



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES “B”, PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.659/PUN/2025
Assessment Year : 2021-22

Vipul Chandrakant Sawalwade, 402/B-3, Atul Nagar, Phase-II, Sector 79/B, Pune 411 058, Maharashtra PAN : AVKPS6413J	Vs.	ITO, Ward-13(1), Pune
Appellant		Respondent

Appellant by	:	Shri Sanket Joshi
Revenue by	:	Shri Ganesh B Budruk
Date of hearing	:	30.04.2025
Date of pronouncement	:	13.05.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of assessee pertaining to A.Y. 2021-22 is directed against the order dated 29.11.2024 passed by Addl/JCIT(A), Chennai u/s.250 of the Income-tax Act, 1961 (in short ‘the Act’) arising out of the Intimation order dated 14.11.2022 passed u/s.143(1)(a) of the Act.

2. In the Grounds of appeal filed in Form No.36, the sole grievance is that Id.CIT(A) erred in not allowing the Foreign Tax Credit (FTC) of Rs.2,15,252/- sole on the ground of delay in filing of Form No.67 beyond the due date of filing the return.

3. Assessee has also raised the additional ground of appeal and the same reads as under :



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“The learned DDIT, CPC, Bengaluru erred in taxing dividend income of Rs.8,61,084 received from USA based company at normal tax rate of 30% instead of special tax rate of 25% as per Article 10 of Indo-USA DTAA and therefore, the CPC/A.O. may be directed to compute tax @ 25% on the said dividend income of Rs.8,61,084 received from foreign company.”

4. At the outset, Ld, Counsel for the assessee submitted that the issue regarding not granting of FTC for delay in filing Form No.67 is squarely covered in favour of the assessee by plethora of decisions where it has been consistently held that filing of Form No.67 is directory in nature and not mandatory and placed reliance on the decision of this Tribunal in the case of *Preeti Das Vs. ITO* in ITA No.2491/PUN/2024 order dated 21.01.2025. As regards the additional ground of appeal, it was submitted that as per India-USA Treaty, the dividend income at the most can be taxed @25% and the assessee has duly offered the dividend income to tax @25% but CPC has erred in taxing the dividend income @30% which is not in accordance with law.

5. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

6. We have considered the rival submissions and perused the record placed before us. We observe that the first issue for our consideration is regarding the claim of FTC of Rs.2,15,252/-. Assessee is an individual who furnished the income-tax return for A.Y. 2021-22 on 14.11.2022. In the said return, assessee claimed FTC of Rs.2,15,252/-. Due date of filing return of income for A.Y. 2021-22 was 15.03.2022 however, in support of claim of FTC assessee filed Form No.67 on 24.07.2022 which was beyond the due date for filing the return u/s.139(1) of the



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Act. Assessee was denied FTC solely on the ground of filing of Form No.67 belatedly. We observe that Hon'ble Madras High Court in the case of *Duraiswamy Kumaraswamy v. PCIT* (2024) 336 CTR 108 (Madras) has held that filing of Form No.67 read with Rule 128 of the Income-tax Rules, 1962 is only directory in nature and not mandatory. Similar view has also been followed by this Tribunal in the case of *Preeti Das (supra)* placing reliance of the judgment of Hon'ble Madras High Court in the case of *Duraiswamy Kumaraswamy (supra)* Finding of this Tribunal in the case of *Preeti Das (supra)* is reproduced below :

