

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 164/JP/2023
निर्धारण वर्ष / Assessment Years : 2018-19

Suresh Kumar Doodi Flat No. 6014 Sobha Charysanthemum Appartments, Thanisandra, Hegde Nagar Main Road, Thanisandra Bangalore, Karnataka	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMEPD 2850 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Nageswar Rao (Adv.)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 27/06/2023
उदघोषणा की तारीख / Date of Pronouncement : 28/07/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 27/01/2023 [here in after (NFAC)] for assessment year 2018-19 which in turn arise from the order dated 08.02.2021 passed under section 154 of the Income Tax Act, by the ACIT/DCIT, Circle-06, Jaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. That NFAC erred on facts and in law in upholding rectification order dated 08.02.2021 passed by the assessing officer under section 154 of the Act (pursuant to intimation dated 08.06.2020 and rectification order dated 07.08.2020 passed by Central Processing Centre) disallowing foreign tax credit of Rs. 15,53,686 claimed by the Appellant in the return of income.

2. That NFAC/CIT(A) erred on facts and in law in not appreciating that the tax liability in relation to salary income earned in United States of America (USA) during secondment period was discharged in USA and such income is not taxable in India in terms of provisions of section 90 of the Act read with Article 25 of India-US Double Taxation Avoidance Agreement ('DTAA' or 'Treaty').

3. That NFAC/CIT(A) erred on facts and in law in not appreciating that taxing salary income received in USA would result in double taxation of income which is contrary to the provisions of the Act as also the treaty.

4. That NFAC/CIT(A) erred on facts and in law in not appreciating that filing of Form 67 under Rule 128 of the Income Tax Rules, 1962 before due date specified under section 139(1) of the Act is a mere procedural requirement in comparison to substantive right of being entitled to obtain credit for tax paid in a treaty Country on same income.

5. That NFAC/CIT(A) erred on fact and in law in not appreciating that Rule 128 which merely prescribes the procedure for claiming credit of taxes cannot enlarge burden on the Appellant nor can it abridge the benefit conferred under the Act and the Treaty.

6. The NFAC/CIT(A) erred in law in levying interest under section 234A, 234B, 234C of the Act.”

3. The fact as culled out from the records is that in this case, The assessee, Suresh Kumar Doodi, a salaried individual, e-filed

his return of income for the AY 2018-19 on January 22, 2019 by declaring Rs,. 1,69,36,787/- as gross total income and paid the self-assessment tax of INR 24,70,738/- after reducing the eligible tax credit. The same total income of Rs. 1,67,44,980 was declared after a deduction of Rs. 1,91,803/- under Chapter VI-A of the Act from the above gross total income and a self-assessment tax of Rs. 24,70,738/- was paid by the assessee after claiming the eligible tax credits. The CPC processed return of income u/s 143(1) on 08.06.2020 determining demand of Rs. 21,23,250/- and later on determining demand of Rs. 22,00,795/- on 07.08.2020 under section 154 of the IT Act, 1961. In that order of the Id. AO u/s. 154 of the Act he hold that the assessee was required to file return of income as well as form 67 before due date specified for furnishing the return of income under sub-section (1) of section 139. The assessee filed form 67 on 28.01.2019 and return of income on 22.01.2019 under section 139(4) which is applicable in case of filing of return of income after due date. Therefore, the assessee is not eligible for relief u/s 90/90A of the Income Tax Act, 1961 and thereby the claim of the assessee was denied.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4 I have considered the grounds of appeal and seen the submission made by the appellant and perused the rectification order dated 08.02.2021 passed u/s 154 of the Income Tax Act, 1961. The grounds of appeal wise discussion and decisions are as follows:-

4.1 Ground No. 1 and 2 are related to disallowance of foreign tax credit claimed u/s 90 of the IT Act. The Appellant claimed the tax relief of Rs. 15,53,686/- being paid in the foreign country in his Return of Income. During the processing of the return, the claimed tax relief of Rs. 15,53,686/- was disallowed. Subsequently, the Appellant filed petition u/s 154 to the AO for allowing the relief of Rs. 15,53,686/-. The AO passed the rectification order u/s 154 of the IT Act on 08.02.2021. The relevant part of the rectification order is reproduced as below:-

Order u/s 154 of the IT Act

"The application of the assessee has been carefully considered. After going through the details available on ITBA as well as details provided by assessee, comments on contention of the assessee are as under:-

On the issue of Relief u/s 90/90A: In respect of relief of foreign tax credit u/s 90/90A/91 relevant portion of notification no.9 dated 19.09.2017 issued by CBDT is mentioned here-in-below:

"an assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him....as specified in rule 128 of the Income tax (18th amendment) rules, 2016. As per sub rule 9 of rule 128, 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 due date specified for furnishing the return of income under sub-section (1) of section 139.....submission of form 67 shall precede filling of return of income."

