

W.P(MD)No.18210 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.18210 of 2025

and

W.M.P(MD)Nos.13981 and 13983 of 2025

Rajalingam Nagarathinam,
Represented by his Power Agent,
Mr.Nagarathinam,
No.4/123, Kodikkal Street,
Lalapet S.O. Government High School,
Karur 639105.

... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Madurai-Annexe Building,
V P Rathinasamy Nadar Road,
CR Building, Bibikulam,
Madurai – 625002.

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

3.The Deputy Commissioner of Income Tax,
Circle- 1, Trichy.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned order dated 5th December, 2024, passed by the first Respondent, bearing DIN and Order



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No.ITBA/REV/F/REV7/2024-25/1070939106(1) under section 264 of Income Tax Act, 1961 and consequently the intimation order also, passed by the second Respondent, dated 05.07.2022, bearing DIN No.CPC/2122/A2/194749294 and quash the same and direct the respondents to grant the foreign tax credit claimed by the petitioner and consequently allow the refund of taxes to the petitioner.

For Petitioner : M/s.T.V.Muthu Abirami

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned order passed by the Principal Commissioner of Income Tax dated 15.12.2024 and the intimation order, passed by the second respondent, dated 05.07.2022 and to direct the respondents to grant the foreign tax credit claimed by the petitioner and consequently allow the refund of taxes to the petitioner.

2. The operative portion of the impugned order reads as under:

7.4. The submission of the assessee and the report of the Assessing Officer reproduced above are discussed herein. The order against which the assessee has preferred revision application is not an assessment order u/s 143(3)/147 of the Act, but it is intimation u/s 143(1) of the Act which was issued just by processing the ITR filed by the assessee. Hence, the judicial decisions relied on by the assessee



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can not be applied to the processing of the ITR u/s 143(1). As per the specific provisions of the section 143(1), the intimation is issued by the A.O./CPC strictly as per the provisions of the Act. Accordingly, the ITR was rightly processed u/s 143(1) of the Act by not allowing foreign tax credit as the Form 67 was not filed before the end of the assessment year. Hence, no interference with the processing of the ITR is warranted in this case.

8. In view of the foregoing discussion and in exercise of powers conferred u/s 264 of the Act, the revision application filed by the assessee is hereby rejected.

3. The petitioner, an Indian citizen, was employed during the financial year 2023-2024 partly in India and partly in Netherland. Therefore, he received the salary in India and in Netherland during the period while he served in the respective Countries. The petitioner had filed his income tax returns. However, he failed to file Form 67 as is required under Rule 128 of the Income Tax Rules, 1962, for bifurcating the income earned in India and in Netherland. The petitioner's return was accepted and an intimation was sent to the petitioner on 05.07.2022 under Section 143 (1) of the Income Tax Act, 1961, wherein, the petitioner was found fault for not filing Form 67 in time and therefore, he was held liable to pay the tax for a sum of Rs.1,05,030/-.

4. The case of the petitioner is that the failure to file Form 67 in time was by oversight and that such failure to file Form 67 is ministerial in nature

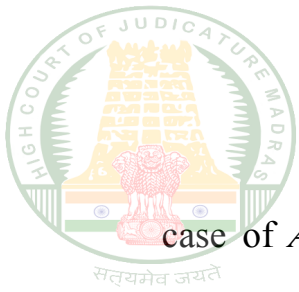


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as otherwise the petitioner was entitled to refund of Rs.20,000/-. Under these circumstances, the petitioner filed a rectification petition under Section 154 of the Income Tax Act, 1961, before the assessing Officer on 06.07.2022. That said petition was rejected by an order, dated 09.09.2022. Aggrieved by the same, the petitioner filed a petition under Section 264 of the Income Tax Act, 1961. The preamble to the impugned order indicates that the petitioner had filed an application under Section 264 of the Income Tax Act, 1961 against the order dated 09.09.2022. However, the operative portion of the impugned order makes it clear that the rectification was filed only against the intimation issued under Section 143 (1) of the Income Tax Act, 1961, dated 05.07.2022 in the rectification application, the petitioner had prayed as follows:

“For the reasons stated above the petitioner submits that the demand raised by the CPC in processing the return by not allowing FTC may please be rectified.”

5. In the meanwhile, the petitioner filed another application under Section 154 of the Income Tax Act, 1961, against the intimation on 11.08.2023, which was also rejected on the same day. The question that arise for consideration is whether the impugned order passed by the respondents is correct or not. The Hon'ble Supreme Court has held that the intimation under Section 143 (1) of the Income Tax Act, 1961 is not an assessment order in the



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case of *Assistant Commissioner of Income Tax Vs Rajesh Jhaveri Stock*

Brokers Private Limited reported in (2008) 14 SCC 208.

6. The scope of the power under Section 264 of the Income Tax Act, 1961, is circumscribed by the language in it. It does not permit an assessee to file an application for rectification against an intimation under Section 143 (1) of the Income Tax Act, 1961.

7. There is also an embargo in Section 264 (4) (a) of the Income Tax Act, 1961, which reads as under:

(4) The Commissioner shall not revise any order under this section in the following cases-

(a) where an appeal against the order lies to the [Deputy Commissioner (Appeals)] [or to [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the [Deputy Commissioner (Appeals)] or

(c) where the order has been made the subject of an appeal [to the Commissioner (Appeals) or] to the Appellate Tribunal.

8. Therefore, I do not find any merit in the present writ petition challenging the impugned order passed by the first respondent rejecting the



application filed under Section 264 of the Income Tax Act, 1961. Further, it is

noticed that an order passed under Section 264 of the Income Tax Act, 1961,

is not appealable before the Tribunal under Section 253 of the Income Tax

Act, 1961. Therefore, the only remedy available to the petitioner is under

Section 246 of the Income Tax Act, 1961 as per which an appeal is

maintainable against an intimation under Section 143 (1) of the Income Tax

Act, 1961. It is evident from reading of the Section 264A(1)(a) of the Income

Tax Act, 1961 which reads as under:

“Faceless revision of orders.

264A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of revision of orders under section-263 or section-264, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) Optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based revision of orders, with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.”

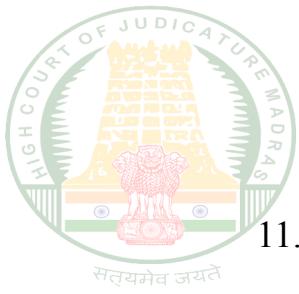


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9. In my view, the petitioner cannot be left without any remedy, as there are *prima facie* indications of a mistake in not filing Form 67 as required under Rule 128 of the Income Tax Rule, 1962. The powers are available to the appellate Commissioner to condone the delay under Section 249 (3) of the Income Tax Act, 1961 in filing appeal. Considering the fact that the petitioner has also pursued an alternate remedy though by mistake under Section 264 of the Income Tax Act, 1961, applying the Principle under Section 14 of the Limitation Act, the petitioner would be entitled for condonation of the delay.

10. Considering the same, I am inclined to dispose of this writ petition by directing the petitioner to challenge the intimation, dated 05.07.2022 issued under Section 143 (1) of the Income Tax Act, 1961 before the appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order. In case, such an appeal is filed before the appellate authority within such time, the appellate authority shall consider the same and dispose of the same on merits on its turn.



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11. The writ petition stands disposed of with the above direction and observations. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

04.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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C.SARAVANAN, J.

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