



W.P.No.5834 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 06.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.5834 of 2022

and

W.M.P.Nos.5925 and 5927 of 2022

Duraiswamy Kumaraswamy

...Petitioner

Vs.

1.The Principal Commissioner of Income Tax - 8,  
II Floor, BSNL Towers,  
Greams Road,  
Chennai - 600 008.

2.The Assistant Director of Income Tax,  
CPC,  
Bangalore.

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

...Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the case in DIN and order No.ITBA/REV/ F/



W.P.No.5834 of 2022

REV7/2021-22/1039075246(1) dated 25.01.2022 for the Assessment year 2019-20 on the file of the 1st respondent and quash the same and direct the 1st respondent to condone the delay in filing Form 67 and grant the Foreign Tax Credit claimed of Rs.23,23,484/-.

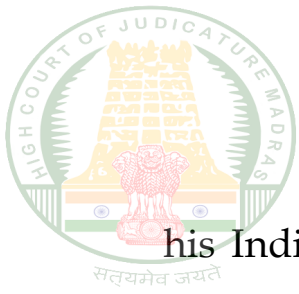
For Petitioner : Mr.Vikram Vijayaraghavan  
for Mr.Subbaraya Aiyar  
Padmanabhan

For Respondents : Dr.B.Ramasamy,  
Senior Standing Counsel

### ORDER

This Writ Petition has been filed to quash the order of the 1st respondent in DIN and order No.ITBA/REV/ F/ REV7/ 2021-22/1039075246(1) dated 25.01.2022 for the Assessment year 2019-2020 and to direct the 1st respondent to condone the delay in filing Form-67 and grant the Foreign Tax Credit claim of Rs.23,23,484/-.

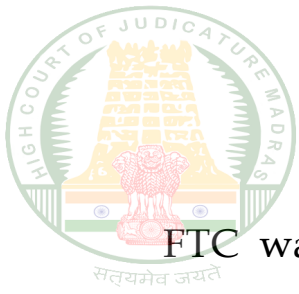
2.The petitioner was employed in Kenya during the year 2016-2018 as CEO. For the financial year 2018-2019, the petitioner was a resident of India, including his Kenya income, he has filed



W.P.No.5834 of 2022

his Indian Income Tax return, and claimed the benefit of Foreign Tax Credit (FTC) under Section 90/91 of the Income Tax Act, 1961, read with Article 24 of the India-Kenya Double Taxation Avoidance Agreement. During the year, he had income of both Kenya and India. The petitioner has filed the income tax return for the income at Kenya. According to the petitioner, he is entitled for Foreign Tax Credit (FTC).

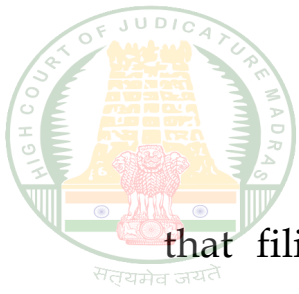
3.The petitioner submitted that while filing the Indian ITR for the impugned assessment year 2019-2020, Form-67 prescribed under Rule 128 of the Income Tax Rules, 1962, for claiming FTC was inadvertently not uploaded along with the Indian ITR. On 02.02.2021, the petitioner uploaded the said Form - 67 along with the TDC certificate. On 26.03.2021, the income tax return was subsequently processed by the Centralized Processing Centre (CPC), Bangalore, under Section 143(1) of the Act for which the petitioner received the intimation through e-mail. However, the



W.P.No.5834 of 2022

FTC was not given effect to. Therefore, the petitioner made a request on 27.03.2021 to CPC to give effect to the FTC. The petitioner also requested on 03.05.2021 to the CPC, Bangalore, through e-proceedings to rectify the above intimation by giving effect to FTC. However, the request of the petitioner was not accepted and he has received intimation on 18.05.2021 under Section 143(1) of the Act with the above demand. On 26.05.2021, the petitioner once again requested the CPC through a letter to give effect to FTC. On 15.06.2021, the petitioner has received a rectification order under Section 154 of the Act by e-mail on 21.07.2021 with the similar demand of Rs.29,69,260/-.

4. In these circumstances, the petitioner had approached the 1st respondent under Section 264 of the Act bringing out all the facts of the case and filed written submissions on 22.10.2021. On 25.01.2022, the respondent passed the impugned order under Section 264 of the Act rejecting the FTC claim, wherein it was held



W.P.No.5834 of 2022

that filing of Form-67 along with the return of income under Section 139(1) was statutory obligation which was not complied with and further, a revised return was not filed and hence FTC could not be granted.

5. At the same time, the respondent accepted that Form-67 which was uploaded on 02.02.2021 before the Section 143(1) order passed on 26.03.2021. Therefore, the petitioner approached this Court by filing the present Writ Petition.

6. According to the learned counsel appearing for the petitioner, the procedure under Rule 128 is directory in nature and it is not mandatory. The Department has rejected the request of the petitioner. He further contended that even the FTC was filed well before the completion of the assessment proceedings, in the present case, the intimation under Section 143(1) was received on 26.03.2021, whereas the petitioner uploaded the FTC on 02.02.2012.



W.P.No.5834 of 2022

The learned counsel appearing for the petitioner relied upon the

WEB COPY

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**. The Hon'ble Supreme Court in its Judgment has held that even if Form 3AA is not filed along with the return of income but the same is filed during assessment proceedings but before the final order of assessment is made that would amount to sufficient compliance. The learned counsel for the petitioner has also relied on the Judgment in **Commissioner of INcome Tax v. Shivanand Electronics (1994) 209 ITR 63 (Bom.)**.

7.However, the learned counsel appearing for the Department strongly opposed that the procedure prescribed under Rule 128 is mandatory and cannot be considered as directory in nature. He further contended that in terms of Section 139 of the Act, Form-67 should be filed on or before the due date of filing the return of



W.P.No.5834 of 2022

income tax. In their counter at Paras 3 and 4, they have also reiterated this aspect. Therefore, he submitted that since the Rule 128 is mandatory the Department has rightly rejected the FTC filed subsequent to the return. Hence, plead for dismissal of the Writ Petition.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

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



W.P.No.5834 of 2022

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 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





W.P.No.5834 of 2022

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



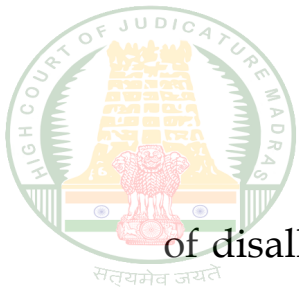
W.P.No.5834 of 2022

the passing of assessment order.

WEB COPY

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



W.P.No.5834 of 2022

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.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

**06.10.2023**

Index : Yes/No  
Speaking Order : Yes/No  
Neutral Citation Case : Yes/No  
mps

To

1.The Principal Commissioner of Income Tax - 8,  
II Floor, BSNL Towers,  
Greams Road,  
Chennai - 600 008.



W.P.No.5834 of 2022

2.The Assistant Director of Income Tax,  
CPC,  
Bangalore.

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



WEB COPY



W.P.No.5834 of 2022

**KRISHNAN RAMASAMY, J.**

mps

**W.P.No.5834 of 2022**  
**and**  
**W.M.P.No5925 and 5927 of 2022**



06.10.2023