IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No.431/Mum./2026
(Assessment Year : 2018-19)

Sachin Shrikant Khedekar,

B-12, Swapnashilpa CHS, Mahant Road, Vile Parle East, Mumbai – 400057.

……………. Appellant

v/s

Asst Commissioner of Income Tax 16(1),

Aaykar Bhavan, Maharshi Karve Marg, Mumbai – 400020, Maharashtra.

……………. Respondent

Assessee by : Ms. Neelam Jadhav, Adv.
Revenue by : Shri Anurag Tripathi, SR. AR

Date of Hearing – 06/04/2026	Date of Order – 10/04/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee against the impugned order dated 22/12/2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], which in turn arose from the order dated 18/05/2023, passed under section 154, for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: -

"1. On the facts and the circumstances of the case and in law, the respected Appellate authority was not justified in dismissing the appeal petition of the

appellant and thereby confirming disallowance of relief claimed u/s 90 amounting to Rs.5,36,896/-.

2. On the facts and the circumstances of the case and in law, the respected Appellate Authority erred in holding that form 67 was not filed at all by the Appellant though the same was filed during the rectification proceedings and which is the sole basis for dismissing the appeal petition of the appellant.

3. On the facts and the circumstances of the case and in law, the respected Appellate authority failed to appreciate that the facts and issue raised for adjudication are squarely covered by the rulings cited in appeal proceedings including ruling of jurisdictional Honourable Tribunal & thereby erred in the dismissing the appeal petition of the appellant.

4. The appellant craves a leave to add, alter and/or modify any of the grounds of appeal on or before the date of hearing of appeal".

3. The solitary grievance of the assessee is against the denial of foreign tax credit under section 90 of the Act due to the delay in filing Form No. 67.

4. The brief facts of the case as emanating from the record are: The assessee is a film artist and earns income from professional activities. For the year under consideration, the assessee filed his return of income on 06/10/2018, declaring a total income of Rs. 80,48,010. Out of the total professional receipts, Rs. 26,84,478 was received from parties outside India, on which tax amounting to Rs. 5,36,896 was paid outside India. While filing his return of income, the assessee included all his income, including that earned in India and also that earned outside India. In the return of income, the assessee claimed relief of Rs. 5,36,896, as per the provisions of section 90 of the Act, in respect of tax paid outside India. The return filed by the assessee was processed vide intimation dated 17/03/2020, issued under section 143(1) of the Act, whereby the foreign tax credit of Rs. 5,36,896, claimed by the assessee under section 90 of the Act, was denied. Thereafter,

the assessee filed a rectification application, inter alia, alongwith the proof of the tax paid and Form No.67 dated 06/10/2018. The rectification application filed by the assessee under section 154 was also disposed off vide order dated 18/05/2023, rejecting the relief claimed by the assessee under section 90 of the Act in respect of foreign tax credit on the basis that the assessee has not filed Form No.67. In the appeal against the order passed under section 154 of the Act, learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and held that Form No.67 was not at all filed by the assessee as prescribed as per the provisions of Rule 128(9) of the Income Tax Rules, 1962 ("*the Rules*"). Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ('*learned AR*') submitted that in the present case, the assessee filed his return of income on 06/10/2018, i.e. before the due date of filing the return of income, and duly disclosed the income earned from outside India as well as the tax amounting to Rs. 5,36,896 paid outside India. It was further submitted that the assessee filed Form No. 67 dated 06/10/2018 along with other proof of payment of tax outside India for claiming relief under section 90 of the Act, along with the rectification application filed under section 154 of the Act. The learned AR also submitted that the provisions of section 90 of the Act are substantive provisions, and provisions of Rule 128 cannot override the same. In support of its submission, reliance was placed upon the various decisions forming part of the case law paper book.

6. On the contrary, the learned Departmental Representative ('*learned DR*') vehemently relied upon the order passed by the learned CIT(A) and submitted that the provisions of Rule 128 of the Rules are mandatory in nature.

7. We have considered the rival submissions and perused the material available on record. In the present case, the assessee filed his return of income on 06/10/2018. In his return of income, the assessee claimed credit of foreign tax paid under section 90 of the Act. The ADIT, CPC, Bengaluru, while processing the return of income vide intimation issued under section 143(1) of the Act, denied the foreign tax credit of Rs. 5,36,896, claimed by the assessee under section 90 of the Act. Thereafter, the assessee filed Form No. 67 and a rectification application under section 154 of the Act for claiming the foreign tax credit. Vide order dated 18/05/2023, the rectification application was disposed off without granting any relief to the assessee in respect of the issue involved. In the impugned order, it has been held that Form No. 67 was not at all filed by the assessee, as per the provisions of Rule 128(9) of the Rules, and thus the claim of the assessee was rejected.

