

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri Ravish Sood, Judicial Member

आ.अपी.सं /ITA No.552/Hyd/2025
(निर्धारण वर्ष /Assessment Year: 2020-21)


Nanda Kishore Ravula Hyderabad [PAN :AGUPR0664F]	Vs.	ADIT (International Tax)-2 Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Nikhill Tiwari, AR	
राजस्व द्वारा/Revenue by:	Shri Gurpreet Singh, DR	
सुनवाई की तारीख/Date of Hearing:	26/06/2025	
घोषणा की तारीख/Date of Pronouncement:	30/06/2025	

आदेश / ORDER

PER. MANJUNATHA G., A.M:


This appeal filed by the assessee is directed against the order dated 21.01.2025 of the learned Commissioner of Income Tax (Appeals) [Ld.CIT(A)], National Faceless Appeal Centre, Delhi, pertaining to A.Y.2020-21.

2. The brief facts of the case are that the assessee, an individual, filed his original return of income for the A.Y.2020-21 on 15.12.2020, declaring total income of Rs.1,08,11,550/-. Subsequently, the assessee filed revised return of income on 30.03.2021 and claimed Foreign Tax Credit ("FTC") of

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Rs.21,57,343/-. The return of income filed by the assessee has been processed by the AO(CPC) and intimation u/s 143(1) dated 24.12.2021 was issued by rejecting the FTC claimed by the assessee. The assessee filed an application u/s 154 of the Act and the same has also been rejected by the AO(CPC).

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that he has filed return of income on or before the due date provided u/s 139(1) of the Act and also filed revised return within the due date provided u/s 139(5) of the Act. The assessee filed Form 67 on 01.03.2021, before the AO passed assessment order on 24.12.2021. Therefore, he submitted that when the assessee has filed relevant Form 67 before the AO passed assessment order for claiming FTC, the AO ought to have allowed the credit for FTC. The Ld.CIT(A), after considering the submissions of the assessee and also taking note of Rule 128(9) of I.T. Rules, 1962, rejected the explanation of the assessee and upheld the additions made by the AO, by rejecting credit for FTC, on the ground that, in order to claim credit for FTC, the assessee shall furnish relevant statement in Form 67 on or before the due date for filing return of income u/s 139(1). Since the assessee has filed relevant Form 67 after the due date provided u/s 139(1), the AO has rightly denied credit for FTC and thus, upheld the reasons for rejecting the claim for FTC.


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4. Aggrieved by the order of the Ld.CIT(A), the assessee is now in appeal before the Tribunal.

5. The Ld.Counsel for the assessee, Shri Nikhill Tiwari, Advocate submitted that, this issue is squarely covered in favour of the assessee, by the decision of ITAT Hyderabad in the case of Sri Sridharan Venkatanarayanan Vs. DCIT in ITA No.32/Hyd/2025 dated 27.03.2025, where, under identical set of facts, the Tribunal directed the AO to allow credit for FTC, if Form 67 is filed on or before the date when the AO passed order u/s 143(1) on 24.12.2021.

6. On the other hand, the Ld.DR, Shri Gurpreet Singh has relied upon the impugned order of the Ld.CIT(A) and submitted that the assessee has failed to furnish Form 67 on the specified date being the due date of furnishing the return of income as prescribed u/s 139(1) of the Act, which is mandatory condition as per Rule 128(9) of the I.T.Rules. Therefore, the CPC has rightly disallowed the claim of FTC of the assessee. The Ld.DR has pointed out that there is delay in furnishing Form 67, however, the same was filed on 01.03.2021 before the CPC passed order u/s 143(1) of the Act on 24.12.2021.


