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T.C.A.No.143 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2025

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE MUMMINENI SUDHEER KUMAR**

T.C.A. No.143 of 2014

The Commissioner of Income tax,
Chennai.

.. Appellant

Vs.

M/s.Gemini Communication Ltd
No.1, Dr.Ranga Road
Alwarpet, Chennai – 600 018

.. Respondent

Prayer: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 28.08.2012 in I.T.A.No.1252/Mds/2012.

For Appellant : Mr.T,Ravikumar
Standing Counsel

For Respondent : Mr.A.S.Sriraman
(Amicus Curiae)

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Department. The assessee has been served and description printed in the cause list, however there is no representation by



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or on behalf of them. Having regard to the issues that arise for resolution,

we, on 08.12.2025, have requested Mr.A.S.Sriraman to assist the Court as

Amicus.

2.The Tax Case (Appeal) relates to Assessment Year (AY) 2008 –

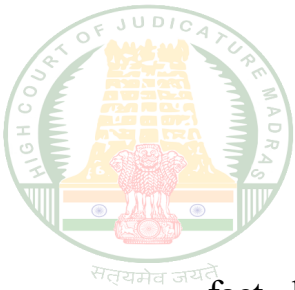
09. The following substantial questions of law have been admitted on

17.04.2014:-

‘1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in remanding the issue back to the AO especially when the assessee did not comply with Rule 11 read with Section 139D?

2.Whether the finding of the Tribunal is proper especially when CBDT Notification dated 24.07.2006 and 28.03.2008 have clearly notified new return Form are to be filed electronically and was mandatory and the assessee company having failed to do so could claim the benefit of deduction in the absence of the same?”

3.The assessee is a company that filed a return of income for AY 2008-09 on 06.11.2008, belatedly. The assessment came to be concluded on 31.12.2010 under Section 143(3) of the Income Tax Act, 1961 (in short ‘Act’). One of the issues taken up in the assessment related to denial of deduction under Section 80-1C of the Act. The Assessing Authority rejected the deduction claimed on the ground that the return filed electronically was belated, and the provisions of Section 80AC require that, for the purpose of claiming deduction under Section 80-1C of the Act, the return ought to have been filed in time.



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4.The defence of the assessee was that a return of income had, in fact, been filed manually on 30.09.2008. This position has not been disputed by the Assessing Authority. However, he eschews the manual return filed, on the ground that on and from assessment year 2007-08, it was mandatory for the company to file its return electronically and no the manual return filed serves no purpose. The Assessing Authority hence concluded the assessment vide order dated 31.12.2010 rejecting the claim under Section 80-1C.

5.The first appeal filed by the assessee met the same fate and was dismissed on 19.03.2012, as against which the assessee filed a second appeal before the Income Tax Appellate Tribunal (in short 'Tribunal'/'ITAT'). That appeal came to be allowed on 28.08.2012, the Tribunal being of the view that the scheme for electronic filing of return of income has been framed only by the CBDT and there was nothing in the Act which made it mandatory for the assessee to file a return of income only electronically. Hence, the present appeal by the Revenue.

6.It all boils down to whether the assessee had the option of filing a manual return for assessment year 2008–09. Section 139 of the Act deals with filing of return of income, including the due date there for, and the provision does not specify any details in regard to the manner for filing of return, per se, including whether the return has to be filed electronically



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or manually. For this purpose, one would turn to Rule 12 of the Income tax Rules (in short 'Rules'), that stipulates the prescription for filing of return of income and the procedure therefor.

7.The Income Tax (Fourth Amendment) Rules, 2007 came into force on 14.05.2007 vide Notification No.S.O.762(E) [(169/2007 (F.No.142/3/2007- TPL)], incorporating Rule 12(3), that reads as follows:

'12.Return of income and return of fringe benefits.

(3) The return of income or return of fringe benefits referred to in sub-rule (1) may be furnished in any of the following manners, namely:-

(i) furnishing the return in a paper form;

(ii) furnishing the return electronically under digital signature;

(iii) transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;

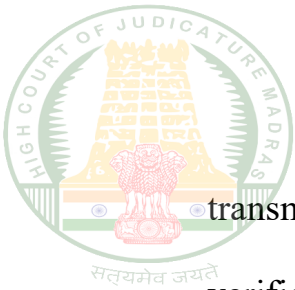
(iv) furnishing a bar-coded return in a paper form:

Provided that-

(a) a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable or a company required to furnish the return in Form ITR-6 shall furnish the return in the manner specified in clause (ii) or clause (iii);

(b) a person required to furnish the return in Form ITR-7 shall furnish the return in the manner specified in clause (i).'

8.Hence, on and from 14.05.2007, all assessees, including companies, were required to furnish a return in the manner specified either under clause (ii) of Rule 12(3), meaning, a return filed electronically, using a digital signature, or clause (iii), meaning



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transmission of data in the return electronically, and thereafter submitting verification of return in Form ITR V, utilising the services of an intermediary.

9. Even earlier, the Electronic Furnishing of Return of Income Scheme, 2004 (Notified vide S.O.No.1073(E) dated 30.09.2004) and the Furnishing of Return of Income Internet Scheme 2004 (Notified vide S.O.No.1074 (E) dated 30.09.2004) provided for e-filing of returns, subject to manual returns being filed immediately thereafter.

10. The option extended was only qua the use of (i) a digital signature under clause (ii) of Rule 12(3) or (ii) an intermediary under clause (iii) of Rule 12(3)). There is no option for filing of a return manually, followed by an electronic return thereafter, and that too, beyond the due date.

11. E-filing of Returns by companies was hence mandatory under Rule 12(3), with effect from 14.05.2007. Circular No.3/07 dated 25.05.2007 carved out an exception in respect of those assesseees who wished to approach the Settlement Commission as the software for receipt and processing of electronic returns was under preparation, and expected to be rolled out only by end October 2025.

12. Hence, on the heels of Notification dated 14.05.2007, Circular No.3/07 dated 25.05.2007 came to be issued wherein the Board mitigates



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the hardship as above, providing as follows:

Circular No.3/2007

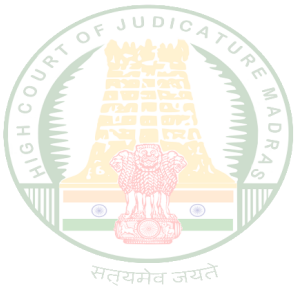
Section 115WD/139 of the Income-Tax Act, 1961-Return of Fringe Benefits/Return of Income-Acceptance of Returns of Income/Fringe Benefits in Paper form for Assessment Year 2007-08 in case of firms liable to audit under Section 44AB and Companies

.....

2. For furnishing the return electronically in any of the manner mentioned above, the necessary software is not yet ready. The last date for filing returns for the above categories of assesseees is 31.10.2007. However, representations have been received in the Board mentioning that the companies who want to file their applications in the Settlement Commission before 31.5.2007 (under the provisions of Chapter XIXA of the Income-tax Act as they stand before their amendment with effect from 1st June, 2007 by the Finance Act, 2007), may not be eligible to do so because they cannot file the return (which is a necessary condition for making an application to the Settlement Commission) for assessment year 2007-08 in the absence of availability of necessary software to be provided by the Income-tax Department for filing the return electronically. Accordingly, it has been requested that, till the software is ready, they may be allowed to file the return manually in paper form with a condition that they will supplement the return by e-filing when the software is ready.

3. To mitigate the hardship pointed out above, the Board, in exercise of powers conferred under section 119 of the Income-tax Act for proper implementation of the said Act, hereby direct the Income-tax authorities to accept the returns of income/ fringe benefits for assessment year 2007-08 in a paper form in case of companies and firms which are, under the provisions of sub-rule (3) of rule 12, liable to file the return electronically, subject to the following conditions:-

- i. These returns shall be filed only in new return forms ITR-5 or ITR-6, as the case may be.
- ii. No annexure shall be enclosed with such returns



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except the extra sheets for computation of income under the head 'House Property' or for giving details of tax deducted at source or tax collected at source in Schedules HP, TDS-2 or TCS, respectively, to these forms, if the space provided in such schedules is not sufficient.

iii. Such firms/ companies filing the return manually shall, after the availability of the software, furnish the return electronically under digital signature or furnish the data in the return electronically and thereafter submit the verification of the return in Form ITR-V on or before 31st October, 2007.

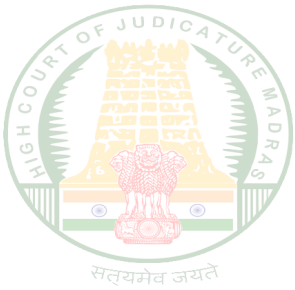
4. All the Assessing Officers are directed to send a report by 15th June, 2007 to the Director General of Income-tax (Systems) in respect of such returns received manually upto 31.5.2007.

13.Despite the leeway granted to the assesseees as above, it was made clear that filing of Returns and electronic verification thereof shall be on or before 31.10.2007, which was the due date for companies to file their returns of income. Under Notification No.S.O.1638 (E) [No.49/2010 (F.No.142/15/2010-TPL)] dated 09.07.2010, individuals were also brought under the electronic filing net with effect from assessment year 2010-11 onwards, and qua companies, the option for filing of return through intermediaries was revoked. This Notification reads as follows:

Notification No.S.O.1638 (E) [No.49/2010 (F.No.142/15/2010-TPL)] dated 09.07.2010

Income -Tax (Seventh Amendment) rules 2010

In exercise of the powers conferred by section 295 read with section 139 of Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income tax Rules, 1962, namely: -



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(1) *These rules may be called the Income-tax (7th Amendment) Rules, 2010.*

(2) *They shall come into force from the date of their publication in the Official Gazette.*

In the Income-tax Rules 1962, in rule 12, in sub-rule (3), in the proviso, for clause (a), the following clauses shall be substituted, namely:-

"(a) a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable shall furnish the return in the manner specified in clause (ii) or clause (iii);

(aa) an individual or HUF required to furnish the return in Form ITR-4 and to whom provisions of section 44AB are applicable shall furnish the return for Assessment Year 2010-11 and subsequent Assessment Years in the manner specified in clause (ii) or clause (iii);

(ab) a company required to furnish the return in Form ITR-6 shall furnish the return for Assessment Year 2010-11 and subsequent Assessment Years in the manner specified in clause (ii)'

14.The furnishing of electronic return by a non-resident agent for assessment year 2008–09 was dispensed for that year having regard to the difficulties faced by agents in India in furnishing returns.

15.In this case, are concerned with a Company, and in light of the prescription under Circular No.9/2006 dated 10.10.2006, it became incumbent upon such assessee to file a return of income electronically following the procedure set out under that Circular. There was no further avenue available for a company to continue to file manual returns of income.

16.Incidentally, Mr.T.Ravikumar, states that the assessee had filed



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returns of income electronically, for the previous two years, 2006–07 and 2007–08. It could not, hence, have been unaware of the procedure for submission of return of income.

17.While it is true that the impetus for the e-filing schemes emanated from the CBDT, there is nothing untoward in this, as the Board is the apex body to streamline and manage tax administration. Hence, there is no merit in the conclusion of the Tribunal that the CBDT has overridden statutory stipulations and rules. The necessary amendments to the Rules to enable such mechanisms, have been made and Circulars issued from time to time. The inception of the e-filing schemes are in the interests of administrative efficiency, and are a necessary incident of progress. Such measures in fact, continue, even as on date.

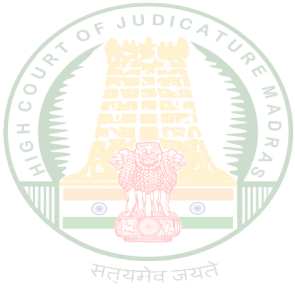
18.We place on record our appreciation to Mr.A.S.Sriraman, Advocate, for his able assistance as Amicus Curiae in the matter.

19.The substantial questions of law are answered in favour of the Revenue and this Tax Case (Appeal) is allowed. No costs.

[A.S.M, J.] [M.S.K, J.]
09.12.2025

Index:Yes
Neutral Citation:Yes
Speaking order
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DR. ANITA SUMANTH,J.
and
MUMMINENI SUDHEER KUMAR,J.

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To
The Income Tax Appellate Tribunal Madras 'D' Bench,
Chennai.

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