



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1363 OF 2025

Udayan Bhaskaran Nair

.. Petitioner

Versus

Deputy Commissioner of Income Tax-42(3)(1),
Mumbai & Ors.

.. Respondents

**Mr.Devendra Jain a/w Shashank Mehta, Saukhya
Lakade i/b Radha Halbe**, Advocates for the Petitioner.

Mr.Akhileshwar Sharma, Advocate for the Respondents.

**CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE : JANUARY 13, 2026

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges the alleged demand raised for Assessment Year 2010-11 and the non-disposal of the rectification application filed by the Petitioner on 11.04.2018 under Section 154 of the Income Tax Act, 1961 (for short “**the Act**”).

3. Brief facts of the case are that during the relevant Assessment Year 2010-11, the Petitioner was a salaried person, employed with a company named *iNautix Technologies Private Limited*. The said company had an associate company in the United Kingdom named *Pershing Limited*. For the period of six months (January, 2009 to June, 2009), the Petitioner was posted and working with Pershing Limited (hereinafter referred to as the “**UK Counterpart**”) which paid the salary to the Petitioner and deducted tax under the applicable laws of the United Kingdom. Subsequently, he was posted to *iNautix Technologies Private Limited* (hereinafter referred to as the “**Indian Counterpart**”) and started receiving salaries in India from July 2009 onwards. The Indian counterpart issued Form-16 to the Petitioner with a gross salary of Rs.30,37,539/- which included the salary received from the UK counterpart of Rs.8,69,078/-. Form-16 mentioned that the total tax deducted/withheld (hereinafter also referred to as “TDS”) under Section 192 was Rs.7,42,184/-. In the footnote in the Form-16, it was stated that the said TDS included credit of tax withheld abroad of Rs.1,86,531/-.

4. The Petitioner filed the income tax return based on the said Form-16 and claimed credit of TDS as Rs.7,42,184/-. Upon filing of the said return of income, acknowledgment in Form ITR-V was generated on 27.07.2010 wherein the total TDS claimed was reflected as Rs.7,42,184/-.

5. Before us, it is the submission of the Petitioner that it never received any intimation under Section 143(1) of the Act for the said return of income. However, directly on 07.11.2017, he received an intimation under Section 245 of the Act, proposing to adjust the refund for Assessment Year 2017-18 against the alleged demand payable for Assessment Year 2010-11. In the said intimation it was mentioned that there was an outstanding demand of Rs.1,86,370/- raised on 20.06.2011 for the Assessment Year 2010-11.

6. The Petitioner then filed an application under Section 154 on 11.04.2018 before Respondent No.1, wherein he stated that he had not received any assessment order raising any demand for A.Y.2010-11 earlier. However, upon receipt of the intimation under Section 245 wherein a demand of Rs.1,86,370/- was mentioned, he could make out that the said demand could have probably been raised on account of

non-granting of TDS credit of the tax withheld abroad by the UK Counterpart of *iNautix Technologies Private Limited* of Rs.1,86,531/- (as mentioned in the footnote of Form 16 issued by the Indian Counterpart).

7. Having received no response on the above rectification application, the Petitioner filed an appeal against the intimation issued under Section 245 dated 07.11.2017 before the Commissioner of Income Tax (Appeals) and made written submissions along with documentary evidence in support of his case. However, the Commissioner of Income Tax (Appeals) dismissed the appeal of the Petitioner vide order dated 12.03.2022 on the ground that the Petitioner had challenged the intimation issued under Section 245 which was not an appealable order as listed in Section 246A of the Act. The Petitioner then filed an appeal before the Income Tax Appellate Tribunal (for short '**TTAT**') challenging the said order of the Commissioner of Income Tax (Appeals). The Tribunal also dismissed the appeal of the Petitioner stating that the intimation/base order [intimation under Section 143(1)] was absent and hence the Tribunal cannot address the grievance of the Petitioner without such base order/intimation.

8. Left without a remedy, the Petitioner has approached this Court in writ jurisdiction challenging the intimation dated 07.11.2017 issued under Section 245, non disposal of the rectification application filed under Section 154 dated 11.04.2018, and the alleged demand being raised for A.Y.2010-11 without issuing intimation under Section 143(1).

9. In this factual backdrop, Mr.Jain, the learned counsel appearing on behalf of the Petitioner, submitted as under:

- (a) That the Petitioner in the return of income for A.Y.2010-11 claimed aggregate credit of TDS as Rs.7,42,184/- (which included the foreign tax Credit of Rs.1,86,531/-). The said TDS credit was claimed based on the Form-16 issued by the Indian counterpart (employer). Further, the footnote to the said Form-16 duly mentioned that total TDS of Rs.7,42,184/- included tax withheld abroad of Rs.1,86,531/-.
- (b) That the Petitioner was never served with any intimation under Section 143(1) for A.Y.2010-11. Accordingly, in the absence of any intimation/demand notice the recovery of any sort cannot be made.

- (c) That despite Petitioner having filed a rectification application on 11.04.2018 before Respondent No.1, the same is still pending and not disposed of.
- (d) That the credit for foreign tax credit of Rs.1,86,531/- was arbitrarily rejected.

10. On the other hand, Mr. Sharma, the learned counsel appearing on behalf of the Respondent, has tendered an Affidavit in Reply of Respondent No.1 dated 01.12.2025 wherein it is contended as under:-

- (a) The Petitioner did not claim any credit for taxes paid/withheld outside India in the return of income under Sr. no. 12 'Relief under Section 90/91' of the ITR-1 Saral-II in the column under 'TAX COMPUTATION'.
- (b) As per Form 26AS the total TDS credit reported and uploaded on the income tax portal by employer was Rs.5,55,653/- whereas the Petitioner claimed total sum of Rs.7,42,184/- (which included the foreign tax credit of Rs.1,86,370/- but not claimed in the relevant column of the ITR-1). That demand for A.Y.2010-11 was raised on 20.06.2011 on account of mismatch of said TDS credit.

- (c) In the absence of claiming the benefit of the foreign tax paid in the correct column of the ITR, its correctness was not verified by the Assessing Officer while issuing order under Section 143(1) of the Act.
- (d) Prior to October 2019, if any Intimation order was passed by the Jurisdictional Assessing Officer under the legacy AST system, then in such a case, it was the Assessing Officer who was required to print the order/intimation and dispatch it physically to the assessee.
- (e) It is stated in the Affidavit-in-reply that Respondent No.1 had sought such details from the then Jurisdictional Assessing Officer. However, till date no response was received. Though, as per the records available with the department, the date of service of notice of demand reflects the date of 25.06.2011, the details about the mode of service or its acknowledgement and the relevant documents are not available with Respondent No.1.
- (f) That even though intimation under Section 245 was issued for adjusting the demand for A.Y.2010-11 against the refund of AY 2017-18, no such refund was adjusted.

(g) That as per the records of the department, the rectification application of the Petitioner dated 11.04.2018 was not disposed of and is still pending.

11. Respondent No.1 supplemented the affidavit in reply with following exhibits:-

- Tax Computation sheet of the income tax department
- Form 26AS of the Petitioner for A.Y.2010-11
- Extract of the portal mentioning the date of service of notice of demand as 25.06.2011
- Email communication between Respondent No.1 and the Additional Commissioner of Income Tax-12, Pune regarding the proof of mode of service of the alleged intimation under Section 143(1) for A.Y.2010-11.
- Intimation under Section 143(1) for A.Y.2017-18 and the status of refund.

12. In rejoinder, Mr. Jain, the learned counsel appearing on behalf of the Petitioner, contended as under:-

(a) That separate disclosure with respect to TDS withheld abroad was not made in the return of income because in Form-16 the

Indian Counterpart had disclosed the total amount of tax credit of Rs.7,42,184/- in the column of total taxes paid. Petitioner was of the view that he should not deviate from what was mentioned in Form 16, and therefore, reported the total TDS in the return of income including the foreign tax credit. Thus, again separately disclosing the foreign tax credit of Rs.1,86,370/- could have led to double claim of the said amount.

- (b) That Respondent No.1 neither disposed of the rectification application of the Petitioner nor it produced the alleged intimation under Section 143(1) raising a demand for A.Y.2010-11 during the course of appeal proceedings before the Commissioner of Income Tax (Appeals) or before the Tribunal.
- (c) That Respondent No.1 even at this stage is not in a position to produce the alleged intimation claimed to have been issued under Section 143(1) for A.Y.2010-11 consequent to which the alleged demand of Rs.1,86,370/- was raised. Accordingly, in the absence of the intimation itself, the impugned demand does not survive.

- (d) That demand/recovery cannot be enforced against the Petitioner without first serving the notice of demand under Section 156.
- (e) That the limitation period to send the intimation under Section 143(1) was one year from the end of the financial year in which the return is made. However, the Respondents have not brought on record any proof to substantiate the timely issuing and service of the said intimation.

13. We have heard both the parties at length and have also perused the records produced before us and also the affidavit in reply filed by the Respondents. Firstly, it is not in dispute that the total TDS credit claimed in the return of income filed by the Petitioner was based on Form 16 issued by Petitioner's employer, the Indian Counterpart. It is also not in dispute that the said Form 16 categorically mentioned that the taxes withheld abroad was Rs.1,86,531/-. Further, Respondent No.1 in his affidavit in reply has also categorically stated that the demand of Rs.1,86,370/- was raised because there was a mismatch between the amount of TDS credit as reported in the return of income (Rs.7,42,184/-) and as appearing in Form 26AS (Rs.5,55,653/-). It is not disputed that the Petitioner has not claimed the amount of foreign tax

credit in the specified separate column/line-item provided in the return of income. The Petitioner had not claimed the foreign tax credit separately, because the same was not reported separately by the Indian Counterpart (employer) in Form 16 issued by them. Thus, it is a case where, there is no suppression or misrepresentation but it can be said that there is mere difference in the approach of making the disclosure in the return of income. The impugned demand was raised merely on account of difference in the approach of reporting the foreign tax credit. However, otherwise it is not disputed that the Petitioner had claimed the said foreign tax credit in the return of income for the Assessment Year 2010-11.

14. Having said that, we are of the view that the Petitioner, being an individual earning a salary, and not having the benefit of assistance of any professional, should not have been deprived from claiming the legitimate foreign tax credit merely for not reporting the same in the separate line item provided for in the ITR but reporting/claiming it with the regular/domestic TDS credit.

15. The Petitioner after receiving intimation under Section 245 dated 07.11.2017 duly filed the rectification application explaining the

above referred factual matrix to Respondent No.1. However, on account of Respondent No.1's inaction the same is pending till date.

16. It is pertinent to note that in the said rectification application dated 07.11.2017 [placed at 'Exhibit C' of this Petition], the Petitioner duly stated that it was only upon receipt of intimation under Section 245 (for adjusting the refunds against the alleged demand of A.Y.2010-11), the Petitioner became aware of the alleged impugned demand being raised for A.Y.2010-11. He stated that he had not received any order for A.Y.2010-11 raising such demand. He also requested Respondent No.1 to provide him with the copy of such order raising the alleged impugned demand. However, neither the said order raising the said demand was provided to the Petitioner, nor the said rectification application was disposed of. Hence, the Petitioner challenged the intimation under Section 245 before the Commissioner of Income Tax (Appeals) and before the Hon'ble Tribunal. However, the Respondents did not produce the said order/intimation for A.Y.2010-11 even during the course of these proceedings. In fact, the appeal of the Petitioner filed before the Tribunal was dismissed because there was no intimation/order pursuant to which the impugned alleged demand of Rs.1,86,370/- was raised. Even the Tribunal in paragraph 6 of the said

order has stated that Petitioner had admitted before it that it did not receive any intimation under Section 143(1) for AY 2010-11.

17. Further, on perusal of the affidavit in reply of Respondent No.1 dated 01.12.2025 we find that in paragraph 7 it is stated that as per the records of the income tax department the date of service of notice of demand is 25.06.2011 [in support of which the Respondent No.1 has placed extract/screen-shot of the portal of department (Exhibit R3) which mentions the date of service of notice as 25.06.2011]. On reading of Exhibit R/3A (placed at page 146 of the affidavit in reply of the Respondent No.1) it becomes evident that Respondent No.1 has attempted to fetch the details about proof/acknowledgement of service of notice of demand from the Centralized Processing Centre (CPC). The CPC vide its email dated 27.11.2025 submitted that the said details were not available on the CPC portal but can be fetched only from the jurisdictional Assessing Officer. Thereafter, Respondent No.1 explains in paragraph 7 of the Affidavit in reply that if any order/intimation is passed/issued prior to October, 2019 under the legacy ATS system, then in a such case, the officer issuing/passing it was required to print the order/intimation and dispatch it physically to the Assessee. Accordingly, the details of service of demand was not available with the CPC.

Accordingly, Respondent No. 1 entered into correspondence with the then Jurisdictional Assessing Officer vide his email dated 28.11.2025 (Exhibit-R3A) and asked for details about the mode of service and acknowledgement thereof. However, Respondent No.1 has fairly stated in Paragraph 7 that he has not received the details of the mode of service or acknowledgement of the service of notice of demand from the then Assessing Officer. Further, even in paragraph 17, Respondent No.1 states that physical acknowledgement of service of the notice of demand was not available with him. Mr. Sharma, the learned counsel appearing on behalf of the Respondents, fairly states that at this stage it would be difficult for the department to retrieve such an old record of the notice of demand dated 25.06.2011. He, however, fairly agrees that the alleged impugned demand was raised merely on account of difference in approach of reporting the foreign tax credit.

18. We observe that clause (d) of Section 143(1) requires that the intimation should be prepared/generated and be sent to the assessee specifying the sum determined to be payable by the assessee or the sum due as refund to the assessee. Further, the second proviso to Section 143(1) [as applicable to A.Y.2010-11] reads as under:-

“Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.”

19. Further, sub Section (1) of Section 156 of the Act reads as under:-

*“156. (1) When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer **shall serve** upon the assessee a notice of demand in the prescribed form specifying the sum so payable :*

*Provided that where **any sum is determined to be payable** by the assessee or the deductor or the collector **under sub-section (1) of section 143** or sub-section (1) of section 200A or sub-section (1) of section 206CB, **the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.**”*

20. Sub Section (1) of Section 156 mandates the service of notice of demand upon the assessee so as to enforce it. The proviso to Section 156(1) provides that in case of demand raised pursuant to intimation under Section 143(1) the said intimation itself would be considered as the notice of demand. Thus, when the intimation under Section 143(1) is to be considered as a notice of demand as referred to in Section 156, then as per sub Section (1) of Section 156, it is mandatorily required to be served upon the assessee. The use of the words “shall” in Section 156(1) emphasize on mandatory service.

21. Admittedly it is now the case before us that even though it is claimed by the Respondents that the intimation under Section 143(1) was issued for the relevant Assessment year 2010-11, however the Respondents have failed to bring on record any such intimation claimed to have been issued under Section 143(1) or the notice of demand claimed to have been served upon the Petitioner. Even the Petitioner had asked for the same from the Respondents vide his rectification application dated 07.11.2017 but the same was never furnished to the Petitioner. Even in the affidavit in reply dated 01.12.2025, Respondent No.1 has not produced the intimation under Section 143(1) which he claims is issued. It was not produced even before the Commissioner of Income Tax (Appeals) or the Tribunal.

22. Thus, we are of the view that in the absence of any intimation under Section 143(1) raising the demand or any independent notice of demand, recovery of such non-existent demand cannot be made against the Petitioner.

23. In view of the foregoing discussion, we pass the following order:-

(i) The Petition stands allowed.

- (ii) The Petitioner shall be provided the benefit of the tax paid in the foreign jurisdiction as mentioned in the Form-16 issued by his employer, and the demand for A.Y.2010-11 shall be deleted.
- (iii) Refund (if any) of any other Assessment Year, if already adjusted against the outstanding demand for A.Y.2010-11 , shall be refunded to the Petitioner.
- (iv) The exercise of giving credit of tax paid/deducted/held abroad and refund, if any, shall be completed by the Assessing Officer within a period of twelve weeks from the date of uploading of his order.

24. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

25. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]