In view of the aforementioned details, the assessee was required to file return of income as well as form 67 before due date specified for

furnishing the return of income under sub-section (1) of section 139. The assessee filed form 67 on 28.01.2019 and return of income on 22.01.2019 under section 139(4) which is applicable in case of filing of return of income after due date. Therefore, the assessee is not eligible for relief u/s 90/90A of the Income Tax Act, 1961"

The due date of filing of Return of Income for AY. 2018-19 in the case of Appellant was 31.03.2018, however, the Appellant filed the Return of Income on 22.01.2019 which is after the due date specified for furnishing the Return of Income under sub-section (1) of section 139. Further, the Appellant submitted Form 67 as referred in Rule 128 was only on 28.01.2019 which is also after the due date specified for furnishing the Return of Income under sub-section (1) of section 139. In view of these facts and the provisions of IT Act and Rule 128 of the IT Rules, 2016 and notification No.9 dated 19.09.2017 of CBDT, I don't find any irregularities in the order of 154 passed by the AO. Further, the Appellant could not submit any contrary view or evidence against the order of 154 of the IT Act. Accordingly, I am of the considered view that the foreign tax credit of Rs. 15,53,686/- is not allowable in the case of Appellant as the relevant Return of Income and Form 67 as referred in Rule 128 of the IT Rules, 2016 have been furnished after the due date specified for furnishing the Return of Income under sub-section (1) of section 139 of the IT Act. Therefore, the order of 154 of the IT Act is hereby confirmed and this ground of appeal is dismissed.

4.2 Ground No. 3 relates to charging of interest under sections 234A, 234B & 234C of the IT Act. The charging of interest is consequential which doesn't require specific adjudication and hence this ground of appeal is dismissed.

4.3 Ground No. 4 is general in nature and requires no specific adjudication.

5. In result, the appeal is dismissed"

5. In this appeal the Id. AR of the assessee submitted a detailed case law paper book and the same is extracted here in below :

S. No.	Particulars	Pages
1	Decision of Hon'ble Mumbai Bench of the Tribunal in the case of Sonakshi Sinha vs. CIT (ITA No. 1704/Mum/2022)	1-10

2	Decision of Hon'ble Delhi Bench Tribunal in the case of Bhaskar Dutta vs. DCIT (ITA No. 1869/Del/2022)	11-14
3	Decision of Hon'ble Hyderabad Bench of the Tribunal in the case of Purushothama Reddy Vankireddy vs. ADIT (ITA No. 526/Hyd/2022)	15-17
4	Decision of Hon'ble Mumbai Bench Tribunal in the case of Bhagwandas Tikamdas Khinani vs. CIT (ITA No. 2177/Mum/2022)	18-22
5	Decision of Hon'ble Mumbai Bench of the Tribunal in the case of Nirmala Murli Relwani vs. ADIT (ITA No. 2094/Mum/2022)	23-27
6	Decision of Hon'ble Bangalore Bench of the Tribunal in the case of Ms. Brinda Rama Krishna vs. ITO	28-32

6. The Id. AR of the assessee in addition to the above case laws relied upon vehemently argued that the assessee has worked two months in State of America. Though the return of income was filed belated u/s 139(4) of the Act and Form No. 67 was filed within one week of the belated return these being the only procedural lapse on the part of the assessee and the Id. AO has denied the foreign tax credit as claimed by the assessee. Considering judicial precedent cited by the Id. AR of the assessee, he prayed before the Bench as judicious view may be taken in this case and consequent relief as deem fit be granted to the assessee.

7. The Id DR is heard who has relied on the findings of the lower authorities. The Id. DR as regards the issue of non granting of the foreign tax credit submitted that the Form No. 67 is required to be filed before the due date of filing of return of income under rule 128

which is mandatory condition and thus supported the finding of the lower authorities.

8. We have heard the rival contentions and perused the material placed on record. The only issue in this appeal is whether the assessee is entitled for foreign tax credit claimed even though the required Form No. 67 is not filed in accordance with the provision of rule 128(9) of the Income Tax Rules. At the same time based on the averments made by the Id. AR of the assessee the bench noted that the Id. DR did not placed on record any contrary judgment to these facts and has relied upon the finding of Id. AO and the Id. CIT(A) on the issue and reiterated those contentions that has already been reflected in the orders of lower authorities. We also noted that the said form (form 67) was filed before the Assessing Officer and before issuance of intimation u/s 143(1) of the Act in that return. The assessee has already put a claim for foreign tax credit based on that form, the revenue has not otherwise put forth the non eligibility of the claim on the merit of the assessee. WE considered the various judgment cited by the Id. AR of the assessee in his submission and based on the judicial decisions cited by the Id. AR of the assessee bench noted that coordinate

bench of Bangalore 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 Rule 128 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 Lakshmi pathi V CIT(A) NFAC ITA No.680/Bang/2022 06.09.2022. Thus, 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 he has filed in form 67 before completion of the assessment. Based on these observations, we hold that the claim of foreign tax credit cannot be denied and we direct the Assessing Officer to allow the FTC based upon the belated form No. 67 filed by the assessee accordingly. Based on these observations the ground no. 1 to 5 are allowed. Ground no. 6 is consequential in nature and did not require any adjudication. Based on these observations the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed

Order pronounced in the open Court on 28/07/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/07/2023

*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Suresh Kumar Doodi, Bangalore,
2. प्रत्यर्थी / The Respondent- Assistant Commissioner of Income Tax, Circle-06, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 164/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar