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

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

आयकर अपील सं./ITA. No. 1081/JPR/2024
निर्धारण वर्ष/Assessment Years : 2022-23

Vaibhav Singh D-7, Meera Marg, Collectrate S.O. 9Jaipur), Jaipur.	बनाम Vs.	The ITO, Ward-1(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BVGPS4103N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shailesh Mantri, C.A.
राजस्व की ओर से/ Revenue by : Shr. Anup Singh, Addl.CIT

सुनवाई की तारीख/ Date of Hearing : 13/11/2024
उदघोषणा की तारीख/Date of Pronouncement : 02/01/2025

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of the present appeal the assessee challenges the order of the National Faceless Appeal Centre, Delhi [for short CIT(A)] dated 04.07.2024. The dispute relates to the assessment year 2022-23. That order of ld. CIT(A) arise because the assessee has challenged the order dated 10.01.2023 passed u/s. 154 of the Act by the Centralized Processing Centre, Bengaluru. [for short AO]

2. The assessee has marched this appeal on the following

grounds:-

> *"1. The learned CIT-A has erred in law disallowing the relief of Rs. 4,86,406/- claimed by the assessee u/s 90/90A toward DTAA.*
> *2. That the appellant crave to add, amend, and alter the grounds before or at the time of appellate hearing."*

3. The fact as culled out from the records is that in the case of the assessee is a salaried employee and has income under the head from salary only. During the year under consideration, assessee worked with Credit Suisse Business Analytics group at USA. He deputed to the Indian office of the company at Credit Suisse Business Analytics (India) Pvt. Ltd., and he joined at Indian office on 25.09.2021. As he resided in India for more than 182 days, therefore as per Income Tax act he become the tax resident and accordingly he filed the return declaring the global income (Income earned in India as well as Outside India) in the Indian ITR as per Income Tax Act 1961. He received a salary of Rs. 35,58,670/- from Indian Company and Rs. 42,89,595/- from Foreign company serving in that country. As the Indian Government has signed Treaty/ for avoidance of Double taxation with USA, therefore, the assessee claimed the relief u/s 90/90A. He claimed relief of Rs. 486,406/-. The Ld. AO, CPC rejected the claim of relief being claimed under Section 90 and raised a

demand of Rs. 5,50,300/- vide intimation order u/s 143(1)(a) dated 26. 10.2022. The assessee filed an application for rectification u/s 154 as non-allowance of relief was mistake apparent on record. The CPC has not considered the facts of the case and disallowed the whole relief being claimed by the assessee and charged the full tax, and Interest thereon, which resulted in demand of Rs. 5,50,300/-.

4. Aggrieved by the above order of the Assessing Officer passed u/s. 154 of the Act, the assessee preferred an appeal before the ld. CIT(A). After perusing the submissions of the assessee, the ld. CIT(A) has dismissed the appeal of the assessee. The relevant finding of the ld. CIT(A) is as under:-

> "4.3 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. As discussed earlier, the appellant was working with Credit Suisse Business Analytics group at USA and was deputed to the Indian office of the company at Credit Suisse Business Analytics (India) Pvt Ltd, and he joined at Indian office on 25.09.2021. As the appellant resided in India for more than 182 days, therefore as per Income Tax act he is Indian Resident and he filed the return declaring the global income (Income earned in India as well as Outside India) in the Indian ITR as per Act. The appellant received salary of Rs.35,58,670 from Indian Company and Rs.42,89,595 from Foreign company serving in that country. The appellant claimed the relief u/s 90/90A of Rs. 486,406. The AO rejected the claim of relief being claimed under Section 90 and raised a demand of Rs.5,50,300/- vide intimation order u/s 143(1)(a) dated 26.10.2022. Aggrieved, the appellant filed an application for rectification u/s 154 as non-allowance of relief was mistake apparent on record. The CPC again did not considered the same and disallowed the whole relief being claimed by the appellant and charged the full tax, and Interest thereon, which resulted in demand of Rs.5,50,300. As per DTAA Agreement the Income earned as Salary by

serving at USA is taxable at USA only and the Indian Government will not charge the Tax again on this Income.

4.4 One of the requirements of Rule 128 for claiming FTC is provided by Rule 128(8) & (9) of the I.T. Rules and the same reads as under:-

"(8) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee namely.-

1. a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein:

2. certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee-

(a) from the tax authority of the country or the specified territory outside India: or

(b) from the person responsible for deduction of such tax: or

(c) signed by the assessee

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by-

(A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee

(B) proof of deduction where the tax has been deducted.

(9) The statement in Form No.67 referred to in clause (1) 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 subsection (1) of section 139. in the manner specified for furnishing such return of income."

4.5 Therefore, as per Rule 128(9) of the I.T. Rules, 1963, the appellant is required to furnish Form No. 67 well within the due date specified for furnishing the return of income under sub-section (1) of Section 139 of the Act. In the case of the appellant, it is noticed that Form 67 has been filed by the appellant after the due date of filing the return of income for A.Y. 2022-23 and even after processing u/s 143(1) of the Act 26.10.2022. Infact it is seen that Form 67 has been filed only on 06.12.2023 much after the current appeal was filed on 19.01.2023. The appellant has submitted that the delay in filing Form 67 does not result in disallowance of the Foreign Tax Credit as per IT Rules. The appellant has placed reliance is placed on following cases:-

1. Hon'ble ITAT BANGALORE in case of Ms. Brinda Ramakrishna VS ITO, ITA. No. 454/Bang/2021

2. Kaushikprasad Jingar Vs Assessing Officer: ITA No.412/Ahd/2023 judgement dated 04/08/2023

4.6 I have examined the case laws relied upon by the appellant, However, I am of the view that the decisions are not applicable. It is seen that CBDT vide Notification No.9 dated 19th September, 2017 mandates Online filing of Form 67 before the filing of return of income before prescribed due date u/s. 139(1) of the Act. I find that there is no express powers vested with any authority to condone delay in filing Form 67. It is well settled that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. A three-Judge Bench of the Supreme Court in a judgment, reported as Chandra Kishore Jha v. Mahavir Prasad & Ors. [(1999) 8 SCC 266], held as under

“17…… It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor ((1935-36) 63 IA 372 AIR 1936 PC 253 (II)), Rao Shiv Bahadur Singh v. State of VP. (AIR 1954 SC 322 1954 SCR 1098), State of U.P. v. Singhara Singh (AIR 1964 SC 358: (1964) 1 SCWR 57]) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

4.7 The said principle has been followed in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors. [(2015) 13 SCC 722] wherein the Hon'ble Apex Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure……”

4.8 The Hon'ble Bombay High Court in the case of Commissioner of Income-tax v. Shivanand Electronics 209 ITR 63 has held that:-

"When the Legislature casts a duty on the assessee claiming certain benefit, to comply with requirements which are associated with such benefit, the assessee cannot get the benefit without doing his part of the duty. He cannot be allowed to say that it was for the ITO to ask him to do so. If the assessee does not do his part of the statutory duty, the ITO may proceed to decide the allowability or otherwise of the relief on the basis of the facts and material available before him.”

4.9 Recently in the case of Union of India & Ors. v. Mahendra Singh (CA No. 4807 of 2022), it was held by the Hon'ble Court that since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the delay in filing Form 67 does not result in disallowance of the Foreign Tax Credit as per IT Rules is not tenable. Since the appellant has failed to file the Form 67, the AO, CPC has rightly disallowed the claim Foreign Tax Credit Hence, no interference is called for in the action of the AO in disallowing the claim of Foreign Tax Credit. The appeal on this ground is thus dismissed.

5. Ground No 2 is general in nature and needs no adjudication.

6. As the result, the appeal is dismissed."

5. As the assessee did not receive any favors from the appeal so filed before ld. CIT(A). The present appeal is filed against the said order of the ld. CIT(A) before this tribunal on the grounds as reiterated in para 2 above. In support of the grounds so raised the ld. AR appearing on behalf of the assessee has placed reliance on the written submission on which is extracted herein below:-

"1. The assessee is salaried employee and having income from salary only. During the year under consideration, he is working with Credit Suisse Business Analytics group at USA. He deputed to the Indian office of the company at Credit Suisse Business Analytics (India) Pvt Ltd, and he joined at Indian office on 25.09.2021. As he resided in India for more than182days, therefore as per Income Tax act the is Indian Resident and he filed the return declaring the global income (Income earned in India as well as Outside India) in the Indian ITR as per Income Tax Act 1961.