8. In the present case, the assessee has placed on record Form No.67 dated 06/10/2018 in respect of taxes amounting to Rs. 5,36,896 paid outside India. Further, from the perusal of the submission dated 21/02/2023 filed by the assessee during the rectification proceedings, forming part of the paper book on page 30, we find that the assessee filed the documents to

prove tax paid abroad for claiming relief under section 90 of the Act. Further, from the perusal of the assessee's written submissions before the learned CIT(A), forming part of the paper book from pages 38-42, we find that the assessee admitted that Form No. 67 was not submitted before the due date for filing the return of income. However, the assessee submitted that the same was filed before the Assessing Officer ("*AO*") in the course of rectification proceedings. We find that the assessee also furnished, before the learned CIT(A), a copy of Form No. 67, as submitted before the AO. Despite the aforesaid submission, it is evident from the perusal of the impugned order that the learned CIT(A) held that Form No.67 has not been filed at all by the assessee as prescribed. Therefore, from the perusal of the record, we agree with the submission of the assessee that Form No. 67 was filed before the AO during the rectification proceedings.

9. We find that under Rule 128(9), as it stood during the year under consideration, provided that 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 due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. Thus, during the year under consideration, the assessee was required to furnish Form No. 67 on or before the due date of filing the return of income under section 139(1) of the Act, as per the provisions of Rule 128(9). We further find that Rule 128(9) has been substituted by the Income-tax (Twenty-

seventh Amendment) Rules, 2022, w.r.e.f. 01/04/2022, and the same reads as under:

> *"(9) 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:"*

10. Thus, with effect from 01/04/2022, the time period for furnishing a statement in Form No. 67 has been extended till the end of the assessment year in which the corresponding income has been offered/assessed to tax and the return of such assessment year has been furnished within the time specified under 139(1) or 139(4) of the Act.

11. We find that the coordinate bench of the Tribunal in Sonakshi Sinha vs CIT, reported in [2022] 142 taxmann.com 414 (Mum-Trib.), while dealing with a similar issue wherein the taxpayer filed Form No.67, after the due date for filing the return of income under section 139(1), observed as follows: -

> *"012. We have carefully considered the rival contention and perused the orders of the lower authorities. Short question In this appeal is whether assessee is entitled to foreign tax credit even when form number 67 required to be filed according to the provisions of rule 128 (9) of the Income Tax Rules on or before the due date of filing of the return of income, not complied by the assessee, but same was filed before the completion of the assessment proceedings. Precisely, the fact shows that assessee filed return of income u/s 139 (1) of the income tax act. In such a return of income, she claimed the foreign tax credit. However, form number 67 was filed during the course of assessment proceedings and not before the due date of filing return. Rule 128 (9) of the Income Tax Rules 1962 provides that 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 due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. We find that coordinate bench in 42 Hertz*

Software India (P.) Ltd v. ACIT [2022] 139 taxmann.com 448 (Bangalore - Trib.) wherein following its earlier order in the case of Ms. Brinda Rama Krishna v.ITO [2022] 135 taxmann.com 358 (Bang Trib) it was held that "one of the requirements of Rule128 for claiming FTC is that Form 67 is to be submitted by assessee before filing of the returns and that this requirement cannot be treated as mandatory, rather it is directory in nature. This is because, Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67. Same view is also taken by a coordinate division bench in Vinodkumar Lakshmipathi V CIT(A) NFAC ITA No.680/Bang./2022 06.09.2022. It is well settled 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 FTC. 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. Further rule 128 (4) clearly provides the condition where the foreign tax credit would not be allowed. Rule 128 (9) does not say that if prescribed form would not be filed on or before the due date of filing of the return no such credit would be allowed. Further by the amendment to the rule with effect from 1 April 2022, the assessee can file such form number 67 on or before the end of the assessment year. Therefore, legislature in its own wisdom has extended such date which is beyond the due date of filing of the return of income. Further, the fact in the present case is quite distinct then the issue involved in the decision of the honourable Supreme Court in case of Wipro Ltd (supra). 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. Accordingly, ground number 2 of the appeal of the assessee is allowed."

12. We further find that the Hon'ble Madras High Court in Venkatanarayanan Somayaji Lakshminarasimha vs. PCIT, reported in [2025] 174 taxmann.com 754 (Madras), held that delay in filing Form No. 67 is only a procedural lapse which can be condoned and thus, foreign tax credit cannot be denied for delay in filing Form No. 67. The relevant observations of the Hon'ble Madras High Court, in the aforesaid decision, are reproduced as follows: -

"6. There is no dispute with regard to filing of income tax return in time i.e., 30.06.2018. While filing the income tax return, the petitioner disclosed Foreign Income at 65,61,171/- and claimed a sum of Rs.18,85,919/- towards foreign tax credit which was withheld by employer. The 2nd respondent vide order dated 14.05.2020 rejected the foreign tax credit on the ground that Form 67 was not submitted along with Income Tax Return. The Form 67 was introduced for the 1st time from the Assessment Year 2018-19 vide Rule 128(9) Income Tax Act and the same was filed by the petitioner on 20.05.2020. Thereafter, the petitioner filed the rectification petition on 20.05.2020 and the same was rejected by the 3rd respondent on the ground that Form 67 was not filed in time.

7. As rightly contended by the learned counsel for the petitioner the delay in filing the Form 67 is only the procedural lapse. That apart, this Court in the decision cited by the learned counsel for the petitioner has observed that Rule 128 is not mandatory but to be considered as directory in nature. The relevant portion of the said decision is extracted hereunder:

> *"9.In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of Indian from the assessment year 2018-2019 and 20192020. The petitioner admitted the fact that he has filed his return in India on 10.08.2019. The intimation under Section 143(1) was issued on 26.03.2020. However, he has filed the return without Form-67 which is required to be filed under Rule 128 to claim the benefit of FTC and the same came to be filed on 02.02.2021 which was well before the completion of the assessment year. The intimation under Section 143(1) was issued from the CPC only on 26.03.2021.*
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> *10.According to the learned counsel appearing for the respondent, the procedure under Rule 128 is mandatory and and cannot be considered as directory in nature. The petitioner has filed his return including his Kenya income along with his Indian Income tax and claimed the benefits of FTC. However, the petitioner would submit that it is not mandatory. The Rule cannot make anything mandatory and it can be directory in nature, that too before the Assessment, the claim to avail the benefits of FTC is filed. Therefore, it would be the amounts to due compliance under the Act. The petitioner referred to the Judgment of the Hon'ble Supreme Court in the case of Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, wherein it was held that Form 3AA is required to be filed along with the return of income to avail the benefit and even if it is not filed, but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance.*
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> *11.The law laid down by the Hon'ble Apex Court in Commissioner of Income-Tax, Maharashtra v. G.M.Knitting Industries (P) Limited in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated 24.06.2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without FTC, however the same was filed before passing of the final assessment order. The*

filing of FTC in terms of the Rule 128 is only directory in nature. The rule is only for the implementation of the provisions of the Act and it will always be directory in nature. This is what the Hon'ble Supreme Court had held in the above cases when the returns were filed without furnishing Form 3AA and the same can be filed the subsequent to the passing of assessment order.

12. Further, in the present case, the intimation under Section 143(1) was issued on 26.03.2021, but the FTC was filed on 02.02.2021. Thus, the respondent is supposed to have provided the due credit to the FTC of the petitioner. However, the FTC was rejected by the respondent, which is not proper and the same is not in accordance with law. Therefore the impugned order is liable to be set aside.

13. Accordingly the impugned order dated 25.01.2022 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the FTC filed by the petitioner on 02.02.2021. The respondent is directed to give due credit to the Kenya income of the petitioner and pass the final assessment order. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of FTC claim made by the petitioner and hence, the first respondent is directed to consider only on the aspect of rejection of FTC claim within a period of 8 weeks from the date of receipt of copy of this order."

13. Thus, respectfully following the decisions cited *supra*, we are of the considered opinion that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), as they stood during the year under consideration, will not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since in the present case, the claim of the assessee was denied on this technical aspect without going into the merits, we deem it appropriate to direct the jurisdictional AO to decide the claim of the foreign tax credit on merits, after accepting the Form No.67 and other related documents filed by the assessee. We order accordingly. As a result, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 10/04/2026

Sd/-
BIJAYANANDA PRUSETH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 10/04/2026

M. Ranganath Vithal

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai