

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2094/Mum./2022

(Assessment Year : 2019-20)

Nirmala Murli Relwani B-
12, Cenced Apartment
318, Union Park Marg no.1
Pali Hill, Khar (W), Mumbai 400 052
PAN – AEGPR2438P

..... Appellant

v/s

Asstt. Director of Income Tax
Central Processing Center, Bengaluru

.....Respondent

Assessee by : Shri Ratnesh Kumar Awasthi
Revenue by : Shri Chetan M. Kacha

Date of Hearing – 23/11/2022

Date of Order – 01/12/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee against the impugned order dated 19/07/2022, passed under section 250 of the Income Tax Act, 1961 („the Act“) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [„learned CIT(A)“], which in turn arose from the intimation dated 08/03/2021, issued under section 143(1), for the assessment year 2019-20.

2. In this appeal, the assessee has raised the following grounds:

"1. The order passed by the Ld. CIT(A) under section 250 of the Income Tax Act ("The Act") is a vitiated order as both, the Dy./Asst. Commissioner of Income Tax, CPC, Bangalore ("the Ld. AO")/Ld. CIT(A), on the facts and in law, has erred in denying the claim of tax credit under section 91 of the Act amounting to Rs. 11,79,796/- claimed by the Appellant via filing of Form 67 as per Rule 128 of the Income Tax Rules, 1962 ("The Rules").

2. That the NFAC has erred in denying the tax credit of amount Rs. 11,79,796/- without appreciating the fact that the appellant filed form 67 within time i.e. within extended due date of filing original/revised return u/s 139(1)/139(5) of the Act for AY 2019-20 vide press release dated 29.07.2020.

3. That the NFAC has erred in not appreciating the fact that filing of Form 67 is a procedural compliance where the appellant is eligible to take credit u/s 91 of the Act.

4. Without prejudice to above grounds, the NFAC has also erred in denying the fact that even though Form 67 has been filed after due date for which foreign tax credit would not be allowed as per Income tax Rules, however, as per Income Tax Act, the same is allowed. Hence, there is discrimination on duo provisions and the appellant should be allowed for such foreign tax credit as per Income Tax Act.

5. That the NFAC has erred in not appreciating the fact that Rules cannot go beyond or against the provisions of the Act as they are framed under the Act and if there is any contradiction, the Act will prevail over the Rules.

The appellant craves to be allowed to add, delete or amend any other grounds of appeal either before or at the time of hearing as we may be advised.

The appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to each other."

3. The only grievance of the assessee is against the denial of foreign tax credit under section 91 of the Act due to delay in filing Form no.67.

4. The brief facts of the case as emanating from the record are: The assessee is an individual. The assessee filed her original return of income under section 139(1) of the Act on 20/08/2019. Thereafter, the assessee filed a revised return of income under section 139(5) of the Act on 26/08/2020, declaring a total income of Rs. 60,58,060, along with the computation of income and Form No.67 for claiming foreign tax credit. The revised return

filed by the assessee was processed vide intimation dated 08/03/2021 issued under section 143(1) of the Act, whereby the foreign tax credit of Rs. 11,79,796, claimed under section 91 of the Act was denied. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on the basis that Form No.67, was filed after the due date for filing the return of income under section 139(1) of the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative („*learned A.R*“) submitted that the assessee is an old lady of about 84 years of age. The assessee received some income from the Company headed by her brother on which tax was already paid in Ghana. Due to the death of her brother, the repatriation of money was delayed due to some paperwork and the assessee was unable to file Form No.67 within the prescribed due date. Upon receipt of Form No. 67, the assessee filed a revised return of income under section 139(5) of the Act and claimed the foreign tax credit of Rs. 11,79,796. The learned AR submitted that the revised return of income was filed within the extended time provided under the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, and notifications issued thereunder by the CBDT. Learned AR also submitted that provisions of section 90/91 of the Act are substantive provisions and the provisions of Rule 128 of the Income Tax Rules, 1962, cannot override the same. Learned AR placed reliance upon certain decisions of the coordinate bench of the Tribunal in support of its submissions.

6. On the contrary, the learned Departmental Representative vehemently relied upon the impugned order passed by the learned CIT(A).

7. We have considered the rival submissions and perused the material available on record. In the present case, the assessee filed the revised return of income under section 139(5) of the Act on 26/08/2020, and claimed the foreign tax credit of Rs. 11,79,796. It is the claim of the assessee that she has received certain income amounting to Rs. 48,10,498, from foreign sources, on which tax was already paid in Ghana. Due to certain factors beyond her control, the assessee received Form No.67, after some delay. However, as soon as the assessee received the aforesaid Form, she filed a revised return of income under section 139(5) of the Act. In the present case, both the original return of income and revised return of income were filed by the assessee before the due date and there is no dispute on this aspect by the Revenue. The ACIT, CPC, Bengaluru, while processing the revised return of income vide intimation issued under section 143(1) of the Act denied the foreign tax credit of Rs. 11,79,796, claimed by the assessee under section 91 of the Act. In the impugned order it has been held that Form no.67 was filed by the assessee after the due date of filing the return of income under section 139(1) of the Act and thus the assessee is not entitled to the claim of the foreign tax credit.

8. We find that under Rule 128(9), as it stood during the year under consideration, provided 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. Thus, during the year under consideration, the assessee was required to furnish Form No. 67 on or before the due date of filing the return of income under section 139(1) of the Act, as per the provisions of Rule 128(9). In the present case, the assessee though filed her original return of income within the extended time granted vide order dated 23/07/2019, passed by the CBDT under section 119 of the Act, however, furnished Form No.67 along with her revised return of income on 26/08/2020. We further find that Rule 128(9) has recently been substituted by the Income-tax (Twenty-seventh Amendment) Rules, 2022, w.r.e.f. 01/04/2022 and the same reads as under:

"(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 end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:"

9. Thus with effect from 01/04/2022, the time period for furnishing statement in Form No. 67 has been extended till the end of the assessment year in which the corresponding income has been offered/assessed to tax and the return of such assessment year has been furnished within the time specified under 139(1) or 139(4) of the Act.

10. We find that the coordinate bench of the Tribunal in Sonakshi Sinha vs CIT, in ITA No. 1704/Mum./2022, vide order dated 08/09/2022, 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), observed 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 Lakshmipathi V CIT(A) NFAC ITA No.680/Bang./2022 06.09.2022. 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."

11. We further find that in another decision in Anuj Bhagwati vs DCIT, in ITAs No.1844 and 1845/Mum./2022, the coordinate bench of the Tribunal vide order dated 20/09/2022, 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."

12. 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, therefore, 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, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 01/12/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/12/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai