IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2018

C O R A M

THE HON'BLE Mr.JUSTICE P.D.AUDIKESAVALU

W.P. No.40015 of 2002

R.Jagadeesan ...Petitioner

vs

1.The Commissioner of Income Tax,
Office of the Commissioner of Income Tax,
67A Race Course Road, Coimbatore 18.

2.The Wealth Tax Officer,
Ward (7), Office of the Commissioner of
Income Tax, Gandhi Road, Salem-7.

3.The Commissioner of Income Tax (Appeals),
No.3, Gandhi Road, Salem-7. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the First Respondent dated 18.06.2001 vide C.No.37/KVSS/98-99/WT/CBE and to quash the same.

For Petitioner : Mr.S.Vijayakumar
For Respondents : Mr.A.N.R.Jayaprathab
Standing Counsel

O R D E R

The Writ Petition has been filed for issuance of a Writ of Certiorari to quash the order of the First Respondent dated 18.06.2001 vide C.No.37/KVSS/98-99/WT/CBE.

2. Heard Mr.S.Vijayakumar, learned Counsel appearing for the Petitioner and Mr.A.N.R.Jayaprathab, learned Standing Counsel appearing for the Respondents.

3. The Ministry of Finance, Government of India introduced a Scheme known as Kar Vivad Samadhan Scheme for settlement of tax dues of the assessees. In pursuance thereof, the Petitioner made an application to the First Respondent and filed Form 1-A declaration under Section 89 of the Finance Act (No.2) under the aforesaid Scheme. The

First Respondent had accepted the declaration made by the Petitioner under the said Scheme and issued Form 2-A Certificate of intimation requiring the Petitioner to pay a sum of Rs.32,355/- within the stipulated period of 30 days from 01.03.1999. On receipt of the demand dated 19.02.1999, the said amount was admittedly paid on 01.03.1999, within the stipulated period of 30 days. However, the First Respondent issued another order dated 10.05.1999, stating as follows:

> "As per the Chief Commissioner's clarification, self-assessment tax paid under Section 15 B of the Wealth-tax has to be appropriated first towards the interest and then towards the tax as laid down in the explanation to the said section. The demand determined as payable under K.V.S.S. in this office certificate in Form 2A dt.19.2.99 has been computed without observing this rule. Hence the same is amended as under:-
>
> | | | |
> |---|---|---|
> | Revised demand | - | Rs.36,579/- |
> | Earlier demand paid | - | 32,355/- |
> | Balance demand payable | | 4,224 |
>
> (Rupees Four thousand two hundred and twenty four only)"

4. In response to the said demand made, the Petitioner on 16.06.1999 remitted the remaining sum of Rs.4,224/-, that was demanded. However, by a letter dated 18.06.2001, it was informed to the Petitioner that the aforesaid additional demand of Rs.4,224/- had not been paid within 30 days from the date of receipt of the order and hence, the assessment filed under the Kar Vivad Samadhan Scheme had to be rejected as there had been delay of three days inasmuch as the order dated 10.05.1999 had been despatched on 12.05.1999 and due date had fallen on 13.06.1999, but payment had been made on 16.06.1999. A representation dated 26.06.2001 was made by the Petitioner for which a Notice was issued to the Petitioner to appear on 18.09.2002. Since there was no favourable response, the Petitioner has approached this Court challenging the aforesaid order dated 18.06.2001.

5. Mr.S.Vijayakumar, learned Counsel appearing for the Petitioner submits that in identical circumstances relating to a similarly placed person in the case of Sri Balaji Finance vs ITO, [2011(12) Taxmann 121 (Madras)], this Court has held that the period of limitation would not apply in respect of the revised demand made. In this regard, reference was made at para No. 17 of that judgment, which is extracted hereunder:

"17. A close reading of sub-section (2) of Section 90 would show that it speaks of limitation for making payment as determined by the designated authority. Here in these cases, the original amounts were determined, certificates under section 90(1) were issued and based on the same, the amounts were paid within 30 days. Thus, in my considered opinion, the petitioners have complied with Section 90(2) of the Act. Strangely, there is no provision in the Act prescribing any period of limitation for making payment from the date of the passing of an amendment order. Had it been the intention of the legislature that the payment should be made within 30 days from the date of passing of the amendment order, surely, the Parliament would have made a provision for the same in the Act. But the Parliament has not done so. At this juncture, it should be noticed that there are time limits prescribed both for the designated authority to determine the amount, and for the assessee to make payment. For the former, it is 60 days and for the latter it is 30 days. If an amendment order is to be construed as a determination order in terms of Section 90 (1), then it goes without saying that such amendment order should also be passed within 60 days from the date of submission of the declaration. If this construction is accepted, the same will render the provision unworkable for, even if a patent mistake is noticed after 60 days, it cannot be corrected. This would not have been the intention of the Parliament. An amendment order cannot at any stretch of imagination be construed as yet another determination order. Therefore, the limitation of 60 days prescribed in Section 90(1) of the Act is not applicable to an amendment order. As a corollary, the period of limitation prescribed for payment is also not applicable for payment as per the amendment made. At this juncture, one should not fail to notice the expressions used in Section 90(1) as well as Section 90(2) of the Act. In Section 90(1), it is found "the competent authority shall, by order, determine". Similarly, in Section 90(2), it is found "the declarant shall pay the sum determined". Both these provisions should be read conjointly and not in isolation. This would only reflect that there can be the only one determination order and thus the amendment order cannot be construed as yet another determination order. If it is so correctly construed, then there can be no difficulty to conclude that both the limitation periods prescribed in section 90 (1) and 90(2) respectively are not at all applicable to an amendment order. On the passing of an amendment order, no fresh period of limitation commences as contended by the learned Counsel for the authority to pass an amendment order and for the declarant to make payment, such period of limitation cannot be assumed as it is sought to be done by the learned Counsel for the Respondent. At the same time, it cannot be said that the declarant at his free will, can make payment at any time. It can only be said that the payment should be made within a reasonable time or within a time to be stipulated in the order itself. In the cases on hand, as pointed out by the learned Counsel for the Petitioners, in the amendment orders, there was nothing said about the time within which the amounts should be paid. Therefore, in my considered opinion, the payment of the amounts by the petitioners beyond 30 days but within a reasonable time as per the amendment orders satisfies the requirements of the scheme. Therefore, they are entitled for the certificate under Section 90(2) of the Act."

6. As the aforesaid principles would squarely apply to the facts of this case also, the Petitioner is entitled to the same benefits. Hence, the impugned order, which cannot be sustained, is set aside and the matter is remitted back to the First Respondent to pass fresh orders in terms of the aforesaid decision of this Court and communicate the same to the Petitioner by 31.10.2018. The Writ Petition is disposed of on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax,
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2.The Wealth Tax Officer,
Ward (7), Office of the Commissioner of
Income Tax, Gandhi Road, Salem-7.

3.The Commissioner of Income Tax (Appeals),
No.3, Gandhi Road, Salem-7.

+1cc to Mr.A.P.SRINIVAS , Advocate SR.No. 47763
+1cc to Mr.S.Vijayakumar , Advocate SR.No. 47484

W.P.No.40015 of 2002

ASK(17/09/2018)