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W.P.No.17394 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17394 of 2024 and
W.M.P.Nos.19160 & 19162 of 2024

Thejo Engineering Limited,
3rd Floor, VDS House,
41, Cathedral Road, Gopalapuram,
Chennai-600 086
Rep. by its Deputy Managing Director.

... Petitioner

-VS-

1.The Deputy Director of Income Tax,
CPC, Bangalore.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 3(1), Chennai 600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the case on the file of the 1st Respondent and quash the Impugned Order u/s.154 of the Act 1961 dated 27.05.2024 in DIN CPC/2223/U6/404172548 for the Assessment Year 2022-23 in PAN:AAACT1261F and direct the



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Respondents to grant Foreign Tax Credit of Rs.1,14,62,414/-.

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For Petitioner : Mr.V.Vikram
for M/s.Subbaraya Aiyar Padmanabhan and
Ramamani

For Respondents : Mr.V.Mahalingam, Senior Standing Counsel

ORDER

An order under Section 154 of the Income Tax Act, 1961 (the Income Tax Act) dated 27.05.2024 is challenged in this writ petition.

2. In respect of assessment year 2022-2023, the petitioner filed the original return of income on 29.11.2022. Thereafter, the petitioner filed a revised return of income on 29.12.2022. In both the original and revised return of income, the petitioner had claimed the benefit of Foreign Tax Credit under Section 90/90A of the Income Tax Act read with Article 24 of India-Australia Double Taxation Avoidance Agreement in respect of taxes paid by the Australian branch to the extent of Rs.1,14,62,414/-. In order to make the Foreign Tax Credit claim, the petitioner had uploaded Form 67, the business activity statements filed with the Australian Tax Office and the company tax return filed in Australia. Upon such return being processed by



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the Central Processing Centre, under Section 143(1), a demand of Rs.1,40,47,430/- was made. Upon examining the intimation, the petitioner noticed that Foreign Tax Credit was not granted. In those circumstances, a rectification petition dated 09.11.2023 was filed. Since such rectification petition was rejected by once again denying the Foreign Tax Credit, the present writ petition was filed.

3. Learned counsel for the petitioner invited my attention to the company tax return filed in Australia. With reference thereto, he pointed out that the tax liability was about Australian dollars 231,460. He also points out that such tax liability was duly discharged as evidenced by the petitioner's activity statement. By referring to the petitioner's claim for Foreign Tax Credit, he pointed out that such tax credit was claimed to the extent of Rs.1,14,62,414/- in view of the differential tax rates being applicable in India and Australia, respectively. By referring to the intimation under Section 143(1), he points out that the Foreign Tax Credit was completely denied although the same intimation computes the Foreign Tax Credit in a sum equal to that claimed by the tax payer. He also points out that the



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rectification order is on the same lines, whereby the tax relief is denied, on the one hand, whereas the computation reflects the total value of the Foreign Tax Credit.

4. Mr.V.Mahalingam, learned senior standing counsel, accepts notice for the respondents. He submits that the matter may be remanded for reconsideration with regard to the Foreign Tax Credit.

5. On examining the company tax return and the activity statements, it appears *prima facie* that the petitioner has remitted taxes through the Australian branch. It is clear that Foreign Tax Credit in respect thereof was claimed by the petitioner by filing Form 67 with relevant annexures. On examining the intimation under Section 143(1) and the impugned rectification order, the Foreign Tax Credit was computed by the assessing officer and such computation tallies with the Foreign Tax Credit claim of the assessee. In spite of accepting the computation of the tax payer, the tax credit relief was denied. It is not possible to discern the reasons for such denial, but these facts and circumstances undoubtedly warrant



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reconsideration.

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6. For reasons set out above, the impugned rectification order dated 27.05.2024 is set aside and the matter is remanded for reconsideration in so far as the Foreign Tax Credit claim is concerned. If there are any dues after taking into consideration such Foreign Tax Credit claim and interest liability arising therefrom, the petitioner shall discharge the same. After providing a reasonable opportunity to the petitioner, the Central Processing Centre, Bangalore shall issue a fresh order within three months from the date of receipt of a copy of this order.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

1.The Deputy Director of Income Tax,
CPC, Bangalore.

2.The Deputy Commissioner of Income Tax,
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Chennai 600 034.

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