2. He received salary of Rs.35,58,670/- from Indian Company and Rs.42,89,595/- from Foreign company serving in that country. As the Indian Government has signed Treaty/for avoidance of Double taxation with USA, therefore, the assessee is eligible for the relief u/s 90/90A. He claimed relief of Rs.486,406/-

3. The AO CPC rejected the claim of relief being claimed under Section 90 and raised a demand of Rs. 5,50,300/- vide intimation order u/s

143(1)(a) dated 26.10.2022 order no CPC/223/A2/278736439. The assessee filed an appeal before CIT(A). Later on he come to know about the Form 67 therefore he filed the form 67 on 26/07/2023 and refiled the form 67 again on 06/12/2023 and also filed request for correction u/s 154 on 07/12/2023. The CPC rejected this application also.

4. The CIT appeal has dismissed the case by considering that

"Since the appellant has failed to file the Form 67, the AO, CPC has rightly disallowed the claim of Foreign Tax Credit. Hence, no interference is called for in the action of the AO in disallowing the claim of Foreign Tax Credit. ".

Submission:-

1. As already mention in the facts that during the year under consideration assessee received income in India as well as from outside India. He was in India from 25.09.2021. He received salary of Rs.42,89,595/- by providing service outside India. He paid tax on this salary as per Income Tax Laws of USA Country. Copy of evidence of paying Tax at that country is enclosed at PB 11-13.

2. As he resided more than 182 days in India, thus as per section 6 of Income Tax act he is taxable as Indian Resident in India, and he have to declare the global income being accrue or earned in India as well as in the whole world.

3. The assessee followed the same and declared the global income of salary being received in India and salary being received outside India (while serving outside India), in ITR form. He filed Income Tax Return declaring income of Rs. Rs. 81,37,160/-. As there is a Treaty being signed between Indian Government as well as USA Government, the assessee claimed the benefit of that D'TAA, u/s 90/90A of Income Tax Act. He claimed relief of Rs. 486,406/- which is allowable as per DTAA. The relevant Para of DTAA reads asunder: -

ARTICLE 16 DEPENDENT PERSONAL SERVICS

1. Subject to the provisions of Articles 17, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.

Thus, as per DTAA agreement the Income earned as Salary by serving at USA is taxable at USA only and the Indian Government will not charge the Tax gain on this Income.

4. As the assessee properly followed the guidelines of Indian Income Tax Act as well as USA Country's Tax Act, and also paid proper tax on the

salary accrued or arise at USA, the leviability of Tax on the same at India is contradictory of DTAA, and creating double tax burden on the assessee.

5. The purpose of DTAA was itself to reduce the burden of Double Taxation and section 90 reads as under: -

DOUBLE TAXATION RELIEF

Agreement with foreign countries or specified territories.

90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, -

(a) For the granting of relief in respect of-

(1) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case maybe, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case maybe, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory), or

(c) for exchange of information for the prevention of evasion or avoidance of income- tax chargeable under this Act or under the corresponding law in force in that country or specified territory or investigation of cases of such evasion or avoidance, or

(d) For recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case maybe, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(24) not withstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.

(3) Any term used but not defined in this Act or in the agreement referred to in sub- section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom an agreement referred to in sub-section

(1) Applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any country outside India or specified territory Outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation 1. For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favorable charge or levy of tax in respect of such foreign company.

Explanation 2. For the purposes of this section, "specified territory" means any are outside India which may be notified as such by the Central Government.

Explanation 3. For the removal of doubts, it is hereby declared that where any term

is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued there under being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

Explanation 4.-For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

6. It is further submitted that the various judicial decisions are also there, where the Hon'ble Authorities have decided that that assessee is entitled

for tax credit of federal as well as state taxes paid by him u/s 91 of the Act. Reliance is placed on following cases: -

a. Aditya Khanna vs. ITO, ITA No. 6668/Del/2015 ITAT Delhi, order dated 17/05/2019. It was held that he is entitled for tax credit of federal as well as state taxes paid by him u/s 91 of the Act

b. Wipro Ltd vs. Deputy Commissioner of Income Tax (2016) 3821TR179 (Karnataka High Court) where in the court has held that even in the absence of agreement u/s 90 of the act, the benefit conferred under section 91of the act is to be extended to the income tax paid in foreign jurisdiction.

