IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31090 of 2017
and W.M.P.Nos.34095 & 34096 of 2017

M/s.Ramsar Tex Private Limited,
Rep. by its Managing Director,
Mr.G.R.Govindarajan,
No.1194 (Old No.857), Avanashi Road,
Coimbatore-641 018. ... Petitioner

vs.

The Principal Commissioner of Income Tax-I,
Coimbatore,
Race Course Road, Coimbatore-641 018. ... Respondent

Prayer:Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondent to issue Form - 4 under the Income Declaration Scheme, 2016 as well as credit the balance amounts already paid towards advance tax and TDS under the Income Tax Act, 1961 for the Assessment Year 2013-14 with respect to the petitioner.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel
: and Mr.A.N.R.Jayaprathap
Junior Standing Counsel

O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel and Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel for the respondent.

2. The petitioner seeks for a direction upon the respondent to issue Form - 4 under the Income Declaration Scheme (Rules), 2016 (IDS), as well as credit the balance amounts already paid towards advance tax and TDS under the Income Tax Act, 1961 for the assessment year 2013-14 by considering his request. The

petitioner by representation dated 06.07.2017, addressed to the respondent submitted that the income declared under the IDS is Rs.83,81,960/- and the tax payable at 45% on the declared income is Rs.37,71,882/-. The amounts paid by the petitioner company or deducted from the petitioner company are as follows:-

First Installment (30.11.2016)	-	Rs. 9,43,000/-
Second Installment (31.03.2017)	-	Rs. 9,43,000/-
Advance Tax	-	Rs.20,60,000/-
TDS	-	Rs. 1,38,196/-
Total Tax Paid	-	Rs.40,84,196/-

3. Referring to the decision of the Hon'ble High Court of Delhi in the case of Kumudam Publications (P.) Ltd. vs. Central Board of Direct Taxes reported in [2017] 79 taxmann.com 466 (Delhi), the petitioner submitted that there is no bar for an assessee to claim credit of the advance tax amounts paid previously relevant to the assessment years or period for which it seeks benefit under the scheme. With the above submission, the petitioner requested issuance of Form - 4. Since his request has not been considered and Form - 4 has not been issued, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that in the light of the decision of the Hon'ble High Court of Delhi in the case of Kumudam Publications (P.) Ltd. (supra), the respondent is bound to issue Form - 4 and the petitioner is entitled to take credit. The respondent has filed counter affidavit resisting the claim made by the petitioner for reasons set out therein. It is pointed out that the IDS is a self contained and complete code in itself, which is evident from a plain reading of the provisions of the scheme. It is submitted that in its declaration under the scheme filed on 30.09.2016, the petitioner has declared a sum of Rs.83,81,960/- for the assessment year 2013-14. Accordingly, as per the provisions of the scheme, Form - 2 was issued and served on the petitioner on 14.10.2016, requiring it to pay a sum of Rs.37,71,882/- comprising of tax, surcharge and penalty.

5. It is further submitted that Item 11 of Form - 1 relates to declaration under Section 183 of the Finance Act, 2016 and is primarily meant for credit of amounts paid after the commencement of the scheme, i.e., on or after 01 June 2016, to

the date of filing of the declaration under the Scheme except in respect of TDS as clarified by the CBDT, vide circular No.25 of 2016 dated 30.06.2016. However, the petitioner has wrongly sought credit for all amounts including advance tax, TDS and payment made under declaration from 01.04.2013 to 31.03.2017. The petitioner's attempt appears to be a ploy to indulge in protracted proceedings to delay and thwart the immediate further action by the respondent under the Act and the Scheme with the intent to evade payment of demands due under the Scheme / Act.

6. In the light of the stand taken by the respondent in the counter affidavit, this Court is not inclined to issue any positive direction as sought for by the petitioner. Nevertheless, since the request made by the petitioner is pending, they are entitled to a speaking order being passed on such a request and a counter affidavit cannot substitute an order to be passed by the respondent under the provisions of the Scheme / Act. Therefore, the respondent is directed to pass a speaking order on the request made by the petitioner for issuance of Form - 4.

7. In the result, this writ petition is disposed of by directing the respondent to consider the petitioner's request for issuance of Form - 4 and pass a speaking order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

abr Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
The Principal Commissioner of Income Tax-I,
Coimbatore,
Race Course Road, Coimbatore-641 018.

+1cc to Mr.A.P.Srinivas, Advocate Sr.No.35759
+1cc to Mr.R.Sivaraman, Advocate Sr.No.36326

SSV(CO)
GSP:21.6.2018

W.P.No.31090 of 2017