IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

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THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.2722 of 2024 &
W.M.P.Nos.2997 and 2998 of 2024

V.Srinivasan ... Petitioner

Vs.

1.The Deputy Director of Income Tax
The Centralized Processing Center
Electronic City, Bengaluru – 560 100.

2.The Commissioner of Income Tax – TDS
No.16, BSNL Tower
Greams Road, Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Writ Petitioner on the file of the first Respondent to quash the impugned order dated 02.01.2024 passed u/s 154 read with section 143(1) of the Act for the Assessment Year 2022-23 in DIN CPC/2223/A3/325927311.

For the Petitioner : Mr.A.S.Sriraman

For the Respondents : Dr.B.Ramaswamy
Sr. Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order dated 02.01.2024 passed under Section 154 read with section 143(1) of the Income Tax Act for the Assessment Year 2022-2023 in DIN CPC/2223/A3/325927311.

2. The learned counsel for the petitioner would submit that the petitioner filed his income tax return for the assessment year 2022-2023 in terms of Section 139 of the Income Tax Act (hereinafter referred to as 'the Act') on 31.12.2022, declaring the taxable income at Rs.2,71,61,330/- by claiming the Foreign Tax Credit to the tune of Rs.10,78,563/-. The petitioner submitted the Form No.67, which claims the Foreign Tax Credit to an extent of Rs.10,78,563/- under Article 25 of the Double Taxation Avoidance Agreement entered into between Republic of India and United States of America. While so, the petitioner received an intimation on 20.06.2023, not granting the benefit of the Foreign Tax Credit, by raising a demand of Rs.13,58,070/- along with consequential interest.

3. The learned counsel would further submit that the petitioner filed a rectification request for reprocessing the return of income through the income tax

web portal on 12.07.2023 along with Form No.67 by showing the tax paid in terms of Section 139 (4) of the Act. However, the 1st respondent vide the impugned order under Section 143 (1) of the Act, has not provided any credit to the amount of foreign tax paid by the petitioner, which was furnished under Form No.67. Hence the present Writ Petition.

4. The learned Senior Standing Counsel appearing for the respondents strongly opposed the submissions made by the learned counsel for the petitioner and would submit that in terms of Section 139 of the Act, Form No.67 should be filed on or before the due date of filing the return of income tax. He would further submit that since Rule 128 of the Income Tax Rules, 1962 is mandatory, the 1st respondent has rightly rejected the Foreign Tax Credit filed subsequent to the return. However, he would submit that if this Court thinks it fit to quash the impugned order, the respondents can consider the aspect of Form No.67 alone.

5. In reply, the learned counsel for the petitioner would submit that the present case for rectification was filed only for providing due Foreign Tax Credit paid by the petitioner under Form No.67. However, without considering the

same, the 1st respondent in a mechanical manner passed the impugned order. In support of his submission, the learned counsel referred the Judgment of this Court in ***Duraiswamy Kumaraswamy Vs. Principal Commissioner of Income Tax*** [(2023) 156 taxmann.com 445 (Madras)].

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. It is an admitted fact that the petitioner has filed his income tax return for the assessment year 2022 – 2023 on 31.12.2022 along with Form No.67. The petitioner was working in a foreign country and paid the income tax. While passing the intimation under Section 143 (1) of the Act, the aspect of payment of foreign tax has not at all been considered, though it was filed along with the income tax return. After receipt of the intimation, the petitioner filed rectification application to rectify the same and to consider the Form No.67. Though the application was submitted once again, without considering the vital aspects, simply it was rejected, which is not proper and the same is not in accordance with law. This Court has already held in ***Duraiswamy Kumaraswamy's case*** (cited

supra) that filing of Form No.67 is not mandatory or directory. Even by following the law laid down by the Hon'ble Supreme Court of India in ***CIT Vs. G.M.Knitting Industries (P) Ltd.,*** this Court had held that filing of Foreign Tax Credit in terms of Rule 128 is only directory in nature.

8. In view of the above, the impugned order is liable to be set aside and accordingly, the impugned order dated 02.01.2024 is set aside. While setting aside the impugned order, this Court remits the matter back to the 1st respondent to make reassessment by taking into consideration of the Foreign Tax Credit filed by the petitioner under Form No.67. The 1st respondent is directed to give due credit to the petitioner's foreign income 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 Foreign Tax Credit claim made by the petitioner and hence the 1st respondent is directed to reassess only on the aspect of rejection of Foreign Tax Credit, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

24.09.2024

Speaking order
Index : Yes
Internet : Yes
Neutral Citation : Yes

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