

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.87/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2020-21

Deelip Kanhailal Chawla,  
Flat No. 650, DDA Appartments,  
Sector 22, Pocket 1, Dwarka,  
New Delhi – 110077

PAN : AFKPC3461L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,  
Ward – 1(4), Jalgaon

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
Revenue by : Shri Ramnath P. Murkunde

सुनवाई की तारीख / Date of Hearing : 02-03-2023  
घोषणा की तारीख / Date of Pronouncement : 09-03-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 07-12-2022 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2020-21.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent

and set ex-parte. Therefore, we proceed to dispose off the appeal by hearing the ld. DR and perusing the material available on record.

3. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC, Delhi justified in confirming the disallowance of Foreign Tax Credit (FTC) in the facts and circumstances of the case.

4. We note that the assessee is an individual, worked with Mckinsey & Co., New York, United States of America from 27-12-2019 till 31-03-2020. The assessee claimed Foreign Tax Credit (FTC) in India for taxes paid in USA. The CPC denied the said FTC for non-filing of Form No. 67 along with the return of income. The assessee challenged the same before the CIT(A), NFAC, Delhi. According to the CIT(A), NFAC, Delhi the FTC is allowable if the assessee files return of income u/s. 139(1) of the Act along with Form No. 67, thereby, the CIT(A), NFAC, Delhi observed since the assessee filed return of income u/s. 139(4) of the Act, therefore, the assessee is not entitled to claim FTC as the return of income was not filed within due time specified u/s. 139(1) of the Act. Having holding so, the CIT(A), NFAC, Delhi opined that it has no jurisdiction to condone the delay and confirmed the order of CPC in denying FTC to the assessee.

5. On perusal of the impugned order, we note that Form No. 67 was filed by the assessee before filing of return of income which is evident from page 4 of the impugned order. It is also noted that the assessee contended that he tried to file rectification application u/s. 154 of the Act, but however, due to technical glitches at on-line Income Tax portal, he could not file the same. Further, he also contended that filing of Form No. 67 is

a procedural requirement and is not a mandatory, further, right of claim of FTC does not extinguish for violation of a procedural requirement. Having examined the record, we note that nowhere in the impugned it is reflected as the date of filing of Form No. 67 and therefore it is to be understood the assessee filed Form No. 67 before filing of return of income u/s. 139(4) of the Act as is evident from page 4 of the impugned order.

6. Admittedly, the statutory provisions u/s. 90, the assessee entitled to claim FTC and in order to claim the taxes paid outside India, Rules are contemplated under Rule 128 of Income Tax Rules, 1962, wherein, Sub-rule (8) of Rule 128 provides procedure in furnishing the documents mentioned therein in clauses (i) & (ii). We note that CIT(A), NFAC, Delhi reproduced the said Rule at page 3 of the impugned order. On careful reading of the said Rule we note that, clause (i) of Sub-rule (8) of Rule 128 explains furnishing a statement of income from the country or specified territory outside India offered for tax for the previous year and foreign tax deducted or paid on such income in Form No. 67 duly verifying the manner in which specified therein. Admittedly, it is not clear, as discussed above the date of filing of Form No. 67 as required under clause (i) of Sub-rule (8) of Rule 128 of the Income Tax Rules, 1962 in the impugned order. Thereby, denying FTC, in our opinion, is not warranted. Further, we hold Rules cannot override statutory provisions, as section 90 of the Act provides allowance of Foreign Tax Credit which is denied for alleged violation of procedures requirement. Therefore, we find filing of Form No. 67 under clause (i) of Sub-rule (8) of Rules 128 of the Income Tax Rules, 1962 is a procedural requirement, therefore, is a directory in nature, non-compliance thereof does not disentitled the assessee in claiming Foreign Tax Credit. Thus, in view of the discussion made by us in the

aforementioned paragraphs and with the facts and circumstances arising out of record, we deem it proper to direct the CPC, Bangalore (AO) to allow Foreign Tax Credit as claimed by the assessee. Thus, grounds raised by the assessee are allowed for statistical purpose.

7. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on March, 2023.

(Inturi Rama Rao)  
ACCOUNTANT MEMBER

(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : March, 2023.  
रवि/Ankam

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

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

आदेशानुसार / BY ORDER,

/// TRUE COPY ///

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune