IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.12578 of 2024 and
W.M.P.Nos.13737 & 13738 of 2024

Shri Kuthoore Natarajan Venkatasubramanian .. Petitioner

Versus

1. The Principal Commissioner of Income Tax,
Chennai – 08
BSNL Tower, No.16, Greams Road,
Chennai – 600 006.

2. Central Processing Centre,
Bangalore.

3. The Deputy Commissioner of Income Tax,
Non Corporate Circle 11(1)
No.120, BSNL Building,
Chennai – 06. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent and to quash the impugned order passed by the first respondent bearing PAN No.ACLPV2518H in DIN & Order No.ITBA/REV/F/REV7/2023-24/1062191199(1) dated 07.03.2024 and direct the third respondent to allow the FTC of Rs.6,39,560/- u/s. 90 of the Act read with Article 24 of India-UK Tax Treaty ("DTAA").

For Petitioner : Mr.G.Ashokapathy for M/s.PASS Associates

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

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ORDER

This writ petition has been filed to quash the impugned order passed by the first respondent dated 07.03.2024 and to direct the third respondent to allow the FTC of Rs.6,39,560/- under the Act read with Article 24 of India-UK Tax Treaty ("DTAA").

2 Learned counsel for the petitioner would submit that the petitioner was working in UK and filed his return of income (ROI) on 21.09.2020 in India. The payer in UK deducted a sum of Rs.6,27,023/- towards TDS and while paying the tax in India, for the purpose of claiming Foreign Tax Credit (FTC) under Section 90 of the Income Tax Act r/w Article 24 of India-UK Tax Treaty (DTAA), the petitioner suppose to file Form-67 along with ROI. But, during the Covid out break, he was not able to get necessary documents from the foreign country and in turn there was difficulties in filing Form-67. However the petitioner filed Form-67 on 29.08.2022. The second respondent while processing the petitioner's Return of Income (ROI), disallowed the Foreign Tax Credit claim for Rs.6,27,023/- Under these circumstances, the petitioner had filed revision under Section 264 of the Income Tax Act for revising the assessment order and the said revision petition was rejected as not maintainable observing that it is beyond the period of limitation and the revisional authority cannot pass any orders as prayed for. Hence the petitioner filed the present writ petition.

3 Learned Senior Standing Counsel for the respondents would strongly oppose stating that the petitioner should have filed Form-67 along with ROI, which was filed on 21.09.2020, whereas, the petitioner filed Form-67 only on 08.10.22 after the lapse of a period of two years. Therefore the revisionsal authority has rightly rejected the claim of the petitioner and the writ petition is liable to be dismissed.

4 I have considered the rival submissions made on either side and perused the materials available on record.

5 In the present case, the petitioner, who was working in foreign country, had filed his ROI for the assessment year 2020-21 on 21.09.2020 in India, but due to Covid out break he could not get necessary documents from foreign country and file Form-67 along with ROI. But, the petitioner uploaded the Form-67 on 08.10.2022. The reasons stated by the petitioner appears to be reasonable and genuine and further this Court in a similar case reported in *(2024) 460 ITR 615 (Duraiswamy Kumaraswamy vs. Principal Commissioner of Income Tax and Other)* passed the following order.

> *"9.In the present case, the petitioner initially worked at Kenya and subsequently, he became the resident of India from the assessment years 2018-2019 and 2019-2020. The petitioner admitted the fact that he has filed his return in India on August 10,, 2019. The intimation under Section 143(1) was issued on March 26, 2020. However, he has filed the return without Form 67 which is required to be filed under Rule 128 to claim the benefit of foreign tax credit and the same came to be filed on February 2, 2021 which was well before the completion of the assessment year. The intimation under Section 143(1) was issued*

from the Centralized Processing Centre only on March 26, 2021.

10.According to the learned counsel appearing for the respondent, the procedure under rule 128 is mandatory 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 foreign tax credit. 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 foreign tax credit is filed. Therefore, it would amount to due compliance under the Act. The petitioner referred to the Judgment of the hon'ble Supreme Court in the case of CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 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.

11.The law laid down by the hon'ble apex court in CIT v. G.M.Knitting Industries (P.) Ltd. in Civil Appeal Nos.10782 of 2013 and 4048 of 2014 dated July 24, 2015, which was referred above, would be squarely applicable to the present case. In the present case, the returns were filed without foreign tax credit, however the same was filed before passing of the final assessment *order. The filing of foreign tax credit 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 subsequent to the passing of the assessment order.*

12. Further, in the present case, the intimation under Section 143(1) was issued on March 26, 2021, but the foreign tax credit was filed on February 2, 2021. Thus, the respondent is supposed to have provided the due credit to the foreign tax credit of the petitioner. However, the foreign tax credit 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 January 25, 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 foreign tax credit filed by the petitioner on February 2, 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 foreign tax credit claim made by the petitioner and hence, the first *respondent is directed to consider only on the aspect of rejection of foreign tax credit claim within a period of 8 weeks from the date of receipt of copy of this order.*

6 This Court, by following the judgment of the Hon'ble Supreme Court, held that filing of foreign tax credit in terms of Rule 128 is only directory in nature and not mandatory. In the present case the petitioner was working in United Kingdom and earned Rs.43,06,224/-. The petitioner filed return of income in India for the assessment year 2020-2021 on 21.09.2020 showing the income earned in the foreign country, in which he claimed Rs.6,27,023/- being TDS credit before United Kingdom, as FTC under Section 90 of the Income Tax Act. But the petitioner uploaded Form 67 with delay, which he suppose to upload while filing the return of income. It is to be noted that Section 90, Section 90A and Section 91 of the Income Tax Act of 1961 have been drafted specifically to avoid the burden of double taxation.

7 In the present case, even though the petitioner had not uploaded Form-67 while filing return of tax, later he uploaded the same with delay and that too due to Covid out break he was not able to get necessary documents from the foreign country, which appears to be genuine. Therefore this Court is inclined to condone the delay in filing Form 67 and the impugned order is liable to be set aside.

8 Accordingly, this Court passes the following order:-

(i) The impugned order dated 07.03.2024 is set aside subject to the payment of Rs.10,000/- to the Principal Government Naturopathy Medical College and Hospital, Account No.7883022723, IFSC Code: IDIB000M157, within a period of 2 weeks from the date of receipt of copy of this order. While setting aside the impugned order, this Court remits the matter back to the respondent to make reassessment by taking into consideration of the foreign tax credit filed by the petitioner.

(ii) Upon production of proof with regard to the payment of a sum of Rs.10,000/- as stated above, the respondent is directed to give due credit to the United Kingdom 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 foreign tax credit claim made by the petitioner and hence, the respondent concerned is directed to consider only on the aspect of rejection of foreign tax credit claim within a period of 8 weeks from the date of receipt of copy of this order.

9 With the above directions, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are also closed.

26.09.2024

Neutral Citation : Yes/No

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To

1. The Principal Commissioner of Income Tax,
   Chennai – 08, BSNL Tower, No.16, Greams Road,
   Chennai – 600 006.

2. Central Processing Centre,
   Bangalore.

3. The Deputy Commissioner of Income Tax,
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   No.120, BSNL Building,
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KRISHNAN RAMASAMY, J.,

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