

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.2536/Del/2022
Assessment Year: 2019-20

Vikash Daga Flat No. D-022, The Belaire, Golf Course Road, DLF Phase 5 Gurgaon Haryana PAN No.ADIPD4214E (APPELLANT)	Vs	ACIT Circle – 3 (1) Gurgaon (RESPONDENT)
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Appellant by	Sh. Sanjeev Kachial, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	12/06/2023
Date of Pronouncement:	14/06/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 18.08.2022 by NFAC, Delhi pertaining to A.Y.2019-20.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the action of the AO who denied the foreign tax credit amounting to Rs.18,87,114/- for the reason form 67 was submitted by the assessee after the due date of filing of the return of income.

3. Briefly stated the facts of the case are that the assessee being an individual Indian citizen filed his return of income on his

global income that was taxable in India. The return of income was filed on 10.08.2019 declaring total income of Rs.165854280/- which included income earned in USA and claimed foreign tax credit of Rs.18,87,114/- u/s. 90 of the Act. The return was processed u/s.143(1) of the Act wherein the demand of Rs.1262070/-was created for which the assessee filed a rectification application u/s.154 of the Act which was denied by CPC Bangalore.

4. The assessee agitated the matter before the CIT(A) but without any success.

5. Before us the Counsel for the assessee vehemently stated that the return of income was filed on 10.08.2019 as form 67 could not be submitted due to technical issues the same was submitted technically on 16.02.2021 but since form 67 was not submitted alongwith the return of income, the foreign tax credit was denied.

6. The Counsel prayed for allowing the credit for foreign tax.

7. Per contra the DR strongly supported the findings of the lower authorities.

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 result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.06.2023.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi