IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.14660, 14664 & 14673 of 2024 and
W.M.P.Nos.15926, 15927, 15930, 15931, 15932 & 15934 of 2024

Venkatesh Krishnamoorti .. Petitioner in all WPs

Versus

1. The Principal Commissioner of Income Tax-8
   II Floor, BSNL Tower, Greams Road,
   Chennai – 600 006.

2. The Assistant Director of Income Tax,
   Central Processing Centre,
   Bangalore.

3. The Deputy Commissioner of Income Tax,
   Non Corporate Circle 11(1)
   Chennai. ... Respondents in all WPs

Prayer in all WPs: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the case in DIN & Order Nos.ITBA/REV/F/REV7/2023-24/1063721798(1) dated 30.03.2024 for the Assessment Year 2019-20, ITBA/REV/F/REV7/2023-24/1059679785(1) dated 12.01.2024 for the Assessment Year 2020-21 and

ITBA/REV/F/REV7/2023-24/1063722281/(1) dated 30.03.2024 for the Assessment Year 2021-22 on the file of the first respondent and quash the same and direct the first respondent to condone the delay in filing Forms-67 and grant the Foreign Tax Credits claimed of Rs.35,27,811/-, Rs.55, 31, 789/- and Rs.1,03,99,917/- respectively.

For Petitioner : Mr.R.Venkatanarayanan for
Mr.Subbaraya Aiyar Padmanabhan-in all WPs

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel – in all WPs

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COMMON ORDER

These writ petitions have been filed to quash the impugned orders passed by the first respondent and to direct the first respondent to condone the delay in filing Form- 67 and grant the Foreign Tax Credit claimed by the petitioner for the Assessment Years 2019-20, 2020-21 and 2021-22.

2 Learned counsel for the petitioner would submit that the petitioner was working in UK and the payer in UK deducted TDS for the income earned there. The petitioner filed return of income(ROI) for the Assessment Years 2019-20, 2020-21 and 2021-22 in India and 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, because of Covid out break he inadvertently had not filed Form-67. However, later, on coming to know that Form-67 has not been filed, the petitioner uploaded Form-67 for all the three Assessment Years. The second respondent while processing the petitioner's Return of Income (ROI), disallowed the Foreign Tax Credit claimed by the petitioner. Under these circumstances, the petitioner had filed revisions under Section 264 of the Income Tax Act for revising the assessment orders and the said revision petitions were 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 these writ petitions.

3 Learned Senior Standing Counsel for the respondents would strongly oppose stating that the petitioner should have filed Form-67 either along with ROI or before passing of the Assessment Order, whereas, the petitioner filed Form-67 belatedly. Therefore the revisionsal authority has rightly rejected the claims of the petitioner and the writ petitions are 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 return of income for the assessment years 2019-20, 2020-21 and 2021-22 in India showing the income earned in the foreign country. But due to Covid out break, he inadvertently had not uploaded the Form-67. However, later the petitioner uploaded the Form-67 for all the Assessment Years. The reasons stated by the petitioner appears to be reasonable 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 cases the petitioner was working in United Kingdom and earned income there. The petitioner filed return of income in India for the assessment years 2019-20, 2020-21 and 2021-22 showing the income earned in the foreign country, in which he claimed 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, which appears to be genuine. Therefore this Court is inclined to condone the delay in filing Form 67 and the impugned orders are liable to be set aside.

8 Accordingly, this Court passes the following order:-

(i) The impugned orders dated 30.03.2024, 12.01.2024 and 30.03.2024 are set aside subject to the payment of Rs.10,000/- in each of the writ petitions, 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 the foreign tax credits filed by the petitioner.

(ii) Upon production of proof with regard to the payment of a sum of Rs.10,000/- in each of the writ petitions as stated above, the respondent is directed to give due credit to the United Kingdom income of the petitioner and pass the final assessment orders. Further, it is made clear that the impugned order is set aside only to the extent of disallowing of foreign tax credit claims made by the petitioner and hence, the respondent concerned is directed to consider only on the aspect of rejection of foreign tax credit claims within a period of 8 weeks from the date of receipt of copy of this order.

9 With the above directions, these writ petitions are 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-8
   II Floor, BSNL Tower, Greams Road,
   Chennai – 600 006.

2. The Assistant Director of Income Tax,
   Central Processing Centre,
   Bangalore.

3. The Deputy Commissioner of Income Tax,
   Non Corporate Circle 11(1)
   Chennai.

KRISHNAN RAMASAMY, J.,

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