



SATURDAY INTERNATIONAL TAX

GYAN !!!

#taxmadeeasy

Sonakshi Sinha

v.

Commissioner of Income-tax (Appeals)

Foreign tax credit (FTC) cannot be disallowed where assessee has filed Form No. 67 before completion of the assessment

Date: 01.10.2022

[2022] 142 taxmann.com 414 (Mumbai – Trib.)

#Taxinpic



Tax se dar
nahi lagta
Sahab **FTC**
na milne se
lagta he

Sonakshi Sinha



ITAT Mumbai

CONCLUSION: 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, it was held that 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.

Fact of the Case

- ❖ Assessee is an individual who is an actor (Sonakshi Sinha) acting in films and provides services for promotion and marketing of brands of goods, services, and events.
- ❖ Assessee had claimed **foreign tax credit in relation to tax paid** on the income earned in United Kingdom at the time of filing Income tax return, however **form 67** was filed before assessment but after the due date u/s 139(1) of the act.
- ❖ The appeal was filed against the order passed by NFAC for disallowing the credit of FTC for the A.Y. 2018-19. Also, A.O. had not issued any Show Cause Notice (SCN) providing any opportunity to the appellant to explain as to why disallowance should not be made

Assessee's Contention

- ❖ Assessee claimed that filing of **form number 67** is a procedural requirements and **not a mandatory requirement for claiming of the foreign tax credit.**
- ❖ Assessee further relied on the decision of **Brinda Ramakrishna versus Income Tax Officer** that rule 128 being merely a procedural provision, any default in its compliance shall **not result in disallowance** of the credit eligible to be allowed and claimed.

Revenue's Contention

- ❖ Revenue contends that **credit of foreign tax** should be **disallowed** on the ground that **form 67 has not been filed on or before the due date** of filing of return of income as per rule 128 (9) of the income tax rules, 1962.
- ❖ It is further stated that merely because the time limit for filing of the form is mentioned in the rules, it cannot be said that it is not mandatory
- ❖ It also rejected the claim of the assessee that such form can be filed at any time, for the reason that it does not have any logical legal background and such an interpretation would make the rule absurd.

Legal provisions related to Income Tax Rules, 1962

Section 90 prescribes for relief from double taxation in a case where India has Double tax avoidance agreement with other country.

As per **Rule 128(2) of Income Tax Rules, 1962** – The foreign tax referred to in sub-rule (1) shall mean,—

- (a) in respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 or section 90A, the tax covered under the said agreement;
- (b) in respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in clause (iv) of the Explanation to section 91.

As per **Rule 128(9) of Income Tax Rules, 1962** – 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 end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:

Legal provisions related to Income Tax Rules, 1962

As per **Rule 128(8) of Income Tax Rules, 1962** – Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee, namely:

(i) 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;

(ii) 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 (c) shall be valid if it is accompanied by,-

- an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
- proof of deduction where the tax has been deducted.

RULING

- ❖ 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.
- ❖ The appellant on realizing the mistake of not filing form 67 had filed the form, being later than the time limit specified under rule 128 (9) of the income tax rules, 1962. Thus the A.O. was of the view that assessee has failed to comply with the provisions of rule 128.
- ❖ Assessee claimed that **filing of form number 67 is a procedural requirements and not a mandatory** requirement for claiming of the foreign tax credit. Merely because form 67 was not filed within the due date prescribed in Section 139 (1) of the act but during the course of assessment proceedings, the **assessee should have been allowed credit** for foreign taxes paid.
- ❖ Revenue submitted that the claim of the assessee was made in the return of income but form number 67 as mandated by the rules and not the act, which is required to be filed on or before the due date of filing of the return of income, is **directory** in nature.

RULING

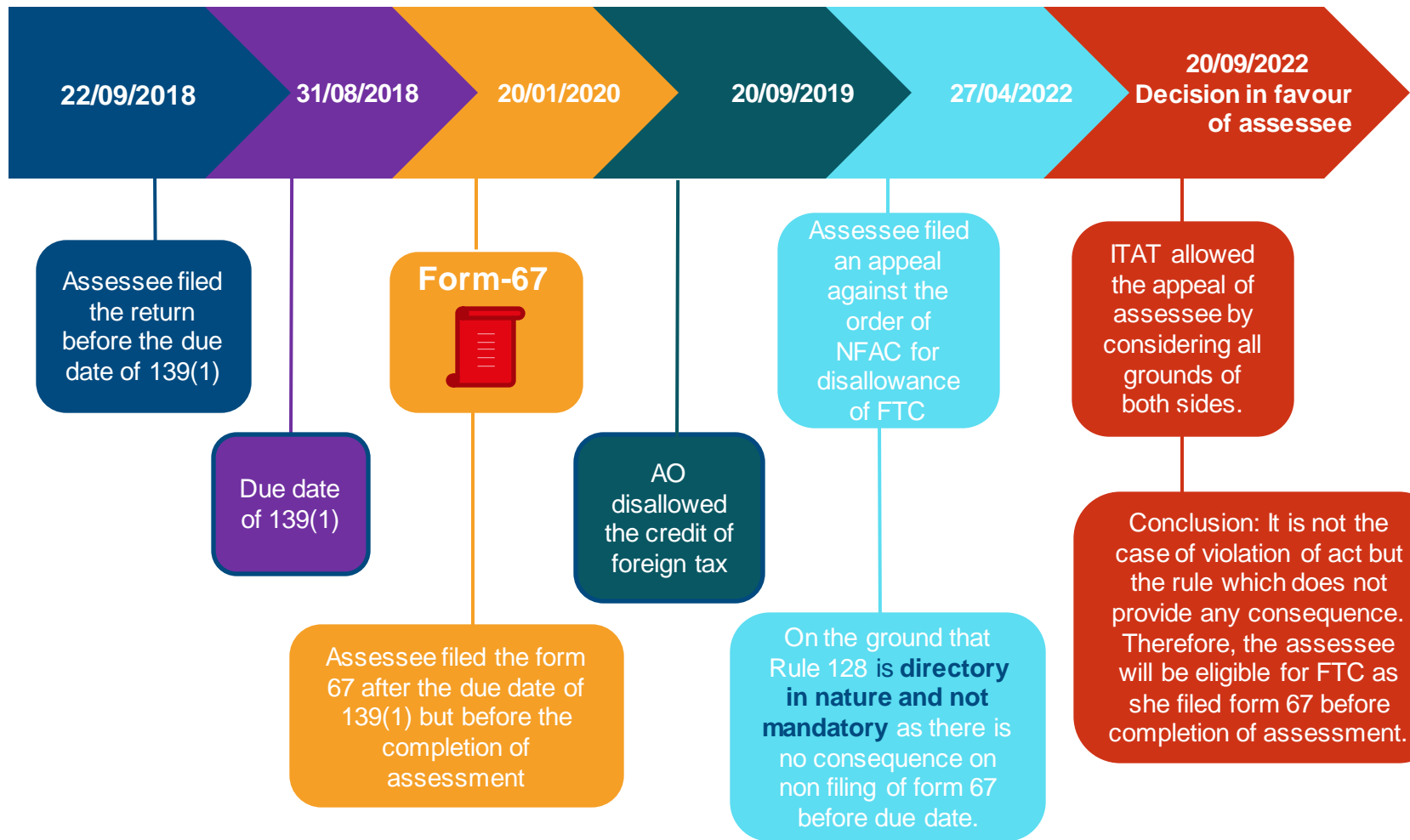
- ❖ **Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67.** Further the Act i.e. section 90 or 91 also do not prescribe timeline for filing of such declaration on or before due date of filing of ROI.
- ❖ While laying down a particular procedure, if no negative 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.
- ❖ 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.

Case laws in support of above contention

- ❖ Some of the case laws which support the above contention are as under:
 - **Ms. Brinda Rama Krishna v. Income-tax Officer** [2022] 135 taxmann.com 358 (Bangalore – Trib.)
 - **42 Hertz Software India (P.) Ltd. v. Assistant Commissioner of Income-tax**[2022] 139 taxmann.com 448 (Bangalore – Trib.)
 - **Elitecore Technologies (P.) Ltd. Vs. Deputy Commissioner of Income-tax, Circle 2 (1) (1), Ahmedabad** [2017] 77 taxmann.com 149
 - **Invendis Technologies India (P.) Ltd. v. Assistant Commissioner of Income-tax*** [2022] 138 taxmann.com 167 (Bangalore - Trib.)

Our comments

- ❖ There have been various instances wherein it has been held by various tribunals that the rule are only directory/ clarificatory in nature and cannot lay down timelines and thus Income Tax rules can never over-rule or lay down provisions what has not been mentioned in Income tax act.
- ❖ A recent amendment was made in sub-rule 9 of rule 128 wherein the time limit for filing Form 67 to claim FTC was relaxed from due date for filing return u/s 139(1) to end of assessment year, however still considering the principles of law this timeline cannot be considered as mandatory and still it will remain directory.



Section & Rule	Section 91 of Income Tax Act, 1961 read with Rule 128 of Income Tax Rules, 1962
DTAA/Country	India - UK
Court	Mumbai - Trib.
Date of decision	20.09.2022

Note: Case law name in **Red**- in favour of the revenue, **Green**- In favour of the Assessee, **Orange** = Partial



Visit our website blog for previous case laws.-

<https://jainshrimal.com/topic/saturday-international-tax-gyan/>



Join Telegram group for discussion on International taxation-

<https://t.me/joinchat/rNjwnbhQo8g4Y2Jl>

Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.