



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 305

DCIT

v.

Thogarchedu subha sri

DTAA benefit cannot be denied just because Form 10F and TRC were filled late, since Law doesn't prescribe any time limit for filling these documents. Once form 10F is furnished, it is treated as relating back to the claim made in the original return.

11.04.2026



[2026] 183 taxmann.com 481 (Hyderabad-trib.)

Facts of the Case

- ❖ Assessee is a **non-resident and tax resident of USA**, who filed return of income claiming benefit under the **India–USA DTAA**. The income was offered to tax at beneficial treaty rates in the return.
- ❖ While filing the return, assessee **did not furnish Form 10F and Tax Residency Certificate (TRC)** as prescribed under Rule 21AB for claiming DTAA benefit.
- ❖ The return was processed under section 143(1), wherein **CPC denied DTAA relief** and recomputed income under normal provisions on account of non-filing of Form 10F.
- ❖ Subsequently, assessee **filed rectification application under section 154** and furnished Form 10F along with TRC to substantiate eligibility for treaty benefits.
- ❖ However, the rectification application was **rejected by CPC**, and denial of DTAA benefit was sustained despite submission of required documents.
- ❖ Aggrieved by the same, assessee preferred appeal before **Ld. CIT(A)**, who granted relief, leading to further appeal by Revenue before the **Hon'ble Tribunal**.

Assessee's Contention

- ❖ Assessee submitted that **DTAA benefit is a substantive right** available under section 90(2), and the same cannot be denied due to procedural lapses.
- ❖ It was argued that **Form 10F and TRC are only supporting documents** meant for verification and do not create the right to claim treaty benefit.
- ❖ Assessee highlighted that **no time limit is prescribed** under the Act or Rule 21AB for furnishing Form 10F, and hence delayed filing cannot invalidate the claim.
- ❖ It was further contended that once Form 10F and TRC are furnished, the same should **relate back to the return of income**, and DTAA benefit should be allowed.
- ❖ Accordingly, denial of treaty relief merely on account of **delay in submission of documents** was unjustified.

Revenue's Contention

- ❖ Revenue contended that **filing of Form 10F is mandatory** for claiming DTAA benefit, and non-filing at the time of return makes the claim invalid.
- ❖ It was argued that since the assessee **failed to furnish Form 10F within the prescribed timeline**, DTAA relief was rightly denied during processing under section 143(1).
- ❖ Reliance was placed on *Principal Commissioner of Income-tax v. Wipro Ltd.* [2022] 140 taxmann.com 223 (SC), wherein deduction under section 10B was denied due to failure to comply with the condition of filing declaration within the due date under section 139(1), and it was held that such time-bound compliance is mandatory.
- ❖ Revenue further submitted that **rectification under section 154 is not permissible**, as the required documents were not available on record at the time of processing.
- ❖ It was emphasized that compliance requirements under section 90(4) and Rule 21AB must be **strictly followed**, and delay cannot be condoned.
- ❖ Accordingly, Revenue supported the denial of DTAA benefit and challenged the relief granted by **Ld. CIT(A)**.

Legal provisions

Section 90 of the Income Tax Act ,1961

The Central Government may enter into an agreement—

(a) with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and income-tax in that country, or

(b) with the Government of any country outside India for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country;

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

Section 90(2) of the Income tax Act, 1961

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 the case may be, avoidance of double taxation ,then, in relation to the assessee to whom such agreement applies, the provision of this Act, shall apply to the extent they are more beneficial to that assessee.

Section 90(4) of the Income tax Act,1961

An Assessee, not being and 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.

Legal provisions

Rule 21AB: Certificate for claiming relief under an agreement referred to in sections 90 and 90A.

Subject to the provisions of sub-rule (2), for the purposes of sub-section (5) of section 90 and sub-section (5) of section 90A, the following information shall be provided by an assessee in Form No. 10F, namely:—

- (i) Status (individual, company, firm, etc.) of the assessee;
- (ii) Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);
- (iii) Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident;
- (iv) Period for which the residential status, as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A, is applicable; and
- (v) Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.

(2) The assessee may not be required to provide the information or any part thereof referred to in sub-rule (1) if the information or the part thereof, as the case may be, is contained in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A.

Ruling

- ❖ Hon'ble Tribunal held that **DTAA benefit cannot be denied merely due to delay in filing of Form 10F and TRC**, since neither section 90 nor Rule 21AB prescribes any time limit for furnishing such documents.
- ❖ It observed that **Form 10F does not create the right to claim DTAA relief**, but is only a procedural requirement to facilitate verification of information, and the substantive right flows from section 90(2) read with the DTAA.
- ❖ Hon'ble Bench rejected the Revenue's contention that filing of Form 10F within due date is mandatory, holding that **procedural requirements cannot override substantive rights**, especially when the assessee is otherwise eligible.
- ❖ The reliance placed by Revenue on **Wipro Ltd. (SC)** was **distinguished**, as that case involved **explicit time-bound conditions**, unlike Form 10F.
- ❖ Accordingly, it held that **delay in filing Form 10F is a curable defect**, and once furnished, the same would relate back to the claim made in the return of income. Therefore, **denial of DTAA benefit was unjustified**, and the relief granted by CIT(A) was upheld.



CASE LAW SUMMARY: DCIT (INTERNATIONAL TAXATION) V. THOGARCHEDU SUBHA

[2026] 183 taxmann.con 481 (Hyderabad - Trib.) AY 2023-24 | FEBRUARY 11, 2026

1. FACTS OF THE CASE



ASSEESSEE

- Non-resident individual
Tax resident of **USA**

INCOME & RETURN

- Filed return
claiming DTAA benefit
(india:- U3A)

CPC ACTION (Sec. 143(1))

- Denied DTAA benefit
- Tax recomputed under
normal provisions



**Demand
₹2.46 Cr**

RECTIFICATION (Sec. 154)

- Assessee later **submitted**:
- Form **10F** ✓ TRC ✓



CIT(A) DECISION

- Allowed DTAA benefit
after verification



2. ASSESSE'S CONTENTION

- ✓ DTAA benefit is a **substantive right** (Sec.90(2):
- ✓ Form 10F is procedural
- ✓ No time limit
prescribed under law

Key Argument:

- ✓ Filing Form 10F later should
relate back to return



3. REVENUE'S CONTENTION

- ✗ Form 10F is mandatory condition
- ✗ Must be filed before due date (Sec. 139(1))
- ✗ Delay = loss of DTAA benefit

Key Argument:

- Non-compliance = no DTAA relief.



FINAL CONCLUSION

- ✓ **DTAA BENEFIT CANNOT
BE DENIED JUST
BECAUSE FORM 10F WAS FILED LATE**



3. REVENUE'S CONTENTION

- ✗ Form 10F is mandatory condition
- ✗ Must be filed before due date (Sec. 139(1))
- ✗ Delay = loss of DTAA benefit



Reliet on!

- Wipro Ltd. (SC)
- Foreign tax credit cases



4. HELD / RULING (ITAT)

APPEAL DISMISSED!

IN FAVOR OF ASSESSEE

- ✓ No time limit for Form 10F in law
- ✓ Form 10F does **NOT** create right
- ✓ It only helps in verification.

DISTINGUISHED CASES

- ✓ Wipro Ltd:
(had strict time limit)
- ✓ Form 67 cases- explicitly time-bound



SUBSTANCE > PROCEDURE



Our Comments

- ❖ As per **Section 90 read with Rule 21AB**, there is **no prescribed time limit** for filing Form 10F. Hence, delay in filing cannot automatically result in denial of DTAA benefits.
- ❖ Filing of **TRC and Form 10F is mandatory**, but **timing of filing is not mandatory** unless specifically provided in law. Therefore, delayed compliance is **curable in nature**.
- ❖ *Procedural lapses (like delayed Form 10F) cannot override substantive rights, as consistently held in various judicial precedents, including cases relating to delay in filing **Form 67**. Once eligibility is established, DTAA benefits should not be denied due to technical defects.*
- ❖ Even under **Rule 75 of the Income-tax Rules, 2026**, the requirement is only to furnish prescribed details for verification of DTAA claims, which may be called for by the Assessing Officer.
- ❖ Notably, **no specific time limit has been prescribed** under the new rule for furnishing such details.

Section/Article	Section 90 and Rule 21AB
DTAA/Country	India – USA DTAA
Court	ITAT Hyderabad Bench 'B'
Date of decision	11-02-2026

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



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