IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.25624 to 25626 of 2017

K.Dharmalingam
Proprietor of Sri Vasavi Tractors
454, C.C.Road, Polur,
Tamil Nadu-606803. ... Petitioner in W.P.No.25624/2017

M.Palani
Proprietor of Sri Vasavi Enterprises
454, C.C.Road, Polur,
Tamil Nadu-606803. ... Petitioner in W.P.No.25625/2017

P.Kalaiselvi
Proprietor of Sri Vasavi Agencies
454, C.C.Road, Polur,
Tamil Nadu-606803. ... Petitioner in W.P.No.25626/2017

- Vs -

Principal Commissioner of Income Tax- VIII,
6th Floor, Kannammai Building, No.611
Anna Salai, Chennai – 6. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to credit the Advance Tax paid by the Petitioner and the Tax deducted at Source lying to the credit of the Petitioner, for the assessment years 2010 – 11 to 2015 – 16, totalling to Rs.28,02,365/- and the assessment years 2011-12 to 2015-16, totalling to Rs.5,36,740/- and the assessment years 2009-10 to 2015-16, totalling to Rs.25,37,159/- respectively, in computing the tax liability of the Petitioner under the Income Declaration Scheme, 2016, contained in Chapter IX of the Finance Act, 2016, and to further direct the Respondent to issue a Form No.4 under the Income Declaration Scheme Rules, 2016, certifying full and final payment of tax, surcharge along with penalty by the Petitioner under Section 187 of the Finance Act, 2016, in respect of the income declared by the petitioner.

For Petitioners : Mr.Suhrith Parthasarathy

For Respondent : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel

COMMON ORDER

The relief sought for in the present Writ Petition is to direct the respondent to credit the Advance Tax paid by the petitioner and the Tax deducted at Source lying to the credit of the Petitioner, for the Assessment Years 2010 - 11 to 2015 - 16, totalling to Rs.28,02,365/- in computing the tax liability of the Petitioner under the Income Declaration Scheme, 2016, contained in Chapter IX of the Finance Act, 2016, and to further direct the Respondent to issue a Form No.4 under the Income Declaration Scheme Rules, 2016, certifying full and final payment of tax, surcharge along with penalty by the petitioner under Section 187 of the Finance Act, 2016 in respect of the income declared by the petitioner.

2. The learned counsel appearing on behalf of the petitioner mainly contended that admittedly the petitioner had not filed his Return of income for the Assessment Years 2010-11 to 2015-16. However, he paid the advance tax amount of Rs.28,02,365/-. In this regard, he submitted an application under the Income Declaration Scheme 2016, to deal with the issues and credit the advance Tax paid by the petitioner and the Tax deducted at Source lying to the credit of the Petitioner. However, the respondent has not taken any action with reference to the application submitted by the Writ Petitioner on 06.09.2017.

3. The learned counsel for the Writ Petitioner relied on the Judgment of the Delhi High Court in Kumudam Publications Pvt. Ltd., Vs. Central Board of Direct Taxes (2017) 393 ITR 599 (Delhi). It is contended that the matter went up to the Hon'ble Supreme Court of India and the Special Leave Petition was dismissed by the Hon'ble Supreme Court of India.

4. The learned counsel appearing on behalf of the respondent disputed the grounds raised in the Writ Petition by stating that the petitioner is not entitled for the relief based on the judgments, more specifically delivered by the Bombay High Court.

5. This Court is of the considered opinion that mixed question of facts and law is to be adjudicated with reference to the documents and evidences to be produced by the respective parties before the Competent Authority. High Court cannot conduct a Roving enquiry with reference to the disputed facts in a writ proceeding under Article 226 of the Constitution of

India. Such an exercise is to be done by the Competent Authority by affording an opportunity to the parties concerned. In the present case, the application of law is to be made with reference to the facts as well as the legal principles laid down with reference to the provisions of the Act. Thus, this Court is of an opinion that the relief as such sought for cannot be granted in these Writ Petitions to the petitioner, and the adjudication is required for forming an opinion to decide the issue.

6. In view of the facts and circumstances of the case, it is suffice if a direction issued to the respondent to consider the issues raised by the petitioner and take a decision and pass orders. Accordingly, the respondent is directed to consider the issues raised by the petitioner in his representation dated 06.09.2017 and pass orders on merits and in accordance with law and by following the procedures contemplated as expeditiously as possible and preferably within a period of twelve weeks from the date of receipt of a copy of this order. Till the final orders are passed in the representation submitted by the Writ Petitioner, the respondent is directed not to initiate any coercive action against the petitioner. The petitioner is directed to send one more copy of the representation with all necessary documents along with the order passed by this Court in these Writ Petitions within a period of one week from the date of receipt of a copy of this order.

7. With these directions, the Writ Petitions stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dh/ssn
To

The Principal Commissioner of Income Tax- VIII,
6th Floor, Kannammai Building,
No.611, Anna Salai, Chennai – 6.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.28688
+2cc to M/s. Arun Karthik Mohan, Advocate Sr.28681

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srg 22/07/2021