Further the Hon'ble ITAT Delhi Bench has also allowed the benefit of section 90/91in the below mentioned cases following the judgment passed by the bench itself.

DCIT vs. Tata Sons Ltd (2011)135TTJ-1

(ii) Tata Sons Ltd vs. Deputy Commissioner of Income Tax in ITA No: 4978/ME/2004dated23/02/2011 in Para number 5

(iii) Rajeev 1 Modi vs. The Deputy Commissioner of Income Tax, in ITA No: 1285/AHD/2014

7. It is further submitted that neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirements. Since FTC is assessee's vested right as per Article 22(2) of the DTAA read with section 90 and thus same cannot be disallowed for non-compliance of procedural requirement that is prescribed in the Rules. The said rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed under section 139(1) of the Act. However, the said Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee under section 90 of the Act would be denied. In case the intention of the Act or Rule was to deny the FTC, then in that eventuality either the Act or Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. Thus, filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement. This view is also accepted by the Hon'ble ITAT Jaipur Bench as well as by other ITAT Bench also, reliance is placed on following cases: -

a) Shri Ritesh Kumar Garg vs. ITO 4, ITA NO. 261/JP/2022, ITAT-Jaipur Bench order dated 15/09/2022. The Income Tax Appellate Tribunal, Jaipur, allowed the assessee's FTC claim under Section 90, despite the late filing of Form 67. It ruled that the form's filing is procedural, not mandatory, and non-compliance with procedural requirements does not affect the right to claim FTC under the India-Finland DTAA.

b) Hon'ble ITAT BANGALORE in case of Ms. Brinda Rama Krishna VS ITO, ITA. No. 454/Bang/2021 held that, it was held that (i) Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing FormNo.67 (ii) Filing of Form No. 67 is not mandatory but a directory requirement and (iii) DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. In the result, the appeal is allowed and benefit of FTC is allowed"

c. The Hon'ble ITAT Ahmedabad in case of Manoj Kaushik Prasad Jingar vs. Assessing Officer: ITA No.412/Ahd/2023 judgment dated 04/08/2023 held that it is pertinent to note that the late filing of Form No.67 cannot deny the entitlement of the assessee the benefit of treaty when the salary earned is from Tanzania and there is DTAA between India and Tanzania. it is undoubtedly clear that the salary is earned outside India and the assessee has paid tax on the said element on foreign country and, therefore, the assessee cannot be taxed twice on the same amount This will amount to double taxation. Hence, the CIT (A) as well as the Assessing Officer was not right in denying the claim of the assessee. Appeal of the assessee is thus allowed.

Prayer: Considering the provisions of DTAA and Section 90, clause no 16, and judicial precedents supporting the position of assessee, the income received outside India on which tax also paid at origin Country the credit of said tax paid out side India should be allowed as per IT act as well as per DTAA. Thus, the relief rejected by the CPC and not allowed by CIT(A) is against the natural justice and it is therefore requested that kindly allow the credit of Foreign Tax paid by the assessee and oblige."

6. The ld. AR of the assessee filed on a detailed paper book in support of the contention so raised in the written submission and the index of the document submitted are as under:-

S. No.	Particulars	Page No.
1.	Reply submitted before CIT appeal	1-7
2.	ITR Form	8
3.	Form 67	9-10
4.	Acknowledgment of Foreign Tax payment	11-12
5.	Case laws	

i.	Shri Ritesh Kumar Garg vs. ITO 4, ITAT-Jaipur Bench	14-26
ii.	Aditya Khanna vs. ITO-ITAT Delhi	27-49
iii.	Anuj Bhagwati Mumbai vs. DCIT Circle-ITAT Mumbai	50-55
iv.	Brinda Rama Krishna vs. ITO-ITAT Bangalore	56-64
v.	Nirmala Murli Relwani vs Asstt. Director of Income Tax-ITAT Mumbai	65-72
vi.	Vivek Kumar-ITBA/APL/S/250/2024-25/1066758955	73-81

7. The ld. AR of the assessee in addition to the above submission vehemently argued that the ld. CIT(A) has not granted the relief to the assessee merely on account of the fact that Form No. 67 was not submitted well within the due date specified for furnishing the return of income under sub-section (1) of Section 139 of the Act. Thus, non-furnishing of Form No.67 before the due date under section 139(1) is not fatal to claim for foreign tax credit.

8. Per contra, the ld. DR supported the order of the ld. CIT(A) recorded at para 4.9 of the order. Ld. DR also submitted that case law relied in the case of Shri Ritesh Kumar being the SMC case do support the binding precedent to the division bench.

9. We have heard both the parties and perused the materials available on record. As we have discussed in details the facts emerges from the order of lower authorities herein above and

therefore, it is not imperative to discuss the same here again. The only dispute is denial of relief of Rs. 4,86,406/- claimed by the assessee u/s 90/90A towards DTAA for the reasons that the required form no. 67 was not filed along with the ITR within the time allowed as per provision of section 139(1) of the Act. The similar issue has been decided by the co-ordinate bench of Jaipur vide ITA no. ITA No. 761/JPR/2023 in the case of Rajesh Kumar Lakhran Vs. ITO Ward -7(1), Jaipur and vide order dated 27-09-2023 in IT(IT)A No. 12/JP/2023 for the assessment year 2021-22 in the case of Juan Miguel Guerrero Ferrer vs DCIT wherein the relevant observation as made by the bench is reproduced as under:-

> 5. We have heard the ld. Counsels of both the parties. We have also perused the material placed on record and also judgments cited by the respective parties. Under this ground of appeal, the assessee has filed Form 67 for claiming relief under section 90 of the IT Act. The said form was filed by the assessee on 28.12.2022 and the Income Tax Return was filed as on 08.09.2021 claiming relief under section 90/90A of the IT Act of Rs. 37,41,228/-. It is an undisputed fact that the assessee has got salary from his employer in Spain and due tax has been deducted by the employer. As per Article 15 of Double Taxation Avoidance Agreement (DTAA) with country Spain, the tax payable by assessee in that country is eligible for relief under section 90 of the Income Tax Act, 1961 to the assessee. The said relief was denied by the revenue authorities on the ground that the return for the year under consideration was filed by the assessee on 08.09.2021. However, the form 67 was filed on 28.12.2022 and not along with the return of income filed on 08.09.2021. Since according to revenue the said form 67 was filed after the due date of filing the return of income for the year under consideration, therefore, the assessee was rightly found not eligible for the credit of that amount.

6. We find that the case of assessee is fully covered by the recent decision of the ITAT Jaipur Bench, adjudicated exactly on similar issue in the case of Ritesh Kumar Garg vs. ITO in ITA No. 261/JP/2022 dated 15.09.2022, wherein the claim of Foreign Tax Credit (FTC) was allowed by observing in para 5.1 to 6 as under :-

" 5.1. After having meticulously gone through the facts of the present case, we are of the view that there is no dispute that assessee is entitled to claim relief under section 90 of the IT Act but the disallowance was confirmed on the sole ground that the relevant form 67 prescribed under section 128(8) was not filed within the time stipulated under sub rule 9 of Rule 128. It is important to mention here that 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 country outside India and such income is also taxable in India. In this regard Article 22 of India Finland DTAA provides for credit for foreign taxes. The relevant portion of sub clause (2) of Article 22 is reproduced below :-

" 2. In India double taxation shall be eliminated as follows:-

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Finland, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Finland. Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Finland."

And since as per section 90 of the Act read with Article 22 sub clause (2) provides that Finland Income Tax paid shall be allowed as a credit against the Indian Tax but limited to proportion of Indian tax. In my view, neither section 90 nor DTAA provides that FTC shall be disallowed for non compliance with any procedural requirements. Since FTC is assessee's vested right as per Article 22(2) of the DTAA read with section 90 and thus same cannot be disallowed for non compliance of procedural requirement that is prescribed in the Rules.

5.2. In my view, section 295 sub section (1) of the Act provides powers to the CBDT to prescribe Rules for various purposes. Section 295 sub section (2) sub clause (ha) gives power to the Board to issue Rules for FTC. The relevant extract is as follows :-

" (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :-

……

(ha) the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under this Act;"

Thus, in this way the Board has power to prescribe procedure for granting FTC. Therefore, in my view the procedure prescribed in Rule 128 should be interpreted in this context. Therefore, Rule 128 is a procedural provision and not a mandatory provision. The said rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed under section 139(1) of the Act. However, the said Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee under section 90 of the Act would be denied. In case the intention of the Act or Rule was to deny the FTC, then in that eventuality either the Act or the Rules would have specifically provided that the FTC would be disallowed if the assessee does not file Form 67 within the due date prescribed under section 139(1) of the Act. Thus filing of Form 67, in my view, is a procedural/directory requirement and is not a mandatory requirement. Therefore, violation of procedural norms does not extinguish the substantive right of claiming the credit of FTC. While reaching to this conclusion, we draw strength from the decision of Hon'ble Supreme Court of India in the case of Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner, (1992) Supp (1) Supreme Court Cases 21 wherein the Hon'ble Supreme Court has held as under :-

" The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

Apart from the above decision, I further rely upon the decision of Hon'ble Supreme Court in the case of Sambhaji &Ors. vs. Gangabai&Ors., (2008) 17 SCC 117 (SC) wherein it was held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. According to Hon'ble Supreme Court, the procedures are handmaid and not the mistress. It is a lubricant and not a resistance. Thus, a procedural law should not ordinarily be construed as mandatory. The procedural law is always subservient to and is in aid to justice. Even otherwise, since there are no conditions prescribed in DTAA that FTC can be disallowed for non compliance of any procedural

provision, therefore, the provisions of DTAA override the provisions of the Act. As the assessee has vested right to claim the FTC under the tax treaty and the same cannot be disallowed for mere delay in compliance of a procedural provision.

5.3. Even otherwise, the said Form 67 filed by the assessee before the tax authorities was available before the AO when the intimation under section 143(1) of the Act dated 25.11.2021 was passed. Therefore, in such circumstances, in my view, there were no reasons with the tax authorities for making disallowance when the said Form 67 was very much available with the AO at the time of framing the assessment order. While reaching to this conclusion, I further strengthen my view by relying upon the decision in the case of Brinda Rama Krishna vs. ITO 135 taxmann.com 358 wherein the Coordinate Bench of the Bangalore Tribunal had directed the Revenue to allow relief of FTC under section 90 of the Act, wherein Form 67 was filed after the prescribed due date. The ratio of the said decision in the case of Brinda Rama Krishna vs. ITO (supra) was further followed in another case decided by the Coordinate Bench of the Bangalore Tribunal in the case of 42 Hertz Software India Pvt. Ltd. vs. ACIT in IT Appeal No. 29 of 2021. On the contrary, I respectfully with all humility disagree with the view taken by the Visakhapatnam Bench of the Tribunal in the case of Muralikrishna Vaddi (supra) while relying upon the decision of Hon'ble Supreme Court and also of the decisions of Coordinate Benches of the Tribunal in the cases of Brinda Rama Krishna vs. ITO (supra) and 42 Hertz Software India Pvt. Ltd. vs. ACIT (supra). Therefore, considering the totality of facts and legal position as discussed above, I am of the view that assessee is entitled for the credit of FTC under section 90 of the Act. Thus, I, accordingly direct the AO to allow the relief of FTC under section 90 of the Act in the case of assessee.

6. In the result, appeal of the assessee is allowed."

''We, therefore, following the coordinate bench decision referred herein above, wherein case laws cited was considered and reliance was placed on the judgment of the Hon'ble Supreme Court, allow the claim of Foreign Tax Credit (FTC) in favour of the assessee. The AO is accordingly directed to allow relief to the assessee. The order of the ld. CIT (A) is set aside.''

Since the issue raised by the assessee (supra) is similar to the case of Juan Miguel Guerrero Ferrer vs DCIT(supra), therefore, the decision taken therein shall apply mutatis mutandis in the case

of the assessee also as the claim of the assessee is duly supported by the ITR filed and the Form no. 67 though late. Thus, the AO is accordingly directed to allow relief to the assessee based on the ITR and form no 67 filed by the assessee. The order of the ld. CIT (A) is set aside.

In the result, the appeal filed by the assessee is allowed. Order pronounced in the open Court on 02/01/2025.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 02/01/2025
*Santosh
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Vaibhav Singh, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), 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. 1081/JPR/2024}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar