

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC': NEW DELHI)**

**BEFORE SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 601/Del/2024
(Assessment Year- 2020-21)**

Suchi Agrawal, Sector 93, B Noida, Gautam Buddha Nagar, Uttar Pradesh- 201304	Vs.	ITO, Ward 5(2) (4), Noida.
PAN No: CMNPA2096K		
APPELLANT		RESPONDENT

Assessee by : Shri Akash Vajpai, Adv. and
Ms. Shweta Shandiyal

Revenue by : Shri Om Prakash, Sr. Dr

Date of Hearing : 13.05.2024

Date of Pronouncement : 31.05.2024

ORDER

PER SUDHIR PAREEK, JM

The instant appeal has been preferred by the Assessee against the order dated 30.12.2023 passed by Learned Commissioner of Income Tax (Appeal) (hereinafter referred to as the 'Ld. CIT(A)', in

short), ADDL/ JCIT (A) Madurai, pertaining to Assessment Year (AY) 2020-21.

2. The assessee has raised the following revised grounds which read as under:

“1. Ld, CIT(A) has erred in confirming the action of the Ld. AO who denied the foreign tax credit amounting to Rs. 10,29,861/- to the Assessee for the reason, that form 67 submitted by the Assessee was not filed in due date.

2. The Ld. CIT(A) ought to have considered while adjudicating the appeal, the decisions laid down by the Principal Bench, Delhi in Isha Mago Vs. Assistant Director of Income-tax, Central Processing Center (ITA No. 173/DEL/2024) Rameshwar Prasad Shrivastava Vs. ITO (ITA, No. 1839/Del/2023), Vikash Daga Vs. ACIT (ITA 2536/Del/2022), Ajay Kumar Mishra Vs. DCIT (ITA No. 1835/Del/2022). In the aforesaid decisions, Hon'ble ITAT has held that filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC.”

3. From the bare perusal of materials available on record, it reveals that the solitary grievance of the assessee / appellant is that the Ld. CIT(A) erred in confirming the action of the Learned Assessing Officer (hereinafter referred to as 'Ld. AO'), who denied the foreign tax credit amounting to Rs. 10,29,861/- for the only reason that Form 67 was not filed within due date by assessee / appellant.

4. Heard rival submissions and carefully scanned the materials available on record.

5. Brief facts of the case may be summarized as that the assessee filed the Income Tax return on 10.01.2021 for the assessment year 2020-2021 declaring total income of Rs. 28,97,770.00 and with tax liability as NIL on account of claim of tax credit under section 90/91 of the Income Tax Act, 1961. Further, the Ld. AO, has disallowed the Foreign tax credit of Rs 10,29,861/- for non-compliance of a procedural provision i.e. filing of Form 67 filed along with the ITR, by issuing an intimation order dated 24.12.2021 under section 143(1) of Income Tax, Act 1961 against the return filed by the assessee on 10.01.2021, imposing tax liability of Rs 8,02,380/-. The Assessee has filed Form 67 on 21.01.2022 along with an rectification application requesting for acceptance of Form 67, however Subsequently, the Assessee received an order u/s 154 on 08.08.2022 imposing tax liability of Rs. 8,02,380/-, Thereafter, the assessee again received order under section 154 on 17.09.2022 showing same tax liability of Rs. 8,02,380/- after submitting of the rectification application. Therefore, aggrieved by this, the assessee preferred appeal before the

Ld. CIT(A) who after considering the submissions, dismissed the appeal of the assessee and sustained the action of AO, on the basis that requisite Form No.67 was not filed within the prescribed time. The Ld. CIT(A) has upheld the order of the AO on the ground that the assessee has failed to file Form 67 within the due date, along with the ITR. Though it is agreed that the Form 67 was not filed along with the ITR, however, the same was filed belated on 21.01.2022 and is on record.

6. The Ld. AR submitted that both lower authorities failed to appreciate the important fact that the requisite filing of Form 67 is a procedural and directory requirement and it is not mandatory. He also submitted that violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC.

7. Per contra, the learned Departmental Representative ('Ld. DR') relied upon the findings of lower authorities.

8. During the course of hearing, the Ld. AR humbly prayed that the impugned order dated 30.12.2023 passed by Ld. CIT(A) should be set aside and the present appeal filed by the assessee should be allowed

and in support of his argument / claim, Ld. AR relied on orders of the co-ordinate Benches of ITAT, as follows:

- *Order dated 04.04.2024 in the case of Isha Mago vs. Asstt. Director of Income Tax, Central Processing Centre in ITA No. 173/Del/2024.*
- *Order dated 11.09.2023 in the case of Rameshwar Prasad Shrivastava vs. ITO, in ITA No. 1839/Del/2023.*
- *Order dated 14.06.2023 in the case of Vikash Daga vs. ACIT in ITA No. 2536/Del/2022.*
- *Order dated 17.04.2023 in the case of Ajay Kumar Mishra vs. DCIT in ITA No. 1835/Del/2022.*

8.1 For the ease of ready reference we reproduced the decisions of the Co-ordinate Benches of ITAT, as under:

In the case of Isha Mago vs. Asstt. Director of Income Tax (supra), held as under:

"5.2. It is also noticed that under similar facts and circumstances the ITAT Delhi Bench 'B' in the case of Eastman Industries Ltd. vs. ACIT (supra) has adjudicated identical issue, observing as under:

"7. Since in the present case the claim of the assessee was denied on this technical aspect without going into the merits of the FTC, therefore, we deem it fit to restore the issue to the files of the AO. The AO is directed to decide the claim of foreign tax credit as per the provisions of the law after admitting / accepting form -67. This common grievance is also allowed for statistical purpose.

In the case of Rameshwar Prasad Shrivastava vs. ITO (supra),

held as under:-

“5. That the claim of FTC was made by the assessee in terms of section 90 of the Income Tax Act. It is a settled principle that where there is special agreement/ DTAA signed by the government, the specific provisions made in such agreement shall prevail over the general provisions contained in the Income Tax Act. The CBDT vide its Circular No. 333 dated 02/04/1982 has held that:-

**SECTION 90. AGREEMENT WITH FOREIGN COUNTRIES
[CORRESPONDING TO SECTION 40A OF THE 1922 ACT]**

627. Specific provisions made in double taxation avoidance agreement Whether it would prevail over general provisions contained in Income- tax Act

1. It has come to the notice of the Board that sometimes effect to the provisions of double taxation avoidance agreement is not given by the Assessing Officers when they find that the provisions of the agreement are not in conformity with the provisions of the Income-tax Act, 1961.

2. The correct legal position is that where a specific provision is made in the double taxation avoidance agreement, that provisions will prevail over the general provisions contained in the Income-tax Act. In fact that the double taxation avoidance agreements which have been entered into by the Central Government under section 90 of the Income-tax Act, also provide that the laws in force in either country will continue to govern the assessment and taxation of income in the respective countries except where provisions to the contrary have been made in the agreement.

3. Thus, where a double taxation avoidance agreement provides for a particular mode of computation of income, the same should be followed, irrespective of the provisions in the Income-tax Act. Where there is no specific provision in the agreement, it is basic law, i.e., the Income-tax Act, that will govern the taxation of income.

Circular: No. 333 [F. No. 506/42/81-FTD] dated 2-4-1982.

6. 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 overrides the provisions of the Act, the assessee has vested right to claim the FTC under the tax treaty, and the same cannot be disallowed for mere delay in compliance of a procedural provision. In other words, we would like to submit 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 only 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.

7. That the lower authorities intends to disallow the claim of the assessee in terms of Rule 128(9), however as stated above, the provisions laid down in the Income Tax Rules shall stand to be overridden by the specific provisions mentioned in the DTAA more so to the extent that the same is beneficial to the tax payer. And as such, since the DTAA does not specifically state to disallow the claim of FTC on mere delay in filing of Form 67, we would submit that the disallowance made by the CPC and further confirmed by the CIT(A) is arbitrary, unjustified and fit to be deleted.

*8. That lastly, we would like to contend that this being a debatable issue, the disallowance made by CPC was uncalled as the same cannot be termed as an adjustment in terms of section 143(1). In a similar matter before the **Hon'ble ITAT Kolkata Bench in the case of M/s Surendra steel Pvt Ltd Vs CPC in ITA No. 78/Kol/2022 dated 20/05/2022**, it was held as below:-*

We have duly considered rival contentions and perused the material available on record. To our mind there are two issues involved. First being the procedural irregularity and second the legitimate quantification for disallowance. If the adjustment has been made on the basis of first defect i.e., for procedural irregularity then according to the decisions referred by the Id. Counsel for the assessee, this irregularity is not fatal enough to deny the claim of deduction u/s 80IC of the Act. More so, when in response to the first proposed adjustment, the assessee has reiterated submission of Form 10CCB. As far as the arguments raised by the Id. D/R is concerned, if a disallowance is to be made after filing of Form 10CCB, then it is a debatable issue and the same is not permissible u/s 143(1) in a prima facie adjustment and the assessee should have been given a notice for that. In other words, if a disallowance is required to be established by arguments and long drawn process of reasoning on points, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment. In view of the above discussion, we delete the disallowance of deduction u/s

80IC of the Act, made by the Assessing Officer and upheld by the Ld. CIT(A) and allow the appeal of the assessee.

As such, we would like to contend that the CPC was not right in disallowing the claim of FTC solely on the ground that Form 67 was filed belated.

9. That in support of our above contentions above, we would like to rely upon the following decisions of the coordinated Benches of ITAT:-

*** Vinod Kumar Lakshmiapati Vs CIT(NFAC) Delhi - 145 taxmann.com 235 - ITAT Bangalore - It was held that:-**

Section 90, read with section 90A, of the Income-tax Act, 1961 and rule 128 of the Income-tax Rules, 1962 Double Taxation Relief - Where agreement exists (Foreign tax credit) Assessment year 2018-19-Assessee claimed foreign tax credit under section 90/90A Assessing Officer disallowed claim, on ground that assessee had not filed Form No. 67 along with return Assessee filed Form No. 67 before Commissioner (Appeals) Commissioner (Appeals) held that since assessee had failed to file Form No. 67 within due date specified for filing return under section 139(1), Assessing Officer had rightly disallowed claim for foreign tax credit - It was noted that Bangalore Bench of Tribunal on identical issue in case of Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 held that non-furnishing of Form No. 67 before due date specified for furnishing return under section 139(1) was not fatal to claim for foreign tax credit - Whether Assessing Officer was to be directed to give credit for foreign tax as per Form No. 67 filed before Commissioner (Appeals) Held, yes [Paras 5 and 6] [In favour of assessee]

*** Ritesh Kumar Garg Vs ITO in ITA No. 261/JP/2022 dated 15/09/2022 - ITAT Jaipur Bench held that:-**

Held that filing of Form 67, in my view, is a procedural/directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. There are no conditions prescribed in DTAA that FTC can be disallowed for non compliance of any procedural provision, therefore, the provisions of DTAA override the provisions of the Act. As the assessee has vested right to claim the FTC under the tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision.

*** Sanjeev Agarwal Vs DCIT in ITA No. 71/JP/2023 dated 10/05/2023 - ITAT Jaipur bench held that:-**

Form 67 filed by the respective assessees, even after the end of the relevant assessment year makes the assessee entitled to claim FTC. Therefore, considering the facts of the present case, the FTC deserves to be allowed to the assessee even if Form 67 was filed by the assessee after the due date of filing the return under section 139(1) of the IT Act, 1961, and in our view not allowing foreign tax credit by AO (CPC) was nothing, but a mistake apparent on record. Therefore, we direct the revenue to allow the claim of the assessee.

In the case of Vikash Daga vs. ACIT (supra), held as under:-

“8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee holds a foreign tax credit certificate for Rs.1887114/-. In our considered opinion filing of form 67 is a procedural / directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. We accordingly direct the AO to allow the credit of FTC and hold that rule 128(9) of the Rules does not provide for disallowance FTC in case of delay filing of form 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act.”

9. In the light of foregoing discussions, we are of the opinion that filing of Form 67 is a directory not mandatory and violation of procedural norm does not adversely affect the substantive rights or claims.

10. On the basis of discussion, submissions and abovementioned binding precedents, we set aside the orders of authorities below and

restore the matter to the file of Ld. AO with the direction to verify the assessee's claim in respect of foreign tax credit as per law after admitting / accepting Form 67 and decide the issue in accordance with law.

11. Consequently, the appeal of assessee is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 31.05.2024

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 31/05/2024.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.5.24
Date on which the typed draft is placed before the dictating Member	29.5.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	