7. We have considered the rival submission, perused the material on record and gone through the orders of the

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authorities below. We note that the Ld.CIT(A) rejected the claim of the assessee on the ground that the assessee has failed to file return of income and Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act, which is mandatory according to Rule 128(9) of I.T.Rules. Since the assessee has filed relevant Form 67 although belatedly, before the AO passed order u/s 143(3) of the Act, in our considered view, the AO ought to have allowed credit for FTC on the basis of relevant Form 67 by the assessee. This view is supported by the decision of Sri Sridharan Venkatanarayanan Vs. DCIT (supra), where under identical set of facts, the Tribunal held as under :

“5. We have considered the rival submission as well as perused the relevant material available on record. At the outset we note that the learned CIT (A) has recorded the relevant facts and rejected the claim of the assessee in Para 7.4 as under:


“7.4. The Appellant claimed FTC of Rs.815869/- u/s.91 of the Act in original return of income filed on 09-08-2018. The Appellant had filed the Form 67 also on 15-03- 2019. The Appellant also filed a Revised Return of income on 20/03/2019. However, it is pertinent to note that the due date of filing of Return of income was 31.08.2018. The Appellant has failed to furnish Form 67 on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act which is mandatory according to Rule 128(9) of the Rules. Therefore, the return of income was processed by Centralized Processing Centre (CPC) electronically and intimation u/s 143(1) of the Act on 20.03.2020 was passed disallowing the claim of FTC. The Appellant has not

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filed Form 67 before the time allowed under section 139(5) of the Act. The word "shall" has been used in the rule 128(9) therefore the provisions of rule 128 are mandatory in nature and not directory. From the above, it is apparent that unless there is an order condoning the delay in filing Form No. 67 by the PCIT under Section 119(2)(b), such Form No.67 can't be taken into consideration and the relief u/s. 91 cannot be allowed by the Appellate Authority even if other conditions are fulfilled. In view of the above, the appellant is not eligible for relief under section 91 and the Ground No.1 is dismissed."

6. Thus, it is clear that the assessee has filed Form 67 on 15/03/2019 along with the revised return of income. However, the CPC while processing the return of income u/s 143(1) of the Act on 20/03/2020, has disallowed the claim of FTC debit. Form 67 was available before the CPC at the time of processing the return. An identical issue has been considered by this Tribunal in a series of decisions relied upon by the assessee and in the latest decision dated 7/3/2025 in case of Shri Suresh Kumar Vobbilisetty vs. Income Tax Officer in ITA No.1204/Hyd/2 024 for the A.Y 2021-22, this Tribunal has held as under:

"5. We have considered the rival submissions as well as relevant material available on record. There is no dispute that in the case of the assessee there was a TDS deducted by the Foreign Government to the extent of Rs.95,539/- which was claimed as Foreign Tax Credit in accordance with section 91 of the I.T. Act, 1961. The CPC while processing the return u/s 143(1) dated 22/03/2022 disallowed the claim of Foreign Tax Credit on the ground that the assessee has not filed Form 67 within the prescribed limit i.e. 31st Dec. 2021 in case of the assessee. The assessee filed Form 67 on 6/8/2022 and challenged the order of the CPC before the learned CIT (A) but could not succeed. At the outset, we note that there are series of decisions on this point as relied upon by the learned AR of the assessee. In case of 42 Hertz Software India (P) Ltd

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vs, ACIT (Supra), the Bangalore Bench of the Tribunal has held in para 6 to 8 as under:

“6. There is no dispute that the Assessee is entitled to claim FTC. On perusal of provisions of rule 128 (8) & (9), it is clear 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. In our view, 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. This view is fortified by the decision of coordinate bench of this Tribunal in case of Ms.Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bang-Tirb).

7. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various High Courts, which has also been approved by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471.

8. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.”


6. Thus, the Tribunal has held that provisions of DTAA overrides the provisions of Act and the Rule as held by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence vs. CIT 432 ITR 471. Similar view has been taken by the Delhi Bench of the Tribunal in the case of NICDC

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Neemrana Solar Power Ltd. v. Deputy Commissioner of Income tax (Supra) in Para 8 & 9 as under:

“8. In the case of Sumedha Arora v. Income - Tax Officer [2023] 154 taxmann.com 535 (Delhi - Trib.) the Co-ordinate bench held as under:


"7. As stated, section 90 of the Act provides that Government of India can enter into agreement with other countries for granting relief in respect of income on which taxes are paid in the country outside India and such income is also taxable in India. Article 24 of India-Italy DTAA provides for credit towards foreign taxes paid for earning income arising from foreign soil. Section 90(2) of the Act provides that provisions of this Act shall apply to the extent they are more beneficial to the assessee. Article 24(3)(a) seeks to provide for method of elimination of Double Tax and the amount of Italian tax payable under the laws of Italy in respect of income from sources within Italy which has been subjected to tax both in India and Italy, shall be allowed as credit against the Indian tax payable in respect of such income. The assessee thus contends that a combined reading of Section 90 of the Act read with Article 24(3)(0) of DTAA provides in no uncertain terms that Italian tax paid shall be allowed as credit against Indian Tax. Neither Section 90 nor DTAA provides that FTC shall be disallowed for mere non- compliance with any procedural requirement of enabling nature. The assessee thus contended that FTC is assessee's vested right as per Article 24(3)(a) of the

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DTAA r. w. section 90 of the Act and such FTC approved to the assessee cannot be denied on the grounds of non-compliance of procedural requirements prescribed in the Rules which are subservient to the Act as well as DTAA. The assessee further contended that provisions of DTAA override the provisions of the Income Tax Act and thus denial of vested right to claim the FTC is in direct infringement of the tax treaty.

8. Rule 128 (8) and (9) provides that the credit for any foreign tax shall be allowed on furnishing of Form 67 on or before due date of filing the return of income as prescribed under Section 139(1) of the Act. The question thus arises as to whether where a substantial compliance has been made and Form 67 has been eventually filed albeit after the due date of filing of return of income under Section 139(1) of the Act, the denial of FTC would be justified. In this regard, the assessee contends that Rule 128 provides machinery for seeking relief and compliance thereof are the procedural formality which has been duly complied with, albeit with some delay. The provisions of sections 90, section 91 and DTAA does not provide for denial of exemption merely on account of delay in filing of certain forms/reports in contrast to other provisions of the Act such as 80AC, 801A(7), 10A(5) and 10B(5) where attendant conditions of compliance are mandatory.


9. In the factual backdrop, we notice that the Co-ordinate Bench of Tribunal in the case of

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Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bangalore - Trib.) in [ITA No.454/Bang/2021 order dated 17.11.2021] clearly held that filing of Form 67 is a directory requirement and having regard to the position that DTAA overrides the provisions of the Act and Rule cannot be contrary to the Act, the assessee is fully entitled to the FTC. The Tribunal also observed that issue of allowability of FTC is not a debatable issue and only one view is possible and thus seeking rectification under Section 154 could be resorted by the assessee. Similar view has been taken in 42 Hertz Software India (P.) Ltd. v. Asstt. CIT [2022] 139 taxmann.com 448 (Bangalore - Trib.)/[ITA No.29/Bang/ 2021 order dated 7th March, 2022). A reference is made to another Co-ordinate Bench decision in the case of Vinodkumar Lakshmipathi v. CIT (Appeals) NFAC [2022] 145 taxmann.com 235 (Bangalore - Trib.), [ITA No.680/Bang/2022 order dated 06.09.2022]; Sonakshi Sinha v. CIT (Appeals) [2022] 142 taxmann.com 414/197 ITD 263 (Mumbai - Trib.)/[ITA no.1704/Mum/2022 order dated 20th September, 2022] and host of other judgments referred to and relied upon.”

7. The Jabalpur Bench of the Tribunal in case of *Gaurav Singh v. Income-tax Officer (Supra)* has also reiterated this view. We further note that the Coordinate Bench (Hyderabad) of the Tribunal in the case of *Purushothama Reddy Vankireddy v. ADIT (International Taxation)* reported in [2023] 147 taxmann.com 398 (Hyderabad - Trib.)[05-12- 2022] has held in Para 6 to 9 as under:


“6. We have gone through the record in the light of the submissions made on either side. It could be seen from the view taken in *Muralikrishna Vaddi (supra)*, the decision of

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the Bangalore Tribunal in the case of 42 Hertz Software India (P.) Ltd. (supra), was brought to the notice of the Bench, but looking at the abnormal delay of more than two years without any valid and reasonable cause, the Bench held that such delayed filing of Form 67 was in compliance with rule 128(9) of the Rules.

