

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.2101/Chny/2025
निर्धारण वर्ष/Assessment Year: 2018-19

Shri Krishnamoorthy Ezhilarasan, 189, 2 nd Main Road, New Kumaran Nagar, Sholinganallur, Chennai-600 119.	v.	The ITO, International Taxation Ward- 1(1), Chennai
[PAN: AAZPE 2544 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Saujanya Ranjan, IRS
सुनवाईकीतारीख/Date of Hearing	:	23.09.2025
घोषणाकीतारीख /Date of Pronouncement	:	24.10.2025

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, Nashik, (hereinafter referred to as "the Ld.CIT(A)"), dated 16.12.2024 for the Assessment Year (hereinafter referred to as "AY") 2018-19.

2. At the outset, the Ld.AR of the assessee brought to our notice that the appeal has been filed belatedly by '152' days and assessee has filed



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an affidavit explaining the cause for the delay. Having gone through the contents of the same, we find that cause for delay was reasonable, so we excuse the same and proceed to hear the assessee's appeal on merits.

3. The main grievance of the assessee is against the action of the Ld.CIT(A) denying the Foreign Tax Credit (FTC) as claimed by the assessee. Brief facts are that the assessee filed his original return of income (RoI) for AY 2018-19 u/s.139(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 28.08.2018 declaring income of ₹6,44,580/-; and thereafter the assessee filed a revised RoI u/s.139(5) of the Act on 31.03.2019 declaring an income of ₹11,97,760/- and claimed FTC by filing Form 67 of ₹1,01,446/-. According to the assessee, he had travelled on short-term assignment to Denmark [08.10.2017 to 23.12.2017] where he was working for M/s Siemens Gamesa Renewable Energy, Denmark. Being a resident and ordinarily resident (RoR) of India for AY 2018-19, assessee offered income earned from Denmark employment as income to tax in India. At this juncture, it needs to be noted that the income earned in Denmark was also taxed in Denmark. Hence, the assessee claimed relief u/s.90 of the Act amounting to ₹1,01,446/- since the ibid income has already been subjected to tax in Denmark. Assessee is noted to have filed Form 67 for seeking relief u/s.90A of the Act r.w.r.128 of the of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'). The assessee received an



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intimation u/s.143(1) of the Act dated 06.03.2020 from CPC/AO denying relief claimed u/s.90 of the Act amounting to ₹1,01,446/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the CPC/AO on the ground that Form 67 was not filed by the assessee on time [i.e. on or before extended due date of filing of return i.e. 31.08.2018 whereas assessee has filed the same only on 31.03.2019 along with revised RoI].

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. Having heard both the parties and after perusal of the records, we note that the assessee has filed the original Income Tax Returns u/s.139(1) of the Act on 28.08.2018 and revised Income Tax Returns on 31.03.2019 u/s.139(5) of the Act along with Form 67 and claimed FTC of ₹1,01,446/-. The CPC/AO has passed orders u/s.143(1) of the Act inter alia disallowed the amount u/s.90 of the Act to the tune of Rs.1,01,446/-. The CPC is noted to have denied the claim only on the ground that the assessee didn't file Form 67 before the due date of filing of ITR u/s.139(1) of the Act or within the extended due date of filing of RoI i.e. 31.08.2018 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),



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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, in the case of 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 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



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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.

7. 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.

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

Order pronounced on the 24th day of October, 2025, in Chennai.

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

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

चेन्नई/Chennai,
दिनांक/Dated: 24th October, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.



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4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF