IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.18432 of 2004
and W.P.M.P.No.21949 of 2004

S.Gengaraman ...Petitioner

Vs

1. The Commissioner of Income-tax (Appeals),
67-A, Race Course Road,
Coimbatore-641 018.

2. The Income Tax Officer, Ward I(4)
67-A, Race Course Road,
Coimbatore-641 018. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in C.No.346/KVSS/98-99/IT/CBE dated 14.05.2001 of the first respondent, quash the same and direct the first respondent to accept the petitioner's declaration under the Samadhan Scheme.

For Petitioner : Mrs.Mallika Srinivasan

For Respondents : Mr.A.N.R.Prathap,
Government Advocate (Taxes)

ORDER

This writ petition has been filed to set aside the proceedings of the first respondent in C.No.346/KVSS/98-99/IT/CBE dated 14.05.2001 and to direct the first respondent to accept the petitioner's declaration under the Samadhan Scheme.

2.The case of the petitioner is that in respect of the assessment years 1992-93 and 1993-94, he was assessed to income tax. There were tax arrears of Rs.10,235/- for the assessment year 1992-93 and Rs.2,46,040/- for the assessment year 1993-94. Apart from these, interest amounts were also levied by the

Department, amounting to Rs.25,834/- and Rs.3,20,824/- for the assessment years 1992-93 and 1993-94 respectively. The petitioner filed appeals against the aforesaid assessments, before the appellate authorities. When these appeals were pending, the Government of India introduced a Kar Vivad Samadhan Scheme and the petitioner was entitled to avail the benefit of the said Scheme. The petitioner also filed required declarations for availing the benefit and thereafter a Certificate of Intimation under Section 90(1) of the Finance (II) Act, 1998 was issued to the petitioner determining the total amount payable at Rs.1,61,658/-. As per the instructions, the petitioner made payment of a sum of Rs.1,61,658/- within the time specified thereon, with a bona fide belief that his declaration would be accepted. While so, another letter dated 24.05.1999 was received from the Income Tax Officer (Headquarters) (Tech), calling upon the petitioner to produce proof of having made the above payment. He also produced the proof, but he received a challan from the Department to pay a further sum of Rs.15,960/-. Subsequently, he also paid the said sum. While so, he received a letter dated 14.05.2001 stating that his declaration filed under the Samadhan Scheme was rejected, since he had not paid the additional amount of Rs.15,960/- within the specified time limit. Hence, this writ petition.

3.The learned counsel for the petitioner has submitted that in so far as the petitioner had complied with the original certificate issued by the first respondent, all the requirements of the Scheme have been satisfied and the rejection of the declaration of the petitioner is totally unjustified in law. The additional demand was paid by the petitioner only with a view to cooperate with the Department, when the fact remained that it is not a valid demand.

4.This Court has also heard the submissions made by the learned Government Advocate (Taxes) on the submissions made by the learned counsel for the petitioner.

5.Under similar circumstances, this Court has passed an order in the case of Sri Balaji Finance v. Income-tax Officer, reported in [2011] taxmann.com 121 (Madras), in which it is stated that payment of amount by assessee beyond 30 days but within a reasonable time as per amendment order would satisfy the requirements of Kar Vivad Samadhan Scheme, 1998. The relevant portion of the order is extracted hereunder:

> "When the Parliament itself has not prescribed any such period of limitation both 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.Applying the principles enunciated in the above decision to the facts of the present case, the writ petition is allowed and the impugned order is set aside. The first respondent is directed to issue necessary certificate under Section 90(2) of the Finance Act, 1998 to the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income-tax
   (Appeals),
   67-A, Race Course Road,
   Coimbatore-641 018.

2. The Income Tax Officer, Ward I(4)
   67-A, Race Course Road,
   Coimbatore-641 018.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.22862
+1cc to Mr.N.Muthukumar, Advocate, S.R.No.23395

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and W.P.M.P.No.21949 of 2004

RR(CO)
KKV/15/06/2020