



Date: 03.08.2021

**CHAIRMAN,
CBDT, FINANCE MINISTRY,
GOVERNMENT OF INDIA,
NEW DELHI.**

SUB: REJECTION OF FOREIGN TAX CREDIT FOR DELAY/NON-FILING OF FORM 67

Sir,

We wish to draw your attention towards the difficulties faced, in recent times, by resident taxpayers, in claiming Foreign Tax Credit (“FTC”) for their income abroad, while filing their return of Income in India.

As per the Double Taxation Avoidance Agreement (“DTAA”), entered by India with different countries, resident of one country is entitled to claim credit of the taxes paid or deducted outside his country of residence, while offering his global income to tax in the jurisdiction of which he is resident. Accordingly, numerous Indian residents having income outside India are entitled to claim credit of the taxes paid outside India while filing their return of income in India, in accordance with DTAA.

In this regard, **Rule 128, of the Income Tax Rules, 1962** was also introduced w.e.f. 01.04.2017, which was made applicable for assessee, being an Indian resident, claiming FTC. As per Sub-Rule (8) and (9) of Rule 128, the resident, claiming FTC, has to file **Form 67**, on or before the due date of furnishing the return of income u/s 139(1) of Income Tax Act, 1961.

In recent times, while processing the return of income u/s 143(1), through online mechanism, those resident taxpayers who had filed Form 67 with delay or had not filed Form 67, their FTC was rejected and demand was created against them to the extent of the amount of FTC claimed along with interest.



We wish to submit that the entitlement for claiming FTC emerges from the DTAA which India has entered with different countries. Putting additional requirement by way of Rules, such as the one of filing Form 67, for claiming Foreign Tax Credit would make the DTAA subservient the local laws of India.

It is a settled proposition that the provision of DTAA always have an overriding effect to the provisions of Income Tax Act, 1961, which has also been expounded by the **Hon'ble Supreme Court** in the case of **Azadi Bacshao Andolan [2003] 263 ITR 70 (SC)** and **P.V.A.L. Kulandagan Chettiar [2004] 267 ITR 654 (SC)**. Article 51(c) of Constitution of India provides that State shall endeavour to foster respect for International law and treaty obligations. Also, as per Article 253, Parliament has power to make any law for whole or any part of India for implementing any treaty, agreement and convention with any other country or countries.

Thus, the provisions of DTAA cannot be undermined by bringing in procedural requirements, in the matter of claiming FTC. As per Section 143(1), while processing the return, only errors or incorrect claims are sought to be rectified, without any human intervention. Rejecting the FTC, u/s 143(1) simply for non-compliance of Rule 128, would also be against the mandate of Section 143(1). Merely, filing Form 67 with delay or not filing Form 67, doesn't point out to the fact of any incorrect claim made by the assessee.

Delay in filing Form 67 in majority of cases can be due to genuine reasons, as the amount of FTC to be claimed can be decided only once the assessee has filed his tax returns in other tax jurisdiction or has received the relevant supporting evidences of the taxes deducted outside India. Many of the tax jurisdictions follow different period for taxing the income and have different due dates for filing the return in comparison to India. Thus, there can be situations, wherein, it is inevitable to file Form 67 with delay i.e. after the due date prescribed u/s 139(1), which in the case of individual is mostly 31st July, of the assessment year subsequent to relevant previous year.



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Such rejection of FTC has resulted into huge demands being generated in those cases, wherein, the assesses have paid taxes abroad and are genuinely claiming credit of those taxes paid. This would result into tax litigation, which otherwise could have been avoided.

Thus, it is humbly prayed to do away with the requirement of filing Form 67 for claiming Foreign Tax Credit before the due date u/s 139(1) or alternatively option may also be given to file Form 67 even within the time limit prescribed u/s 139(4).

We trust that the CBDT will act swiftly in the matter and provide much needed relief and clarity to the concerned assessees.

Thanking You,

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