7. Coming to the decisions relied upon by the assessee it could be seen that in the case of Hertz Software India (P.) Ltd. (supra), reliance was placed on the decision in Ms. Brinda Ramakrishna (supra) and all the other decisions were following of the same. In Ms. Brinda Ramakrishna (supra), the Bench considered the issue in the light of the provisions of DTAA, section 295(1) of the Act, the decisions of the Hon'ble Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner 1992 (1) Supp SCC 21, Sambhaji v. Gangabai [2008] 17 SCC 117 and a lot many decisions of the Hon'ble Apex Court including the case in Union of India v. Azadi Bachao Andolan [2003] 132 Taxman 373/263 ITR 706 etc. and reached a conclusion that since Rule 128(9) of the Rules does not provide for disallowance of FTC in the case of delay in filing Form 67 and such filing within the time allowed for filing the return of income under section 139(1) of the Act is only directory, since DTAA over rides the Act, and the Rules cannot be contrary to the Act.

8. We find from Article 25(2)(a) of the DTAA that where a resident of India derives income which, in accordance with the provisions of the convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of the resident an amount equal to the income tax paid, paid in


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the United States, whether directly or by deduction. In view of this provision overriding the provisions of the Act, according to us, rule 128(9) of the Rules has to be read down in conformity thereof. Rule 128(9) of the Rules cannot be read in isolation. Rules must be read in the context of the Act and the DTAA impacting the rights, liabilities and disabilities of the parties.

9. With this view of the matter, we are of the considered opinion that the decisions relied upon by the assessee are applicable to the facts of the case on hand while respectfully following the same, we allow the appeal, and direct the Learned Assessing Officer to verify the details of the foreign tax paid by the assessee on the earnings at foreign source and take a view inconformity with the established law discussed above.”

8. The Hon'ble Madras High Court in the case of *Duraiswamy Kumaraswamy v. Principal Commissioner of Income-tax*, reported in 460 ITR 615 has also held in para 11 to 13 as under:


“11. The law laid down by the Hon'ble Apex Court in G.M.Knitting Industries (P) Ltd. (supra), which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order.

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12. Further, in the present case, the intimation under section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore, the impugned order is liable to be set aside.

13. Accordingly, the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order.”

9. Accordingly, in view of the series of decisions of this Tribunal as well as to maintain the rule of consistency with the decisions of the Coordinate Benches and the decision of the Hon'ble Supreme Court in the case of Vegetable Products Ltd vs. CIT reported in (1973] 88 ITR 192 (SC) dated 29-01-1973, in case of divergent views, the precedent in favour of the assessee shall be followed. Hence, in view of the facts and circumstances as discussed above as well as the decisions of this Tribunal, Hon'ble High Court and Hon'ble Supreme Court, we hold that the Foreign Tax Credit cannot be denied merely because there is a delay in filing Form-67.

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Accordingly, we direct the Assessing Officer to allow the Foreign Tax Credit to the assessee.”

7. To maintain the rule of consistency, we follow the earlier decisions of this Tribunal and accordingly direct the Assessing Officer to allow the claim of Foreign Tax Credit to the assessee.”


8. In view of this matter and considering the facts and circumstances of the case, we are of the considered view that the AO erred in denying credit for FTC claimed by the Assessee. The Ld.CIT(A) without appreciating the relevant facts, simply dismissed the appeal filed by the assessee. Thus, we set aside the order of the Ld.CIT(A) and direct the AO to allow credit for FTC as per Form 67 filed by the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 30th June, 2025.

Sd/-	Sd/-
(RAVISH SOOD) JUDICIAL MEMBER	(MANJUNATHA G.) ACCOUNTANT MEMBER

Hyderabad,
Dated 30th June, 2025
L.Rama, SPS

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3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order