IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14071 of 2003

P.R.Thangavelu .. Petitioner

Versus

The Commissioner of Income Tax-III,
67A, Race Course Road,
Coimbatore-18. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the Respondent to refund a sum of Rs.76,292/- being the difference between Rs.1,08,558/- paid by the Petitioner on 25.03.1999 as per the directions of this Hon'ble Court in W.M.P.No.7050 and 7053 of 1999 in W.P.No.4893 and 4894 of 1999 dated 24.03.1999 and Rs.32,266/- payable by the Petitioner under KVSS as per the revised Form 2A dated 21.09.2001 issued by the Respondent after giving effect to the Order of this Hon'ble Court dated 23.02.2001 in W.P.No.4893 and 4894 of 1999.

For Petitioner : Mr.M.P.Senthil Kumar
For Respondnet : Mr.S.Rajasekar, Standing Counsel

O R D E R

Heard Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner and Mr.S.Rajasekar, learned Standing Counsel appearing for the respondent Department.

2. In this writ petition, the petitioner seeks for a direction upon the respondent to refund a sum of Rs.76,292/- being the difference between Rs.1,08,558/- paid by the petitioner on 25.03.1999, as per the direction of this Court in W.M.P.Nos.7050 and 7053 of 1999 in W.P.Nos.4893 and 4894 of 1999 dated 24.03.1999 and Rs.32,266/- payable by the petitioner under Kar Vivad Samadhan Scheme Rules, 1998 (KVSS Rules) as per the revised Form 2A dated 21.09.2001 issued by the respondent after giving effect to the final order passed in W.P.No.4893 and 4894 of 1999 dated 23.02.2001.

3. The petitioner filed declaration under section 89 of the Finance (No.2) Act, 1998 in respect of the KVSS, in Form-1A as per Rule 3(1)(a) of the KVSS Rules 1998, before the respondent, who is the Designated Authority, on 28.12.1998 for the assessment year 1985-86.

4. The petitioner in the said declaration stated that the assessed total income is Rs.6,33,390/- and the amount payable as per the assessment order is Rs.5,77,795/-, which is made up of tax in a sum of Rs.3,69,690/- and interest in a sum of Rs.2,08,105/-; tax arrears outstanding as on 31.03.1998 being interest amount to Rs.1,84,601/-. However, the tax arrears outstanding as on the date of declaration under Section 88 was declared as consisting of the tax of Rs.626/- being the tax on income of Rs.39,000/- and interest of Rs.1,72,978/-; the disputed income was declared as Rs.1,89,000/- and the petitioner arrived at the amount payable under the scheme as Rs.400/-.

5. The respondent issued an intimation under Section 90 (1) of Finance (No.2) Act, 1998, in respect of the KVSS and determined the amount payable by the petitioner at Rs.3,13,635 as against the amount of Rs.400/- as per the statement of the petitioner.

6. The petitioner filed a petition dated 26.02.1999 for clarification to treat the sum of Rs.78,000/- as income, which dispute has been remanded back to the Commissioner of Income Tax (Appeals) by the Income Tax Appellate Tribunal (ITAT) by order dated 24.03.1998 and this sum has to be allocated between two years 1985-86 and 1986-87 i.e., 39,000/- each year. Since the clarification given by the petitioner did not find favour with the designated authority, the petitioner filed Writ Petitions before this court in W.P.No.4893 and 4894 of 1999 setting out all the facts, and interim order was granted in the said Writ Petition in W.M.P.No.7050 and 7053 of 1999 dated 24.03.1999, directing the petitioner to pay 50% of the interest arrears. Accordingly, the petitioner had paid a sum of Rs.92,300/- for the assessment year 1985-86 and Rs.16,258/- for the assessment year 1986-87 and in all Rs.1,08,558/-. After which the Writ Petitions were taken up for final disposal and the Writ Petitions were allowed by an order dated 23.02.2001 and the operative portion of the order reads as follows:

> "..... 5. Learned Counsel for the Revenue, however, submitted that the view taken by the Revenue is in accordance with the Law laid down in the case of Dr.Mrs.Renuka Datia vs. Commissioner of Income Tax and another (240 T.T.R. 463). With respect to the learned Judges who decided that case, I am unable to subscribe to the view taken by them that the fact that an assessment made before 31.03.1998 had been set aside and the re-determination was still to be done, at the time the scheme was in force, would disentitle the assessee from claiming the benefit of that scheme.

> 6. It is not the person who took the matter in appeal, or the fact of that matter having been remanded without being finally decided, or the fact of the re-determination not having been made after the remand, that is relevant. What is relevant is that the determination of the tax had been made prior to 31.03.1998 in an order of assessment. The subsequent developments with regard to appeal, remand and re-determination will not affect the fact that the tax had been determined prior to 31.03.1998.
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> The Writ Petitions are therefore, allowed."

7. The Revenue accepted the order and no appeal was preferred by them. Consequently, the respondent, by way of implementation of the order based on the Writ Petitions, passed an order on 21.09.2001, stating that there is a reduction in demand being a sum of Rs.2,97,627/-. Thereafter, the respondent issued a Form of Certificate for full and final settlement of the tax arrears under Section 90(2) read with Section 91 of the Finance (No.2) Act, 1998 in respect of KVSS, dated 22.10.2002.

8. The petitioner submitted a representation dated 28.10.2002 stating that they paid Rs.1,08,558/-, as per the interim order in the earlier Writ Petitions and as per the final order, the amount payable is only Rs.32,266/-. Hence, the petitioner requested for refund of the balance amount of Rs.76,292/-. This has been rejected by the impugned order stating that no refund of tax paid pursuant to the declaration, is permissible as per Section 93 of the Finance Act, 1998 under KVSS. Section 93 of the Finance Act states that any amount paid in pursuance of the declaration made under Section 88, shall not be refundable under any circumstances. However, in the instant case, the factual position is clear that the amount paid by the petitioner, is Rs.1,08,558/-. No amount was paid in pursuance of the declaration made under Section 88. But the said amount was paid as per the interim direction issued by the Court in the earlier Writ Petitions. It is settled legal principle that amount which is tendered pursuant to the interim direction, shall abide by the final order in the Writ Petition.

9. Therefore, even assuming the expression "paid" is used, it would still be construed as the payment effected by the petitioner without prejudice to the outcome of the writ petition. If such interpretation is not given, then the very purpose of granting interim orders would stand defeated.

10. Under normal circumstances, the respondent would be justified in stating that no refund is payable on any amount paid pursuant to the declaration made under Section 88, in the

light of the statutory embargo under Section 93. However, the facts of the present case are different and amount has been paid based on interim direction. The further fact which has to be taken note of is that the petitioner succeeded in the earlier petitions, which were allowed by order dated 23.02.2001 and the said order was implemented by giving effect to the stay order and the Department passed consequential order on 21.09.2001, wherein it has been stated that there is a reduction in the demand of Rs.2,97,627/-. That apart, the case also having been settled under the KVSS, the petitioner is entitled for refund of the excess amount paid as per the actual amount payable as per the revised demand pursuant to the order passed in the earlier Writ Petitions.

11. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the respondent is directed to refund the excess amount paid by the petitioner, viz., Rs.76,292/-. However, the plea for interest stands rejected.

The above direction shall be complied with by the respondent within a period of four weeks from the date of receipt of copy of this order. No cots.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

The Commissioner of Income Tax-III,
67A, Race Course Road,
Coimbatore-18.

+1 cc to Mr.T.Pramodhkumar,advocate,sr.51736.

vd(co)
krd 28/9

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