



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1200/PUN/2024  
Assessment Year : 2021-22

Rohan Atul Khadilkar, Apt 411, Woodland Harmony, Kothrud, Pune 411038 Maharashtra PAN : ETWPK4758Q	Vs.	Income Tax Officer, Ward-13(1), Pune
Appellant		Respondent

Assessee by	:	Shri Kishor Phadke
Revenue by	:	Shri Vishwajit Shinde
Date of hearing	:	22.01.2026
Date of pronouncement	:	02.02.2026

**आदेश / ORDER**

The captioned appeal at the instance of assessee pertaining to the Assessment Year 2021-22 is directed against the order dated 30.03.2024 of Addl/JCIT(A), Kanpur passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') arising out of the Intimation Order dated 22.03.2022 passed u/s.143(1) of the Act.

2. This is the second round of litigation before this Tribunal in as much as earlier *exparte* order dated 14.08.2024 has been recalled vide order dated 26.09.2025 in M.A.No.56/PUN/2025.

3. Assessee has raised following grounds of appeal :

"1. The appellant contends that, the appellant is entitled to foreign tax credit of Rs. 84,375/- pertaining to the foreign sourced salary income of Rs. 10,90,200 which is doubly taxed, i.e., in USA as well as India considering the fact that the appellant has filed Form 67 so as to enable him to claim such Foreign Tax Credit.



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2. *The lower IT authorities ought to have appreciated that.*
- *Rule 128(9) of the IT Rules does not provide for disallowance of FTC in case of delay in filing Form No.67.*
  - *Filing of Form No.67 is NOT mandatory but a directory requirement.*
  - *DTAA overrides the provisions of the Act, and the Rules cannot be contrary to the Act.*

3 *The appellant craves leave to add, alter, clarify, explain, modify, delete any of the grounds of appeal, and to seek any just and fair relief.”*

4. The sole grievance of the assessee in the instant appeal is that Id.CIT(A) erred in not granting the credit for Foreign Tax to the extent of Rs.84,375/-.

5. Brief facts of the case are that the assessee is an individual and an ordinary resident of India. During the period relevant to the assessment year under consideration the assessee worked with MGM Resorts International Operation, United States of America for the period from 01.04.2020 to 19.06.2020. Assessee claimed Foreign Tax Credit (FTC) of Rs.1,45,082/- in the original return of income filed on 20.12.2021 u/s.90 of the Act read with Article 25 of India-United States of America Treaty. However, assessee has not filed Form No.67. Return processed u/s.143(1) of the Act on 22.03.2022 disallowing the FTC claimed by the assessee. Assessee filed rectification application claiming relief only to the extent of Rs.84,375/- but could not succeed. Assessee preferred appeal before Id.CIT(A) and Id.CIT(A)

6. Ld. Counsel for the assessee submitted that assessee filed Form No.67 belatedly on 21.04.2022 and filing of Form No.67 is directory in nature and the Revenue authorities ought to have accepted the assessee's claim of FTC after



necessary verification. Reliance placed on various decisions mentioned in the case law paper book along with the judgment of Hon'ble High Court of Gujarat in the case of *Deepak Pragjibhai Gondaliya Vs. PCIT (2025) 175 taxmann.com 985 (Gujarat)*.

7. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

8. I have heard the rival submissions and perused the record placed before me. The short issue for my consideration is whether the assessee is entitled to Foreign Tax Credit. During the year under consideration, the assessee worked with MGM Resorts International Operation and for the period from 01.04.2020 to 19.06.2020 the assessee rendered services in United States of America. Assessee filed return of income for A.Y. 2021-22 u/s.139(1) of the Act on 20.12.2021 claiming Foreign Tax Credit of Rs.1,45,082/- which was later on reduced to Rs.84,375 owing to calculation error. However, assessee has uploaded Form No.67 only on 21.04.2022 after the processing of return u/s.143(1)(a) on 22.03.2022 disallowing the FTC claimed as the assessee has not filed Form No.67 till the conclusion of assessment proceedings. Assessee preferred appeal before the First Appellate Authority but could not succeed and the assessee is now in appeal before this Tribunal.

9. This issue is no more *res integra* by virtue of catena of decisions by this Tribunal on this very issue. I find in the case of *Duraiswamy Kumaraswamy Vs. PCIT & Ors 460 ITR 615 (Mad)* Hon'ble Madras High Court has decided this issue



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in favour of the assessee. Finding of Hon'ble Court at para nos.11 to 13 reads as under :

*“11. The law laid down by the Hon'ble Apex Court in G.M.Knitting Industries (P) Ltd. (supra), which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC 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 the subsequent to the passing of assessment order.*

*12. Further, in the present case, the intimation under section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC 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 25.01.2022 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 FTC filed by the petitioner on 02.02.2021. 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 FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order.”*

10. In the case of *Deepak Pragjibhai Vs. Gondhaliya Vs. PCIT (2025) 175 taxmann.com 985 (Gujarat)*, relied on by the Id. Counsel for the assessee, the Hon'ble High Court of Gujarat also quashed the order passed by PCIT and remanded the matter to condone the delay in filing the Form No.67 so as to enable the petition to get the credit of the tax paid at Bangladesh on the salary earned by the petitioner for the year under consideration by availing the benefit of DTAA.



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11. Therefore, the position is very clear that the FTC cannot be denied merely because of delay in filing Form No.67 as filing of Form No.67 is directory in nature. I therefore condone the delay in filing of Form No.67 direct the Ld. Jurisdictional Assessing Officer to allow the FTC to the assessee as per law after examination of the relevant documents. Needless to mention that ld. JAO shall afford reasonable opportunity to the assessee. Impugned order is set aside and the grounds of the assessee are allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 02<sup>nd</sup> day of February, 2026.

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 02<sup>nd</sup> February, 2026.  
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**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune