by the Tribunal in the following cases: (a) *Nirmala Murli Relwani vs. Assistant Director of Income-tax* [2022] 145 taxmann.com 293 (Mumbai - Trib.), *Priya Savina Murzello vs. Deputy Commissioner of Income-tax* [2023] 148 taxmann.com 472 (Mumbai - Trib.) and *Bhagwandas Tikamdas Khinani vs. Commissioner of Income-tax (Appeals)* [2022] 145 taxmann.com 265 (Mumbai - Trib.)
10. Thus, respectfully following the aforesaid decisions of the coordinate bench of the Tribunal, we are of the considered opinion that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), as they stood during the year under consideration, will not preclude the Assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since in the present case, the claim of the Assessee was denied on this technical aspect without going into the merits and without putting the Assessee to notice in violation of the provisions contained in Second Proviso to Section 143(1)(a) of the Act, we deem it appropriate to direct the jurisdictional Assessing Officer to decide the claim of the foreign tax credit on merits, after accepting the Form No. 67 and other related documents filed by the Assessee. Accordingly, Ground No 1, 2 & 3 raised by the Assessee are treated as allowed for statistical purposes.
11. In the result, the appeal by the Assessee is treated as allowed for statistical purposes. Order pronounced on 30.09.2025.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.09.2025
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai