

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NO.24682 OF 2018

ORDER

(Per Sri Justice Sanjay Kumar)

1. Challenge in this writ petition is to the proceedings dated 06.02.2018 passed by the Principal Commissioner of Income Tax-6, Hyderabad, the first respondent, whereby the declaration filed by the petitioner under the Income Declaration Scheme, 2016 (IDS), was rejected on the ground that he had failed to pay the tax, surcharge and penalty on the undisclosed income declared by him before the due date, i.e., 30.09.2017. A consequential direction is sought to the Income Tax authorities to accept and act upon the said declaration.

2. The petitioner filed the subject declaration under the IDS in Form 1 on 30.06.2016 for the assessment years 2010-11 to 2015-16 declaring undisclosed income of Rs.40,98,706/-. The IDS was promulgated under Sections 184 and 185 of the Finance Act, 2016, enabling an assessee to pay tax @ 30% on undisclosed income along with surcharge and penalty @ 25% on the tax payable. As per Section 187 thereof, read with Notification No.S.O.2476(E) dated 20.07.2016, the tax, surcharge and penalty were to be paid in three installments between 30.11.2016 and 30.09.2017.

3. In terms of the IDS, the petitioner was liable to pay a sum of Rs.18,44,418/- towards tax, surcharge and penalty on the undisclosed income declared by him. In that regard, he claimed credit of a sum of Rs.12,11,611/-, being his tax deducted at source (TDS). He also claimed credit of a sum of Rs.1,10,000/-, being the advance tax/prepaid tax paid by him for the assessment year 2013-14. After adjusting the aforestated credits, he paid the balance sum of Rs.5,22,807/- in three installments as required.

4. While so, show-cause notice dated 15.11.2017 was issued by the first respondent proposing to reject the petitioner's declaration as he had not paid the requisite amount before the due date. The petitioner submitted reply dated 27.11.2017 furnishing the details of the payments made by him. However, *vide* the impugned proceedings dated 06.02.2018, the first respondent rejected his declaration on the ground that there was no provision in the IDS to allow credit for prepaid taxes. Aggrieved thereby, the petitioner approached this Court.

5. The first respondent filed a counter-affidavit, wherein she stated as follows: The tax and surcharge payable under Section 184 of the Finance Act, 2016, and the penalty payable under Section 185 thereof, in respect of his undisclosed income, were payable by the petitioner in terms of his declaration and proof of such payment was required to be furnished in Form 3. According to her, there was no provision in the IDS enabling credit being given to prepaid taxes. She asserted that the advance tax paid by the petitioner could not be adjusted against the tax, surcharge and penalty payable under the IDS. She pointed out that the petitioner had not filed his return of income for the assessment years 2010-11 to 2015-16 and therefore, the advance tax paid by him could not be given credit while computing his liability in respect of the undisclosed income declared by him under the IDS. She relied upon Section 219 of the Income Tax Act, 1961, which provides for credit for advance tax being given in the case of regular assessment, which would be either under Section 143(3) or Section 144 thereof. She asserted that the advance tax paid by the petitioner could not be adjusted while computing the payments made under the IDS.

6. An additional counter-affidavit was thereafter filed by the successor Principal Commissioner of Income Tax-6, Hyderabad, on 06.09.2019. This

additional counter-affidavit was filed without separately seeking the leave of this Court. Therein, he stated that certain important contentions were not raised in the counter-affidavit filed earlier and sought permission to do so. While reiterating that the IDS did not provide for credit being given to prepaid taxes while computing the payment made towards tax, surcharge and penalty under the IDS, he contended that the petitioner had not paid the sum of Rs.1,10,000/- towards advance tax for the assessment year 2013-14. He pointed out that the said payment was not made under the Minor Head – 100, which pertains to advance tax, but under the Minor Head – 400, which pertains to tax on regular assessment. On this basis, he contended that the tax paid by the petitioner on regular assessment could not be given credit while computing his payment towards his liability in respect of the undisclosed income declared under the IDS. He pointed out that the petitioner had not paid the required amount within time and asserted that if he wished to avail the benefit of the IDS, he would have to make the required payment now along with interest.

7. Heard Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner, and Sri K.Raji Reddy, learned senior standing counsel appearing for the respondents.

8. At the outset, we may note that there is no dispute as regards the credit claimed by the petitioner towards TDS. In this regard, the Central Board of Direct Taxes (CBDT), Ministry of Finance, Government of India, itself issued Circular No.25 of 2016 dated 30.06.2016, furnishing clarifications on the IDS, and Question No.4 thereunder was as to whether credit for TDS, if any, in respect of the income declared should be allowed. The answer to this was in the positive and to the effect that credit for TDS should be allowed in those cases where the related income was declared

under the IDS and credit for the tax had not already been claimed in the return of income filed for any assessment year. There is also no dispute that if the amount paid by the petitioner for the assessment year 2013-14, being a sum of Rs.1,10,000/- is adjusted, the payments made by him on 21.11.2016 (Rs.1,50,000/-), 28.03.2017 (Rs.1,50,000/-) and 27.09.2017 (Rs.2,22,807/-) would be sufficient to discharge his liability in respect of the tax, surcharge and penalty payable by him towards his undisclosed income declared under the IDS. The only issue is whether the petitioner is entitled to seek adjustment in this regard of the sum of Rs.1,10,000/- paid by him for the assessment year 2013-14.

9. In so far as the payment of Rs.1,10,000/- for the assessment year 2013-14 is concerned, Sri A.V.A.Siva Kartikeya, learned counsel, does not dispute the fact that it was remitted by the petitioner under the wrong head, viz., Minor Head - 400, which pertains to tax on regular assessment instead of Minor Head - 100, which pertains to advance tax. Significantly, the impugned proceedings dated 06.02.2018 do not proceed on the strength of this aspect for refusing to give credit for the sum of Rs.1,10,000/- paid by the petitioner for the assessment year 2013-14. It was only on the premise that the IDS made no provision to allow credit for prepaid taxes that the first respondent held that the petitioner was not eligible to claim credit for the same. Further, this aspect was not even raised by the first respondent in the first counter-affidavit. It is therefore not open to the first respondent to now improve upon the case by supplementing a new ground which does not even find mention in the impugned proceedings dated 06.02.2018 (*see* MOHINDER SINGH GILL V/ s. THE CHIEF ELECTION COMMISSIONER¹).

¹ AIR 1978 SC 851 : 1978 SCR (3) 272

10. We may also note that it is not the case of the Income Tax authorities that there was any regular assessment for the assessment year 2013-14, whereby the petitioner could have paid tax under Minor Head - 400. When there was no such regular assessment, the payment made by the petitioner cannot be appropriated under that head merely because he made a mistake in mentioning the number. The contention of the Income Tax authorities in this regard is therefore liable to be rejected even on merits.

11. Treating the payment of Rs.1,10,000/- made by the petitioner as one towards advance tax, the question that arises is whether the same could have been adjusted against the payment to be made by him towards tax, surcharge and penalty under the IDS.

12. This very aspect fell for consideration before a Division Bench of the Delhi High Court in KUMUDAM PUBLICATIONS PVT. LTD. V/ s. CENTRAL BOARD OF DIRECT TAXES². This case pertained to the very same IDS and the issue that fell for consideration was whether the petitioner therein was entitled to adjust the amount paid towards advance tax and the amount lying to its credit as TDS against the tax, surcharge and penalty to be paid by it under the IDS. Dealing with this aspect, the Division Bench observed that there was no bar in the IDS, express or implied, which precluded the reckoning or taking into account of previously paid amounts which had nexus with the periods sought to be covered by the scheme.

Adverting to the clarification issued by the CBDT in relation to credit for TDS, the Division Bench observed that such a clarification precluded any meaningful argument being advanced by the Revenue that advance tax payments relative to the assessment year covered by the declaration could not be taken into consideration as payments under and for the purpose of

² [2017] 393 ITR 599 (Del.)

availing the benefits of the scheme. The Income Tax authorities were accordingly directed to ensure that the payments and declarations of the petitioner therein were processed in accordance with the scheme. SLP (Civil) Diary No.33000/2017 filed by the Income Tax authorities against the aforestated judgment of the Delhi High Court was dismissed by the Supreme Court on 29.01.2018.

13. We are in respectful agreement with the view taken by the Delhi High Court. Once the TDS relevant for the period covered by the declaration filed under the IDS is given credit as per the CBDT's clarification itself, there is no logic as to why advance tax paid for the very same period, which has not been given credit to earlier, should not be adjusted against the amount payable under the IDS. In the case on hand, the declaration of the petitioner pertains to the assessment years 2010-11 to 2015-16. The advance tax of Rs.1,10,000/- was paid by him for the assessment year 2013-14. Admittedly, there was no regular assessment for the said year, whereby the said advance tax could have been adjusted. Therefore, there is no logic or rationale in denying the petitioner credit of this amount while computing the amount payable by him under the IDS.

14. Before parting with the case, we may note that reliance placed by Sri K.Raji Reddy, learned senior standing counsel, upon INTER CRAFT LTD. V/ s. COMMISSIONER OF INCOME TAX³ is altogether irrelevant as the Division Bench of the Delhi High Court, presided over by the very same learned Judge who decided KUMUDAM PUBLICATIONS PVT. LTD.², was dealing with the Kar Vivad Samadhan Scheme, 1998, which was altogether different in its scope and ambit when compared with the Income Declaration Scheme, 2016. The said judgment is therefore eschewed from consideration.

³ (2017) 390 ITR 409 (Del)

15. The writ petition is accordingly allowed setting aside the impugned proceedings dated 06.02.2018 passed by the Principal Commissioner of Income Tax-6, Hyderabad, rejecting the declaration filed by the petitioner under the Income Declaration Scheme, 2016. The said declaration shall be considered afresh by the Principal Commissioner of Income Tax-6, Hyderabad, duly giving credit not only to the TDS but also to the advance tax paid by the petitioner for the assessment year 2013-14. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order, be it from whatever source.

16. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.



SANJAY KUMAR, J

K.LAKSHMAN, J

18th September, 2019

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