

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 4087/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2018-19

**Shri Rajiv Ramesh Lulla,**

3503A, Vivarea Sane Guruji Marg,  
Jacob Circle,  
Mahalaxmi Mumbai,  
Mumbai – 400 011.

**The DCIT/ACIT,**

Vs. Non-Corporate Circle 7(1),  
Chennai

**PAN: AIAPR 3119D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Piyush Chajjed, CA  
(Through Virtual Mode)

प्रत्यर्थी की ओर से/Respondent by

: Ms. Gouthami Manivasagam,  
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 09.04.2026

घोषणा की तारीख/Date of Pronouncement

: 10.04.2026

**आदेश/ ORDER**

**PER GEORGE GEORGE K, VICE PRESIDENT:**

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 06.11.2025 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The grounds raised read as follows:-

1. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in denying the Foreign Tax Credit without appreciating that the assessee had duly offered the said income to tax by way of filing the revised computation of income during the course of assessment.*

2. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in denying the foreign tax credit without appreciating that Form 67 was filed along with revised computation of income wherein the income earned in United States of America were offered for tax against which the appropriate credit was claimed.*

3. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in not appreciating that the question of filing the Form 67 arises only when the income earned outside India on which tax credit claimed offered for taxation and assessee had accordingly along with the offering of income claimed the tax credit.*

4. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) ought to have appreciated that foreign tax credit cannot be denied when the income is taxed under the provisions of income tax act in view of the provisions of the Section 90 read with double tax avoidance agreement with the USA, only on account of certain delays in procedural requirements.*

3. Brief facts of the case are as follows: The assessee is an individual and is a resident of India during the relevant assessment year. For the assessment year 2018-19, return of income was filed u/s.139(1) of the Act on 29.08.2018 declaring total income of Rs.38,36,970/-. The assessee in the said return did not disclose any foreign income. The assessment was selected for scrutiny and notice u/s.143(2) of the Act was issued on 28.09.2019. During the course of assessment proceedings,

assessee submitted revised computation of income admitting following foreign income which was inadvertently omitted to be disclosed in the return of income:-

- i. Short Term Capital Gains on sale of shares of foreign company : Rs.2,60,90,100/-
- ii. Interest on foreign bank accounts : Rs.1,80,183/-
- iii. Dividend from foreign securities : Rs.1,77,795/-
- iv. Professional fees earned in foreign currency :  
Rs.3,80,242/-

4. The assessee had also claimed Foreign Tax Credit (FTC) of Rs.75,24,894/- (USD 1,15,690) by filing Form No.67 on 07.02.2020 during the course of assessment proceedings along with the payment of additional tax of Rs.25,48,850/- including interest u/s.234A/B/C of the Act. The assessment was completed vide order dated 23.02.2021 passed u/s.143(3) of the Act. In the said assessment order, the AO accepted the additional income offered by the assessee on foreign assets. However, AO did not give Foreign Tax Credit (FTC) for the reason Form No.67 was not filed within the due date prescribed u/s.139(1) of the Act as mandated under Rule 128 of the Income Tax Rules, 1962.

5. Aggrieved, assessee filed appeal before the First Appellate Authority (FAA). The FAA vide order dated 06.11.2025 dismissed the appeal of the assessee by holding as under:-

- i. The foreign income was not offered in the return filed u/s.139(1)
- ii. Form No.67 was filed much later, violating the mandatory timeline prescribed under Rule 128(9)
- iii. The provisions of Rule 128 are clear and the claim of FTC is not maintainable.
- iv. Ground relating to penalty u/s 270A was held premature.

6. Aggrieved by the order of the FAA, assessee has filed the present appeal before the Tribunal. The assessee has filed a paper-book comprising of 96 pages enclosing therein the return of income filed for the relevant assessment year, notice issued during the course of assessment proceedings, revised computation of total income for the relevant assessment year, challan for payment of additional taxes, copy of Form No.67, acknowledgment of filing Form No.67, written submissions filed before the FAA, etc. The Ld.AR reiterated the submissions made before the AO and the FAA.

7. The Ld.DR on the other hand has filed a brief written submission essentially reiterating the findings of the AO and the FAA. The Ld.DR also placed reliance on the order of ITAT, Visakhapatnam Bench in the case of Muralikrishna Vaddi vs. ACIT/Dy CIT reported in [2022] 142 taxmann.com 32.

8. We have heard rival submissions and perused the material on record. For the relevant assessment year, assessee had filed his return of income within the due date prescribed u/s.139(1) of the Act on 29.08.2018. In the said return of income, assessee had disclosed the foreign assets in Schedule FA (refer pages 52 & 53 of paperbook filed by the assessee). However, by inadvertence the income was not disclosed in the return of income. During the course of assessment proceedings, assessee filed revised computation of income by including the foreign sourced income which was inadvertently omitted to be disclosed in the return of income filed on 29.08.2018. In the revised computation, apart from disclosing the foreign income, assessee had also claimed FTC for taxes paid in the foreign country of Rs.75,24,894/- by e-filing Form No.67 on 07.02.2020. Copy of acknowledgment of filing Form No.67 is placed on record at page 83 of the paper-book. The AO had accepted the additional

income offered by the assessee, however, denied the FTC only for the reason that Form No.67 was filed belatedly and not within the prescribed time u/s.139(1) of the Act. The Chennai Bench of the Tribunal in the case of Shri John Kishore vs. DCIT in ITA No.4090/CHNY/2025 (order dated 02.03.2026) by following the Hon'ble Delhi High Court judgment in the case of Real Time Data Services Pvt. Ltd., vs. PCIT in WP(C) No.959/2024 (judgment dated 13.02.2026) had held that filing of Form No.67 within the due date prescribed is not mandatory but only directory in nature. It was further held therein that the provisions of the DTAA override the provisions of the Act and the Rules cannot curtail substantive relief otherwise available under the Act/DTAA. The relevant finding of the Chennai Bench of the Tribunal in the case of Shri John Kishore (*supra*) reads as follows:-

*7. We have heard rival submissions and perused the material on record. Admittedly, assessee has not filed Form 67 along with return of income within the due date prescribed u/s.139(1) of the Act. The return was processed u/s.143(1) of the Act on 24.12.2021. The assessee on receipt of intimation u/s.143(1) of the Act and realizing the mistake that Form 67 was not filed, he e-filed the same on 24.08.2022.*

*8. The Hon'ble Delhi High Court in the case of Real Time Data Services Pvt. Ltd., (supra), had held that when petitioner had failed to upload Form 67 within due date of filing of the return, it is only a technical or venial breach. It was further held by the Hon'ble Delhi High Court that the petitioner has substantial right of getting FTC and withholding the same is without any authority and would tantamount to unjust enrichment. The Hon'ble Court in the said case directed the AO to*

*examine the Form 67 (which was admittedly filed subsequent to the intimation issued u/s.143(1) of the Act) and pass a speaking order in accordance with law.*

*9. The Mumbai Bench of the Tribunal in the case of Tabassum Abdulla Inamdar, (supra) had held that filing of Form 67 within the due date prescribed is not mandatory but only directory requirement. It was further held by the Mumbai Bench of the Tribunal, the DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. The relevant finding of the Mumbai Bench of the Tribunal reads as follows:-*

“5. We have perused the records and material placed before us. We take note of the provisions contained in Rule 128. From the reading of Rule 128 of the Rules, we find that sub-rule (9) of Rule 128 does not provide for disallowance of foreign tax credit in case of delay in filing Form No. 67. It is noted that filing of Form No. 67 is not mandatory but a directory requirement. Further, DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act. In reference to Rule 128, it is a well-settled position that 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 foreign tax credit. Also, under the Act, provisions of Section 90 and 91 do not prescribe timeline for filing of such declaration on or before the due date of filing of return. Also, Rule 128(4) clearly provides the condition where the foreign tax credit would not be allowed. Thus, present case is not a 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.

5.1. The issue before us is no longer res integra as held by various Coordinate Benches of ITAT, few of which are listed below:

- i. Sonakshi Sinha vs. CIT [2022] 142 taxmann.com 414 (Mum)
- ii. Deepak Shimoga Parmaraju vs. ADIT [2024] 162 taxmann.com 96 (Bang)

iii. Brinda Ramakrishna vs. ITO [2022] 135 taxmann.com 358 (Bang)

6. Considering the factual matrix on record as well as pending application before the ld. JAO u/s. 154, and the judicial pronouncements listed above read with Rule 128 of the Rules, we remit the matter back to the file of ld. JAO for a limited purpose of verification of the records and allow the credit for foreign taxes paid by the assessee as duly claimed in her return along with Form 67 already on record. Accordingly, ground raised by the assessee is allowed.”

10. *In the case considered by the Mumbai Bench of the Tribunal, it is abundantly clear that Form 67 was filed only subsequent to the intimation issued u/s.143(1) of the Act (refer para 3.1 of the said order of the Tribunal).*

11. *The Chennai Bench of the Tribunal in the case of Ms.Chathadi Krishnan Parvathi vs. ITO in ITA No.932/CHNY/2025 (order dated 18.06.2025) by following the earlier judicial pronouncement had directed the AO to examine the Form 67 which was filed subsequent to the intimation issued u/s.143(1) of the Act.*

12. *Since various judicial pronouncements have held filing of Form 67 under Rule 128 of the Income Tax Rules, 1962 within the prescribed time is only directory in nature and not mandatory, we hold the FAA is not justified in not examining whether Form 67 filed by the assessee is in accordance with the rules prescribed. Since there has not been examination whether assessee is entitled to FTC, we deem it appropriate to restore the matter to the files of the AO. The AO is directed to examine the Form 67 filed by the assessee (which is already on record) and take a decision in accordance with law. It is ordered accordingly.”*

9. In light of the above order of the Chennai Bench of the Tribunal, which has considered the judicial pronouncements on the subject, we condone the delay in filing Form No.67 and

restore the case to the files of the AO. The AO is directed to verify the Form 67 filed by the assessee (which is already on record) and take a decision in accordance with law. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10<sup>th</sup> April, 2026 at Chennai.

*Sd/-*

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 10<sup>th</sup> April, 2026

*Sd/-*

(जॉर्ज जॉर्ज के)

**(GEORGE GEORGE K)**

उपाध्यक्ष /VICE PRESIDENT

*RSR, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

By Order