“7. We have heard both the parties and perused the material on record. The issue in the present appeal is that whether or not the CPC, Bangalore is justified in denying the credit for Foreign Tax paid for the reason that the Form No.67 was not filed within the due date for filing of the return of income as specified under the provisions of section 139(1) of the Income Tax Act, 1961 ('the Act'). Admittedly, in the present case, Form No.67 was not filed within the due date for filing of the return of income under the provisions of section 139(1), but Form No.67 was filed on 23.03.2020. The CPC, Bangalore had processed the return of income as on 18.02.2021, which means that Form No.67 was very much available with the CPC, Bangalore. Therefore, the CPC, Bangalore cannot deny the claim for credit for foreign tax paid merely because Form No.67 was not filed within the due date specified for filing the return of income under the provisions of section 139(1) of the Act, as it is merely directory in nature. Our view is fortified by the judgment of Hon'ble Madras High Court in the case of *Duraiswamy Kumaraswamy Vs. The PCIT and others* in W.P.No.5834/2022 dated 06.10.2023 wherein it has been held that 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. We further find support from the decision of this Tribunal in the case of *Samiran Arunkumar Dutta Vs. DCIT* – ITA No.1195/PUN/2024 dated 14.08.2024 where also assessee was employed with same employer but Foreign Tax Credit was allowed even when Form No.67 was filed belatedly observing as follows :

“7. I heard the ld. Sr. DR and perused the material on record. The issue in the present appeal is that whether or not the CPC, Bangalore is justified in denying the credit for Foreign Tax paid for the reason that the Form No.67 was not filed within the due date for filing of the return of income as specified under the provisions of section 139(1) of the Income Tax Act, 1961 ('the Act'). Admittedly, in the present case, Form No.67 was not filed within the due date for filing of the return of income under the



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provisions of section 139(1), but Form No.67 was filed on 30.03.2021. The CPC, Bangalore had processed the return of income as on 24.12.2021, which means that Form No.67 was very much available with the CPC, Bangalore. Therefore, the CPC, Bangalore cannot deny the claim for credit for foreign tax paid merely because Form No.67 was not filed within the due date specified for filing the return of income under the provisions of section 139(1) of the Act, as it is merely a directory. Therefore, I direct the CPC, Bangalore to amend the Intimation u/s 143(1) of the Act by taking into consideration the Form No.67 filed by the appellant. Accordingly, the grounds of appeal filed by the assessee stands partly allowed.”

8. *In light of above, we direct the Jurisdictional Assessing Officer to allow the alleged Tax Credit by taking into consideration the Form No.67 filed by the appellant but after due verification. Accordingly, the grounds of appeal raised by the assessee stands allowed.*

7. Respectfully following the above decision and that the same being squarely applicable on the facts of the instant case, we allow the claim of FTC of Rs.2,15,252/- claimed by the assessee in Form No.67 and allow the Grounds of appeal Nos. 1, 2 and 3 raised by the assessee.

8. Grounds of appeal No.4 and 5 is are alternate in nature which needs no adjudication.

9. Now we take up the additional ground of appeal. Assessee has earned dividend income from USA based company at Rs.8,61,084/-. In the income-tax return, assessee has offered this income to tax @25% as per Article 10 of Indo-USA Double Taxation Avoidance Agreement. However, the CPC while processing the return u/s.143(1)(a) has taxed the said dividend income @30%. Our attention was drawn to the Article 10 of the India-USA Treaty and for necessary guidance the relevant portion is reproduced below :



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“1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :

(a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends.

(b) 25 per cent of the gross amount of the dividends in all other cases.

Sub-paragraph (b) and not sub-paragraph (a) shall apply in the case of dividends paid by a United States person which is a Regulated Investment Company. Sub-paragraph (a) shall not apply to dividends paid by a United States person which is a Real Estate Investment Trust, and sub-paragraph (b) shall only apply if the dividend is beneficially owned by an individual holding a less than 10 per cent interest in the Real Estate Investment Trust. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident; and income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterised under the laws of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is



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effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State."

10. From going through the above Article 10, we find that 2(a) is not applicable on the facts of the case and what remains is clause 2(b) which provides that except for the cases covered in 2(a), in all other cases, the dividend is taxable @25% of the gross amount. Since the rate of tax is already prescribed under the Treaty, the same shall prevail over and above the normal tax rate provided under the Act. Therefore, assessee has rightly offered to tax the dividend income @25% and the CPC grossly erred in taxing the dividend income @30% in the given case. Finding of ld.CIT(A) is set aside. The additional ground of appeal raised by the assessee is allowed.

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

Order pronounced on this 13th day of May, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th May, 2025.
Satish



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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.