IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.28199 of 2024
and
W.M.P.Nos.30742 and 30744 of 2024

Venkatanarayanan Somayaji Lakshminarasimha ... Petitioner

..Vs..

1. The Principal Commissioner of Income Tax-8,
   BSNL Tower, No.16 Greams Road,
   Chennai- 600 006.

2. Assistant Director of Income Tax
   Centralized Processing Centre
   Post Box No.-1, Electronic City Post Office,
   Bangalore- 560 100.
   Karnataka, India.

3. Deputy Commissioner of Income Tax
   Non Corporate Circle 17(1) Chennai
   Room No.514, BSNL Building,
   5th Floor, Income Tax Office-BSNL Tower
   No.16, Greams Road,
   Chennai- 600 006. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 06.09.2024 passed by the 3rd Respondent vide ITBA/COM/F/17/2024-25/1068426359(1) for Assessment Year 2018-2019 and quash the same and direct the 3rd Respondent allow the foreign tax credit for the Assessment Year 2018-2019,if necessary by condoning the delay in filing Form No.67.

For Petitioner : Mr.Baskar G

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order dated 06.09.2024 passed by the 3rd Respondent vide ITBA/COM/F/17/2024-25/1068426359(1) for Assessment Year 2018-2019 and quash the same and direct the 3rd Respondent allow the foreign tax credit for the Assessment Year 2018-2019,if necessary by condoning the delay in filing Form No.67.

2. The facts giving rise to the writ petition, in a nutshell are as follows:

(i) The petitioner filed his income tax return for the Assessment Year 2018-2019 on 30.06.2018, admitting an income of Rs.68,81,870/- which included foreign income of Rs.65,61,171 and claimed a sum of Rs.18,85,919/- towards foreign tax credit which was withheld by employer. While so, the 2nd respondent sent a communication to the petitioner dated 14.05.2020 stating that relief under Section 90 of the Act i.e. Foreign tax credit was not considered, for the reason that Form 67 was not submitted along with income tax return.

(ii) The corresponding foreign salary income of Rs.65,61,170/- admitted by the petitioner has been accepted by the Department. The petitioner return of income which was e-filed on 30.06.2018, was accepted by the portal even without alerting the petitioner of any error for non-filing of Form 67, before the due date. The petitioner was under the bonafide impression that the foreign tax credit will be allowed automatically in the return form itself. Therefore, Form 67 which was introduced for the first time from the Assessment Year 2018-19 vide Income Tax Rule 128(9) was filed on 20.05.2020.

(iii) The petitioner originally was assessed by the Deputy Commissioner of Income Tax, International Taxation Circle 1 (2), Bangalore. His file was transferred to Chennai vide Communication dated 09.12.2020 to the Income Tax Officer, International Taxation, Chennai, and the jurisdiction presently lies with the 3rd Respondent. Thereafter, the petitioner preferred a rectification petition under Section 154 of the Act with his erstwhile jurisdictional Assessing Officer Bangalore on 20.05.2020 and the copy of the same was furnished to the Jurisdictional Officer, Chennai on 27.04.2022. The file was again internally transferred to 3rd respondent. The petitioner's authorized representatives made a written representation to the Commissioner of Income Tax-8, Non Corporate Range 17(1) vide their letter dated 29.08.2024 requesting for early doposal of the rectification petition, but the same was rejected by the 3rd respondent vide letter dated 06.09.2024 for the reason that the petitioner have failed to furnish Form 67, within due date of filing Return of Income and Form 67 was submitted only after the processing of Return of Income. The said order is impugned in this writ petition.

2. The learned counsel appearing for the petitioner would submit that the delay in filing Form 67 is only the procedural lapse on the part of the petitioner and that apart requirement of filing Form 67 is only directory and not mandatory. In support of his contention, he relied upon the decision of this Court in the case of ***Duraiswamy Kumaraswamy Vs. Principal Commissioner of Income Tax [2023] 156 taxmann.com. 445 (Madras).***

3. The learned Senior Standing Counsel appearing for the respondents would fairly submit that the aforesaid order passed by this Court in similar circumstances, may be followed in the present case also.

4.Heard both sides. Perused the records.

5. 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.

6. 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 2019-2020. 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.

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.

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."

7. In the light of the aforesaid decision and also in the interest of justice, this Court is inclined to condone the delay in filing the Form 67 subject to payment of a cost of Rs.10,000/- to the Principal Government Naturopathy Medical College and Hospital.

8. Accordingly, this Court passes the following order:

(i) The impugned order dated 06.09.2024 is set aside subject to the payment of a sum 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 and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) Upon production of proof with regard to the payment of a sum of Rs.10,000/- as stated above, the 3rd Respondent shall consider and pass orders within a period of two weeks thereafter.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

04.04.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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Krishnan Ramasamy,J.,
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