

## Foreign Tax Credit u/s 90 - FTC denied as assessee has filed the Form No. 67 beyond the due date u/sec 139(1) - mandatory v/s directory obligation

ITAT MUMBAI,

JOHN ARUNKUMAR DIAZ 8A VERSUS DCIT-19 (1) , MUMBAI, No.- ITA No. 3647/Mum/2023

Dated.- February 15, 2024

We considering the facts, circumstances provisions of the Act and judicial decisions are of the opinion that there is no amendment on these aspects in the Section 90 of the Act and the rules cannot override the Act and therefore the filing of Form. No. 67 is not mandatory but it is directory. Accordingly, we considering the facts, circumstances and ratio of the judicial decisions, restore the disputed issue for limited purpose to the file of the assessing officer to grant Foreign Tax Credit after verification and in accordance with the law.

Reference-The Hon'ble High Court of Madras in the case of Duraiswamy Kumaraswamy Vs. Pr.CIT (156 taxmann.com 445) dated 6-10-2023 has observed as under:

“Section 90 of the Income-tax Act, 1961, read with rule 128 of the Income-tax Rules, 1962 and article 24 of DTAA between India and Australia - Double taxation relief - Where agreement exists (Elimination of double taxation - Eligibility of relief) Assessment year 2019-20 Whether filing of FTC in terms of rule 128 is only directory in nature - Held, yes - Whether where assessee claimed foreign tax credit (FTC) and filed Form-67 after due date specified for furnishing return under

section 139(1) but before completion of assessment proceedings, and an intimation under section 143(1) was issued after filing of Form-67, rejection of assessee's FTC claim was not proper - Held, yes [Paras 11, 12 and 13] [In favour of assessee]”

Cases relied upon

Ms. Brindra Rama Krishna, Vs. Income Tax Officer in ITA No 454/Bang/2021

Hon'ble Tribunal in ITA No.29/Bang/2021 in M/s 42 Hertz Software India Pvt. Ltd., Vs. ACIT-3(1)(1), Bangalore dated 07.03.2022