IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.33881 of 2018
WMP.No.39345 & 39346 of 2018

Krishna Venkata Ramana Shetty ...Petitioner

Vs.

1.Income Tax Settlement Commissioner
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
640, Anna Salai, Nandanam
Chennai-600 035

2.Deputy Commissioner of Income Tax
Central Circle 1(1), Chennai
New No.46, Mahatma Gandhi Road
Chennai-600 034 ...Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent 1st respondent in TN/CN 51/2018-19/18/IT in passing the order u/s.245D(2C) of the Income Tax Act, 1961 dated 11.12.2018 and quash the same as illegal and consequently direct the 1st respondent to proceed with the settlement application u/s.245D (2C) of the Income Tax Act, 1961 after considering the petitioner's submissions.

For Petitioner : Mr.Sathish Parasaran for
Mr.R.Sivaraman
For Respondent : Mr.A.P.Srinivas- SSC

ORDER

The order of the Income Tax Settlement Commission (in short 'SC' or Commission) dated 11.12.2018 is assailed in the present writ petition.

2. The Commission has rejected the application of the petitioner for assessment years (AY) 2011-12 to 2017-18 as 'invalid', since the payment of additional taxes is a primary condition for maintainability of the application. The report of the Commissioner under Rule 2(B) had pointed out that there was a short payment of tax, amounting to Rs.4,58,772/- for AY 2015-16, Rs.3,52,780/- for AY 2013-14 and Rs.7,84,966/- for A Y 2016-17.

3. There have been a significant number of hearings in this matter and both the petitioner and the revenue have filed their versions of the pending arrears for various assessment years, as on date. Vide letter dated 21.01.2020, after considering the consolidated position of pending demands for AYs 2013-14, 2015-16 and 2016-17, the Assessing Authority confirms that there is no shortfall in the tax remitted by the petitioner taking into consideration the TDS credits available for assessment years 2015-16 and 2016-17.

4. According to the petitioner, he has filed applications for rectification of assessment under Section 154 in respect of AYs 2006-07 and 2010-11, which if heard and the errors in assessment corrected, would result in a substantial refund. However, despite this fact having been brought to the notice of the Assessing Officer multiple times during the course of the hearings pending writ petition, these applications remain pending as on date.

5. The revenue has, at long last, circulated a tabulation of the amounts in question, for the three assessment years extracted below:

AY 2015-16

Contention of the Department in Counter Affidavit	Para 3 of the counter affidavit states demand of Rs.5,06,210/- raised u/s 143(1) due to TDS mismatch Application i.e.16.10.2018
Explanation of the Assessee vide reply to counter affidavit	A) As on date of filing settlement application no mismatch in TDS for AY 2015-16. As can be seen no mismatch between TDS claimed in return filed in response to 153A notice of Rs.28,11,600/- (S No.1 of Additional Type Set) and TDS totaling to Rs.28,11,600/- as per Form 26AS as on 11.10.2018 (S.No.2 of Additional Type Set) B) Originally as per 143(1) demand of Rs.5,06,210/- has arisen due to difference in TDS being of Rs,28,11,600/- claimed in original returns vs. Rs.23,84,892/- as per 143 (1) (Ref.Pg.18 in S.No.3 Additional Type Set). This difference was not exising as on date of filing settlement application on 16.10.2018 which is evidenced by Form 26AS as on 11.10.2018 (S.No.2 of Additonal Type Set)
Written Submission of the Department on the above isue	The demand of Rs.5,06,210 was raised u/s 143 (1) due to wrong quoting of TAN by the assessee in the return of income in respect of M/s Landmark housing Projects Chennai Private Limited to the extent of Rs.4,26,712. Now on verificaition of the assessee's claim made regarding wrong quoting of TAN vide the application u/s 154 with reference to the 26AS statement, the claim of the assessee is found to be in order. But the order u/s 154 could not be passed on ITBA System due to the technical issue that the bigger proceedings alrady initiated u/s 153A are pending as on date. When tried to pass the order u/s 154, the ITBA system did not enable to do so. In other words, additional TDS credit to the extent of Rs.4,26,712 is now available to the credit of the assessee and if the same is considered the demand for A Y 2015-16 will get reduced to Rs. Nil.

AY 2016-17

Contention of the Department in Counter Affidavit	Petitioner in WP had submitted that the difference in 143(1) due to TDS mismatch being Rs.7,84,960/- was duly considered by petitioner itself in computing taxes to be paid before ITSC. No specific comments in ounter affidavit on difference of Rs.7,84,960/-.
Explanation of the Assessee vide reply to counter affidavit	A) TDS as claimed by assessee in return filed in response to 153A for A.Y.2016-17 was Rs.24,07,220/- (S.No.4 Additional Set) but TDS ultimately taken into consideation for computing taxes before ITSC was only Rs.17,45,527/- (S.No.5 Additional Type Set) B) Originally as per 143(1) demand of Rs.7,84,960 had arisen due to difference in TDS being of Rs.24,07,220/- claimed in original return vs. Rs.17,45,528/- as per 143 (1) (Ref Pg.23 in S.No.3 Additional Type Set). This difference was not existing as on date of filing settlement application on 16.10.2018 since the petitioner itself has taken only Rs.17,45,528/- for computing taxes before ITSC (S.No.5 Additional Type Set)
Written Submission of the Department on the above issue	Though a deamnd of Rs.7,84,960 was raised u/s 143(1) due to TDS mismatch of Rs.6,61,692 (Rs.24,07,220 claimed in the return-Rs.17,45,528 available in 26AS, it is noticed on verification of the petitioner's claim that the petitoine considered TDS credit at a lower amount of Rs.17,45,528 (to the extent of the credit available in 26AS) for the purpose of computation of tax payable as per the Settlement Application. Therefore, there is no additional demand payalbe by the petitioner for the A.Y 2016-17 in the regard.

AY 2013-14

Contention of the Department in Counter Affidavit	Issue of demand of Rs.3,52,780/- as per Assessment Order u/s 143(3). No specific comment in counter affidavit. Comments on refund due as per settlement application of Rs.1,10,796/- which is available for adjusting against the demand of Rs.3,52,780.

Explanation of the Assessee vide reply to counter affidavit	A) Difference ought to be adjusted against increase in TDS of Rs.3,34,971/- for A.Y.2016-17 being amounts credited into petitioner's account on 23.11.2018 before receipt of report u/s 245D(2B) on 27.11.2018 (Ref Pg.25 in S.No.3 Additional Type set) and excess refund of Rs.1,10,796/- (Annexure E in Pg.24 of Type Set) B) In Para 3 of the Counter Affidavit the Department states credit of Rs.2,34,972/- was available to the Petitioner as on date of filing settlement application. Thus, along with its interest impact u/s.234B the short fall becomes NIL as on the date of filing settlement application Revised computation of income considering additional TDS credit of Rs.2,34,972/- is submitted in S.No.6 of the Additional Type Set. Original computation of Income submitted before ITSC is enclosed in S.No.5 of the Additional Tupe Set. As can be seen if additional TDS credit of Rs.2,34,972/- is considered, taxes payable reduces by Rs.3,31,281/- for A.Y.2016-17 which would set off the demand of Rs.3,52,780/- for A.Y.2013-14 when considered along with refund already due as per settlement application of Rs.1,10,796/-. C) No shortfall as on date of filing settlement application if interest u/s234B is correctly computed Interest u/s.234B for A.Y.2012-13, 2013-14 and 2014-15 ought to have been calculated only until such date of adjustment of excess tax for A.Y.2015-16 (taxes for A.Y.2015-16 and in March 2018 and May 2018 itself) and not till the date of filing application before ITSC i.e., October 2018. on recalculating interest u/s234B in this basis the refund due to petitioner as on date of filing settlement application is Rs.20,18,724/- (Rd.pg32-37 in S.No.3 Additional Type Set) Department in Counter Affidavit states in Para 6 (c) that interest is to be calculated independently for each assessment year till date of payment of taxes for each Assessment Year. The scheme of

Written Submission of the Department on the above issue	As per the 26AS Statement for the AY 2016-17 as on date, TS credit available for the pettitoner is Rs.20,80,499 (as against the TDS amount of Rs.17,45,527 available as on date of filing the Settlement Application). In other words, excess TDS credit available now for the AY 2016-17 works out to Rs.3,34,972. Coupled with the excess taxes paid of Rs.47,430 (Rs.5,57,59,992 paid for AY 2015-16-Rs.5,57,12,562 payable for AYs 2012-13, 2013-14, 2014-15, 2016-17 & 2017-18 as per the computation filed along with the Settlement Application), the total credit available to the petitioner as on date works out to Rs.3,82,402 (Rs,3,34,972) + Rs.47,430), which is more that the demand of Rs.3,52,780 due for the AY 2013-14.

6. Thus, the admitted position is that there is no shortfall as on date as confirmed by the officer, even though there was a shortfall, according to the Department, as on date of application before the SC. On an overall consideration of the matter, I am of the view that this is not a case where the assessee has consciously short-paid admitted tax. There are computational differences that exist that could well be the reason for the remittances falling short of the required amounts. This is apparent from the contentions of the assessee/petitioner and revenue extracted above. In addition, the differences are quite insignificant in the context of the entirety of the payments made. I am thus of the view that in the interests of substantial justice the petitioners' case should be considered on merits by the Commission. The impugned order treating the application as invalid is thus set aside and the Settlement Commission is directed to take the matter up for hearing on merits and pass appropriate orders, in accordance with law.

7. This writ petition is allowed in the above terms. Consequently, connected miscellaneous petitions are closed with no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

To

1.Income Tax Settlement Commissioner
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
640, Anna Salai, Nandanam
Chennai-600 035

2.Deputy Commissioner of Income Tax
Central Circle 1(1), Chennai
New No.46, Mahatma Gandhi Road
Chennai-600 034

+1 cc to Mr.R.SivaRaman Advocate sr4960

+1 cc to Mr.A.P.Srinivas Advocate sr4621

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