

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B (SMC)" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 782/Kol/2022**  
**Assessment Year: 2020-21**

<b>Sobhan Lal Gangopadhyay</b> Flat 14B, Tower A Eden Court, Tata Housing Plot 2G/1, Action Area II New Town S.O., Rajarhat Pincode - 700156 <b>[PAN : AAUPG2642L]</b>	Vs	<b>Asstt. Director of Income Tax, CPC, Bengaluru</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Nirmal Kaushik, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 28/02/2023  
घोषणा की तारीख /Date of Pronouncement: 09/05/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

This is the appeal preferred by the assessee against the order of the National Faceless Appeal Centre (hereinafter referred to as the Id. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 22/12/2022 for the Assessment Year 2020-21.

2. The only grievance of the assessee is that the Id. CIT(A) has erred in not allowing the relief of tax of Rs.3,50,106/- paid in Republic of Korea and claimed in the return u/s 90 of the Act as available under Article 23(a)(i) in DTAA with Republic of Korea.

3. At the outset, Id. Counsel for the assessee submitted that the issue raised in the instant appeal is squarely covered by the decision of the Coordinate Bench in the case of *Sonakshi Sinha vs. CIT* in ITA No. 1704/Mum/2022; Assessment Year 2018-19; order dt. 20/09/2022.

On the other hand, the Id. D/R supported the order of the lower authorities but could not controvert the contention of the assessee.

4. We have heard rival contentions and perused the material placed before us.

5. We observe that the assessee is an individual and filed its return of income on 06/10/2020 for Assessment Year 2020-21 declaring income of Rs.42,35,370/-. During the year under consideration, the assessee has claimed to be out of India for employment in South Korea from 16/04/2018 to 08/09/2019 under the assignment with Tata Daewood Commercial Vehicle Company Ltd. The fact about the assessee being outside India from 16/04/2018 to 08/09/2019, is not in dispute before us. In the return of income, assessee has claimed relief u/s 90 of the Act at Rs.3,50,106/- being tax paid in Republic of Korea. In the return processed u/s 143(1)(a) of the Act, the said claim of relief u/s 90 of the Act was not provided to the assessee on account of the reason that the prescribed Form No. 67 read with Clause 8 of Rule 128, was not filed belatedly i.e., after the due date of filing return u/s 139(1) of the Act. For this very reason that Form No. 67, was not filed before the due date of filing of return, the said claim was denied.

6. Before us, Id. Counsel for assessee referred to the decision of the Co-ordinate Bench in the case of *Sonakshi Sinha (supra)*, wherein it has been held that filing of Form No. 67 is directory in nature and not mandatory. Relevant extract of the Tribunal's decisions is reproduced hereunder:-

*"011. The learned authorised representative submitted that honourable Supreme Court was seized of the matter where in the same subsection twin conditions were mentioned the honourable High Court and lower appellate authorities considered one of the condition as mandatory and one of the condition as directory. He submitted that here section 90 or 91 does not lay down any condition of filing any form. The requirement of filing of the form is provided under rule 128 of The Income Tax Rules. Therefore here the situation is quite different. He submitted that these conditions have been considered by the coordinate bench in case of Brinda Ramakrishna.*

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 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 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.

013. Other grounds of appeal are also revolving around the issue of claim of foreign tax credit and therefore those are allowed.

014. Accordingly appeal of the assessee is allowed."

7. Above finding of the Tribunal is squarely applicable on the facts of the case in hand and the same remains uncontroverted by the Id. D/R by way of placing reliance on any other binding precedents in its favour. We, therefore, respectfully following the same, are inclined to hold that the Assessing Officer ought not to have denied the relief u/s 90 of the Act merely for delay in filing of Form 67. Thus, effective ground of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 9<sup>th</sup> May, 2023 at Kolkata.**

*Sd/-*

**(RAJPAL YADAV)  
VICE PRESIDENT**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 09/05/2023

*SC Sp/2*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata