

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़

**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH**

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT

आयकर अपील सं./ITA No. 750/CHD/2023

निर्धारण वर्ष / Assessment Year : 2021-22

Smt. Anita Sandhu, House No. 24, Sector - 2, Chandigarh.	बनाम VS	The ITO, Ward 5(5), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AEFPS1456K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Nechchal Sandhu

राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

तारीख/Date of Hearing : 15.07.2024

उद्घोषणा की तारीख/Date of Pronouncement : 04.09.2024

PHYSICAL HEARING

आदेश/ORDER

This is assessee's appeal for assessment year 2021-22
against the order dated 03.11.2023 passed by the 1d. CIT(A),
Chennai.

2. The assessee has raised the following grounds of
appeal :

“1. That the order dated 03.11.2023, passed under section 250 by
the Ld. Addl./ JCIT (A)-6, Chennai in Appeal No. ITBA/APL/S/250 /2023-
24/ 1057673977 (1) is contrary to law and facts of the case.

2. That in the facts and circumstances of the case Learned Ld.
Addl./JCIT (A)-6, Chennai gravely erred in upholding the order of the

Ld. Asstt. Director of Income Tax, CPC, Bengaluru under which credit for Foreign Tax Paid was not given on the foreign income earned from dividend, interest income and capital gain, in the presence of form No. 67 having been filed in time on 02.09.2021 within due date which was extended On the following dates:-

Extended upto 30.11.2021 and further upto 15.02.2022 as per Board's Circular No. 9/2021 dated 20.05.2021 and Circular No. 17/2021 dated 09.09.2021 respectively issued by the Hon'ble CBDT. This date was again extended upto 15.03.2022 as per Board's Circular No. 01/2022 in FNo. 225/49/2021/ITA-II dated 11.01.2022."

3. The assessee had filed her return of income (APB 11-18) for assessment year 2021-22 on 02.09.2021. In the return of income, the assessee claimed Foreign Tax Credit ("FTC" for short) of Rs.71,308/- paid as tax in Canada. Form 67, i.e., submission of income from a country or specified territory outside India and FTC, was filed alongwith the return of income, on 02.09.2021.

4. Vide intimation issued under Section 143(1) of the Income Tax Act, dated 05.07.2023, the assessee's claim of FTC was declined. By virtue of the impugned order, the 1d. CIT(A) has confirmed this disallowance.

5. Heard.

6. The 1d. CIT(A) has held as follows :

"4. A notice was issued to the appellant to establish the fact on filing of form no.67 to claim relief of taxes u/s.90. In response to the same, the Appellant, vide letter dated 29/10/2023 submitted that filing of form 67 was not mandatory and relied on the decision of ITAT, Chennai Bench 'B' in the case of Amitsingh Baid Mehta vs. CPC.

4.2 The facts of the case and the compliance to the rules laid down u/r. 129(8) of the Income tax Rules, 1962 are carefully considered. It is an admitted fact that Form no.67 has not been file by the Appellant before the time limit specified u/s. 139(1) for-AY 2021-22 and such omission is attempted to be justified by the Appellant on the pretext that filing of Form No.67 is not mandatory relying on certain judgements of the Tribunal. With due respect to the judicial authorities who had rendered in favour of the tax payers like that of the Appellant, it is brought on record that filing of Form no.67 is mandatory to claim the benefit of Foreign Tax Credit.

4.3 Taxes are paid in an alien nation, the particulars of which can never be verified by the Income tax Authorities. It is for such reason that Form no.67 which consists of 4 parts has a verification column, affirming that the claim of the FTC to the best of the knowledge and belief of the Appellant is true and correct. Providing credit of FTC in the absence of such verification is not logical while the authorities erred in failing to comprehend that the claims are otherwise not verifiable. Further, Rule 129(8) incorporates the word "Shall", which imply that filing of Form no.67 before the time limit u/s. 139(1) [now extended to 139(4)] is directory/mandatory. Having failed to file the same, the CPC was correct in denying the credit of FTC paid abroad.

5. Conclusion: Accordingly, the grounds of appeal of the Appellant is DISMISSED."

7. Thus, the 1d. CIT(A) has held that filing of Form 67 is mandatory, within the time limit prescribed under Section 139(1) of the Act and that in the absence thereof, the FTC claimed was correctly denied.

8. As against the assessee's grievance that the FTC claimed ought to have been allowed, since the Form 67 had been furnished within the extended due date, the 1d. DR has placed strong reliance on the impugned order.

8.1 The due date of furnishing of return of income for assessment year 2021-22, as prescribed under Section

139(1) of the Act, was 31.07.2021. It is undisputed that this date was extended upto 30.09.2021 by CBDT Circular (APB 27-29) No. 9 of 2021, dated 20.05.2021. Both, the return of income and Form 67 were filed on 02.09.2021, i.e., within the extended date, as per the aforesaid CBDT Circular No.9 of 2021. Proof (APB-19) of filing of Form 67 on 02.09.2021 is in the shape of Acknowledgement Receipt thereof, which is scanned and reproduced hereunder, for ready reference :

Acknowledgement Receipt of Income Tax Forms (Other Than Income Tax Return)		 e-Filing <small>Anytime Anywhere</small> Income Tax Department, Government of India
e-Filing Acknowledgement Number / Quarterly Statement Receipt Number 413111970020921		Date of e-Filing 02-Sep-2021
Name	: ANITA SANDHU	
PAN/TAN	: AEFPS1456K	
Address	: House No 24, Sector 2, CHANDIGARH, Chandigarh, New Sectt Chandigarh S.O, Chandigarh, INDIA - 160001	
Form No.	: Form 67	
Form Description	: Statement of income from a country or specified territory outside India and Foreign Tax Credit. This form is in compliance with form rule 12B.	
Assessment Year	: 2021-22	
Financial Year	: -	
Quarter	: -	
Filing Type	: Original	
Filing Entity/Filed By	: Individual	
Verified By	: AEFPS1456K	

(This is a computer generated Acknowledgement Receipt and needs no signature)



8.2 This acknowledgement was placed before the authorities below. However, they have not taken cognizance thereof. The 1d. CIT(A) has just confirmed the denial of the FTC claimed, by holding that Form 67 had not been filed within the time limit specified under Section 139(1) of the

Act. The 1d. CIT(A) has also held that filing of Form 67 in the manner prescribed under Section 139(1) of the Act is mandatory, even in the face of judicial decisions holding it to be merely directory.

8.3 However, in the case at hand, where, as noted, Form 67 has actually been filed within the extended date of filing the return of income, I refrain from entering any comment on such observation of the 1d. CIT(A), since this controversy does not arise herein. I reverse the order of the 1d. CIT(A), finding it to be an outcome of non-reading of material documentary evidence brought on record by the assessee, in the shape of the Acknowledgement Receipt of the Form 67 filed on 02.09.2021 alongwith the return of income. Accordingly, I direct the AO to take cognizance of the Form 67 filed and grant FTC to the assessee, as the assessee may be entitled to, in accordance with law.

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

Order pronounced on 04.09.2024.

Sd/-

SAG blog

(A.D.JAIN)
VICE PRESIDENT

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चंडीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar