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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-5921-2021 (O&M)
Date of decision : 14.07.2021

Ashwani Kumar

...Petitioner

Versus

Income Tax Officer, Railway Road, Nabha, District Patiala

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Manpreet Singh Kanda, Advocate for the petitioner.

Mr. Kunal Sharma, Advocate for the respondent.

(Through Video Conferencing)

VIKAS BAHL, J.

The petitioner has filed the present writ petition for the issuance of a writ in the nature of certiorari for quashing the order dated 01.02.2021 (Annexure P-9 with the writ petition), vide which the Income Tax Officer, Nabha has not given the credit of Rs.8,02,500/- to the petitioner, which was the amount received from Shri Ashok Kumar (Bidder) and was forfeited under Rule 58 of Schedule II of the Income Tax Act, 1961 with respect to the auction conducted on 30.03.2016 of the shops owned by the petitioner.

A further prayer has been made in the writ petition for the issuance of a writ in the nature of mandamus directing the respondent to rectify Form-3 dated 05.02.2021 (Annexure P-10 with the writ petition) to

the extent that the said credit of Rs.8,02,500/- has not been given to the petitioner, who has availed the Direct Tax Vivad Se Vishwas Scheme 2020.

The issue in the present case is as to whether the amount of Rs.8,02,500/-, which was forfeited at the time of auction, is to be credited into the account of the petitioner or is to be credited to the account of the Government, after defraying the expenses of the same, as provided in Rule 58 of Schedule II of the Income Tax Act, 1961.

That the facts which emerge from the reading of the writ petition are as under:-

- i. That for the Assessment Year 2009-10, the Assessing Officer made an addition of Rs.70,41,000/- on account of cash deposits, treating the same as unexplained income of the petitioner. The said addition attained finality as successive appeals upto this Court were dismissed. It is further the case of the petitioner that he is the owner of 17 shops and the said shops have been attached to recover the amount vide attachment order dated 03.12.2015. Two shops of the petitioner were auctioned on 03.03.2016 to one Shri Ashok Kumar as is apparent from the receipt annexed as Annexure P-1 along with the writ petition. The said Shri Ashok Kumar had deposited an amount of Rs.8,02,500/- being 25% of the total auction amount. However, as per the case of the petitioner, the said Shri Ashok Kumar could not deposit the balance amount of 75% and thus, the said amount has been forfeited.

- ii. It is the case of the petitioner that penalty proceedings under

Section 271(1)(C) of the Income Tax Act, 1961 were initiated and initially vide order dated 08.03.2016, a penalty of Rs.69,72,671/- was imposed on the petitioner. The appeal filed by the petitioner before the Commissioner of Income Tax [hereinafter referred to as "CIT(A)"] was dismissed on 18.11.2016. On further appeal by the petitioner, the learned Income Tax Appellate Tribunal vide order dated 17.11.2017 (Annexure P-3 with the writ petition) remanded the case to the CIT(A) to consider the explanation offered by the petitioner and thereafter, decide the issue in accordance with law. It is further the case of the petitioner that on 28.02.2018 a show cause notice was issued to the petitioner as to why he should not be committed to civil prison. Thereafter, the petitioner filed CWP-7603-2018 and this Court vide order dated 27.03.2018 (Annexure P-4 of the writ petition) stayed the arrest of the petitioner. It has further been averred in the present writ petition that the Commissioner of Income Tax (A) passed the order upholding the penalty demand and therefore, the abovesaid writ petition filed before this Court became infructuous. It was noted in the order of this Court that the petitioner had challenged the order of CIT(A) before the learned Tribunal. Vide order dated 14.06.2019 (Annexure P-7 with the writ petition), the Income Tax Appellate Tribunal, Chandigarh Bench "A", again remanded the matter to the CIT(A) to decide afresh in accordance with law and as per the

directions given by ITAT in its earlier order.

- iii. It was averred in the writ petition that during the pendency of the appeal before the CIT (A) the petitioner availed the Direct Tax Vivad Se Vishwas Scheme, against which Form-I was generated on 24.01.2021. It has further been stated that the petitioner had moved an application under Section 154 of the Income Tax Act for adjustment of the amount of Rs.8,02,500/-. The grievance of the petitioner is that the said application has been dismissed vide order dated 01.02.2021, a copy of which has been appended as Annexure P-9 alongwith the writ petition. It is further the grievance of the petitioner that Form-3 has been generated without giving credit of Rs.8,02,500/- along with interest.
- iv. In the writ petition, reference has also been made to an order dated 26.04.2018 (Annexure P-5 along with the writ petition) in which, it was observed by the Tax Recovery Officer that earlier a credit of the amount of Rs.8,02,500/- had been inadvertently granted to the petitioner, whereas, the said amount was forfeited to the account of the Government as per Rule 58 of Schedule II of the Income Tax Act, 1961. Thus, the necessary correction with respect to the outstanding arrear demand, relevant to Assessment Year 2009-10, was carried out by the said order.

That in the present case, notice of motion was issued on 15.03.2021. A written statement has been filed on behalf of the respondent.

In the written statement, it has been stated that the impugned amount has been credited to the Government account in accordance with the procedure and mandate contained in Rule 58 of the said Schedule II of the Income Tax Act, 1961. It has further been averred that the aforesaid forfeited amount is not a part of the sale consideration, as the property of the petitioner will be sold again and the consideration then received will be applied in full towards the account/dues of the petitioner. Reference has also been made to Rule 57 of Schedule II of the Income Tax Act, 1961. It has also been stated that the forfeiture of the deposit is a matter between the defaulting purchaser and the respondent and the petitioner has no privity of contract or right or interest in the said amount. It has further been stated that no loss has been caused to the petitioner inasmuch as, the auction would be conducted afresh and the petitioner will have the benefit of the entire sale proceeds received from the fresh sale.

Learned counsel for the petitioner has raised two submissions. It has been argued that the amount of Rs.8,02,500/-, which was the forfeited amount, was required to be credited to the account of the petitioner as the same has been received in the process of auction of the shops owned by the petitioner. The second submission of the learned counsel for the petitioner is that the respondent had already credited the amount in assessee's account as is apparent from Form-26AS, which has been annexed as Annexure P-2 alongwith the writ petition.

On the other hand, learned counsel for the respondent has relied upon the averments made in the written statement and has prayed for dismissal of the present writ petition.

This Court has considered the arguments of both the counsels and has gone through the entire record and finds that there is no merit in the present writ petition and the same deserves to be dismissed, for the following reasons:-

That it is not in dispute that the relevant rules governing the aspect of forfeiture with respect to sale of immovable property by the Tax Recovery Officer are Rule 57 and 58 of Schedule II of the Income Tax Act, 1961. The said Rules are reproduced hereinbelow:-

“Deposit by purchaser and resale in default.

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.”

A perusal of Rule 57 would show that on every sale of immovable property, the person declared to be the purchaser is required to pay/deposit 25% of the purchase money to the officer conducting sale and in

default of such deposit, the property shall be resold forthwith. Importantly, Rule 58 provides that the sum deposited by the purchaser would be forfeited to the **“Government”** after defraying expenses incurred on the auction.

Thus, it is apparent that if the auction purchaser, as in the present case, does not pay the balance amount of instalment, then the property is required to be resold and the amount already paid is to be **“forfeited to the Government”**. Even, the expenses of the auction can be deducted from the said amount. Thus, it has been rightly observed in the impugned order that the amount of Rs.8,02,500/-, which was the forfeited amount could not be credited into the account of the petitioner and was forfeited to the Government as the auction purchaser failed to deposit the balance amount. Moreover, there is no challenge to the said Rules by the petitioner. The Rules being very clear, thus, the amount in question had to be forfeited to the Government and not credited to the petitioner. Even otherwise once the auction was not successful then as per the above-said Rules and also as per the stand of the respondent in the written statement, the property is required to be re-auctioned. In case, the re-auction is successful then the petitioner will have the benefit of the sale proceeds. Thus, considering from any aspect, the impugned action of the respondents is in accordance with law and deserves to be upheld and the first submission of the petitioner deserves to be rejected.

With respect to the aspect that the said amount had been credited in the account of the petitioner/assessee and the same was so reflecting in Form-26AS (Annexure P-2 with the writ petition), suffice it to say that any entry inadvertently made and being in violation of the Rules

governing the case is required to be ignored. Moreover, even as per the case of the petitioner, the respondent-authority as per order dated 26.04.2018 had carried out the said correction after passing a detailed order and after considering the rule in question. The said order has not been challenged by the petitioner in the present writ petition. Thus, the entry of Rs.8,02,500/-, which is there in Form-26AS, is contrary to the orders passed by the authorities as well as contrary to the Rule in question i.e., Rule 58 of the Schedule II of the Income Tax Act, 1961 and is therefore required to be ignored. The respondent-authorities had thus correctly not given the credit of Rs.8,02,500/- to the petitioner vide impugned order dated 01.02.2021 (Annexure P-9) and even Form-3 dated 05.02.2021 (Annexure P-10) has been correctly issued and thus, the impugned order does not call for any interference and hence, the writ petition stands dismissed.

Since the main case is disposed of, the pending Civil Miscellaneous Application(s), if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

14.07.2021

Jitesh (JTS)

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No