IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.12.2021
Pronounced On	13.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.16022, 16024, 16026 & 16029 of 2021

M/s.Vyasa Plot & Housing Private Limited,
Rep. by its Director,
Mr.R.P.Darrmalingam @ A.R.Dharmalingam,
No.1379, Golden Villa, I Block,
6th Street, 18th Main Road,
Vallalar Kudiyeruppu, Anna Nagar West,
Chennai - 600 040.
PAN No.AACCV6776H ... Petitioner in W.P.No.16022/21

M/s.SSD Homes & Estate
Developers Private Limited,
Rep. by its Director,
Mrs.D.Sangupathi,
No.1379, Golden Villa, I Block,
6th Street, 18th Main Road,
Vallalar Kudiyeruppu, Anna Nagar West,
Chennai - 600 040.
PAN No.AALCS1774R ... Petitioner in W.P.No.16024/21

M/s.Sangupathi Properties Private Limited,
Rep. by its Director,
Mr.R.P.Darrmalingam @ A.R.Dharmalingam,
No.1379, Golden Villa, I Block,
6th Street, 18th Main Road,
Vallalar Kudiyeruppu, Anna Nagar West,
Chennai - 600 040.
PAN No.AALCS4094A ... Petitioner in W.P.No.16026/21

M/s.Anu Plot & Housing Private Limited,
Rep. by its Director,
Mr.R.P.Darrmalingam @ A.R.Dharmalingam,
No.1379, Golden Villa, I Block,
6th Street, 18th Main Road,
Vallalar Kudiyeruppu, Anna Nagar West, Chennai - 600 040.
PAN No.AALCS4094A ... Petitioner in W.P.No.16029/21

Vs.

1.The Deputy /
Assistant Commissioner of Income Tax,
Central Circle – 2(2),
Investigation Wing,
Room No.109, 1st Floor,
New No.46, M.G.Road,
Chennai – 600 034.

2.The Additional Commissioner of Income Tax,
Central Circle – 2,
Investigation Wing, Room No.108,
1st Floor, New No.46, M.G.Road,
Chennai – 600 034. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first respondent to pass an order under Section 154 of the Income Tax Act, 1961, deleting the protective addition for the Assessment Year 2014-2015 of the respective petitioner and consequently, to direct the respondents either to adjust the amount of Rs.1,09,12,172/-, Rs.1,25,90,664/-, Rs.1,16,99,777/- and Rs.1,20,08,628/- respectively along with interest for the Assessment Year 2011-12 payable by the respective petitioner or to refund the same to the respective petitioner bearing PAN No.AACCV6776H, PAN No.AALCS1774R, PAN No.AALCS4094A and PAN No.AAGCA9006R respectively.

For Petitioners in all W.Ps. : Mrs.Pushya Sitaraman, Senior Counsel for Mr.M.Vivekanandan

For Respondents in all W.Ps. : Mr.A.P.Srinivas Senior Standing Counsel

COMMON ORDER

By this common order, all these four Writ Petitions are being disposed.

2. These Writ Petitions have been filed by the respective petitioners for the following relief:-

W.P.No.	Prayer
16022/2021	For issuance of a Writ of Mandamus, to direct the first respondent to pass an order under Section 154 of the Income Tax Act, 1961, deleting the protective addition for the Assessment Year 2014-2015 of the petitioner and consequently direct the respondents either to adjust the amount of Rs.1,09,12,172/- along with interest for the Assessment Year 2011-2012 payable by the petitioner or refund the same to the petitioner bearing PAN No.AACCV6776H within a time period.
16024/2021	For issuance of a Writ of Mandamus, to direct the first respondent to pass an order under Section 154 of the Income Tax Act, 1961, deleting the protective addition for the Assessment Year 2014-2015 of the petitioner and consequently direct the respondents either to adjust the amount of Rs.1,25,90,664/- along with interest for the Assessment Year 2011-2012 payable by the petitioner or refund the same to the petitioner bearing PAN No.AALCS1774R within a time period.
16026/2021	For issuance of a Writ of Mandamus, to direct the first respondent to pass an order under Section 154 of the Income Tax Act, 1961, deleting the protective addition for the Assessment Year 2014-2015 of the petitioner and consequently direct the respondents either to adjust the amount of Rs.1,16,99,777/- along with interest for the Assessment Year 2011-2012 payable by the petitioner or refund the same to the petitioner bearing PAN No.AALCS4094A within a time period.
16029/2021	For issuance of a Writ of Mandamus, to direct the first respondent to pass an order under Section 154 of the Income Tax Act, 1961, deleting the protective addition

W.P.No.	Prayer
	for the Assessment Year 2014-2015 of the petitioner and consequently direct the respondents either to adjust the amount of Rs.1,20,08,628/- along with interest for the Assessment Year 2011-2012 payable by the petitioner or refund the same to the petitioner bearing PAN No.AAGCA9006R within a time period.

3. The respective petitioners had received amounts during the financial year 2010-2011 as advance. The amounts received as advance were not offered to tax by the respective petitioners. These petitioners were therefore taxed for the assessment year 2011-12. Therefore, appeals came to be filed by the respective petitioners which culminated in order of Appellate Commissioner for the Assessment Year 2011-2012.

4. Meanwhile, the respective petitioners themselves treated the amounts as income during the financial year 2013-2014 for the Assessment Year 2014-2015 and offered the amounts for tax in their returns filed under Section 139 of the Income Tax Act, 1961. Based on the aforesaid returns filed by the respective petitioners, the Assessments were completed for the Assessment Year 2014-2015 on a protective basis and the net amount of tax was demanded along with interest under Sections 234A, 234B & 234C of the Income Tax Act, 1961 from the respective petitioners.

5. Meanwhile, the appeals preferred before the Commissioner of Income Tax (Appeals) by the respective petitioners for the Assessment Year 2011-2012 came to be allowed by separate orders dated 20.03.2018. The second respondent has also passed consequential orders to give effect to the orders of the Commissioner of Income Tax (Appeals) dated 20.03.2018.

6. Aggrieved by the order of the Commissioner of Income Tax (Appeals) dated 20.03.2018, the respondents preferred appeals before the Income Tax Appellate Tribunal. These appeals were also dismissed by the Income Tax Appellate Tribunal vide separate orders dated 03.12.2018. Aggrieved by the said orders dated 03.12.2018, the respondents have filed appeals before this Court in Tax Case Appeals.

7. Details of the Assessment Orders, orders of Commissioner of Income Tax (Appeals), the orders of Income Tax Appellate Tribunal and the orders of this Court are as under:-

W.P.No.16022 of 2021			
	Dated	No.	Assessment Year
Assessment order	31.03.2016	PAN No.AACCV6776H	2011-2012
	31.03.2016	PAN No.AACCV6776H	2014-2015
Order of CIT (Appeals)	23.02.2018	I.T.A.No.223/16-17	2011-2012
Order of ITAT	03.12.2018	ITA.No.1608/Chny/2018	2011-2012
	08.03.2019	ITA.No.1644/Chny/2018	2014-2015
Order of this Court	25.01.2021	T.C.A.No.514 of 2019	2011-2012
	23.03.2021	T.C.A.No.47 of 2020	2014-2015
W.P.No.16024 of 2021			
Assessment order	31.03.2016	PAN.No.AALCS1774R	2011-2012
	31.03.2016	PAN.No.AALCS1774R	2014-2015
Order of CIT (Appeals)	23.02.2018	I.T.A.No.229/16-17	2011-2012
Order of ITAT	03.12.2018	ITA.No.1611/Chny/2018	2011-2012
Order of this Court	25.01.2021	T.C.A.No.507 of 2019	2011-2012

W.P.No.160246 of 2021			
Assessment order	31.03.2016	PAN No.AALCS4094A	2011-2012
	31.03.2016	PAN No.AALCS4094A	2014-2015
Order of CIT (Appeals)	23.02.2018	I.T.A.No.221/16-17	2011-2012
Order of ITAT	03.12.2018	ITA.No.1610/Chny/2018	2011-2012
	08.03.2019	ITA.No.1650/Chny/2018	2014-2015
Order of this Court	25.01.2021	T.C.A.No.512 of 2019	2011-2012
	29.03.2021	T.C.A.No.49 of 2020	2014-2015
W.P.No.16029 of 2021			
Assessment order	31.03.2016	PAN No.AAGCA9006R	2011-2012
	31.03.2016	PAN No.AAGCA9006R	2014-2015
Order of CIT (Appeals)	23.02.2018	I.T.A.No.231/16-17	2011-2012
Order of ITAT	03.12.2018	ITA.No.1610/Chny/2018	2011-2012
	08.03.2019	ITA.No.1651/Chny/2018	2014-2015
Order of this Court	25.01.2021	T.C.A.No.513 of 2019	2011-2012
	23.03.2021	T.C.A.No.45 of 2020	2014-2015

8. The respective petitioners opted to settle the case under Vivad Se Vishwas Scheme, 2020 and filed Form No.1 and Form No.2. The case having being settled under the said Vivad Se Vishwas Scheme, 2020 for the Assessment Year 2011-2012, the respective petitioners sent a representations dated 02.12.2020 to revise the protective assessment made for the Assessment Year 2011-2012 and consequently either to adjust the amount payable for the tax liability for the Assessment Year or to refund the same to the respective petitioners.

9. Meanwhile, the appeals filed by the respondents were dismissed on 25.01.2021 in the light of the cases having being settled under the Vivad Se Vishwas Scheme, 2020 and Form 3 issued by the Income Tax Department under Vivad Se Vishwas Act, 2020.

10. It is the case of the petitioner that the respondents are duty bound to pass appropriate orders by deleting the protective addition made in the Assessment Year 2014-2015 and consequently either to adjust the amount of Rs.1,09,12,172/-, Rs.1,25,90,664/- , Rs.1,16,99,777/- and Rs.1,20,08,628/- respectively along with interest for the Assessment Year 2011-2012 payable by the respective petitioners or refund the same to the respective petitioners.

11.Opposing the prayer for the order under Section 154 of the Income Tax Act, 1961, the learned Senior Standing Counsel for the respondents submits that once the assessment has been completed based on the returns filed under Section 139 of the Income Tax Act, 1961, the returns cannot be revised in terms of the decision of the Hon'ble Supreme Court in Goetze (India) Limited Vs. Commissioner of Income Tax, (2006) 284 ITR 323 (SC). It is submitted that the petitioners had voluntarily offered to pay the tax for the Assessment Year 2014-2015 and merely because the petitioners had to settle the case under the Vivad Se Vishwas Scheme, 2020 for the previous year ipso facto would not justify either for passing of the order under 154 of the Income Tax Act, 1961 or for consequently refunding the same to the respective petitioners.

12. Heard the learned Senior Counsel for the petitioners and the learned Senior Standing Counsel for the respondents.

13. Question that arises for consideration in these Writ Petitions is whether the petitioners are entitled for an order under Section 154 of the Income Tax Act, 1961 in the light of the case of the petitioner having being settled under Vivad Se Vishwas Scheme, 2020 and opted under the Vivad Se Vishwas Act, 2020 for the Assessment Year 2011-2012 and to consequently refund the tax paid by the respective petitioners alone with interest under Section 244A of the Income Tax Act, 1961?

14. Recently, under similar circumstances, W.P.Nos.15762 & 15763 of 2021 were allowed by an order dated 29.11.2021. The operative portion of the said order reads as under:-

23.Heard the learned Senior Counsel appearing for the petitioner and the learned Senior Standing Counsel appearing on behalf of the respondents. Perused the orders passed under Section 154 of the Income Tax Act on 08.03.2021 for the assessment year 2014-15 and the settlement of case under the Vivad se Vishwas scheme under VSV Act, 2020 for the Assessment Year 2011-12.

24.There is no dispute that the petitioner has paid the tax for the relevant assessment year viz., 2011-12 and therefore, the protective assessment for the year 2014-15 results in excess payment of tax. The petitioner cannot be taxed twice on the same income. Ultimately, the purpose of exercising power under the Act is only intended to collect correct and just tax under the provisions of the Income Tax Act, 1961 from an assessee. The Act is not intended either to collect or retain any amount which is not due from an assessee.

25.In this connection, a reference may be made to the decision of the Hon'ble Supreme Court in Unichem Laboratories Ltd vs. Collector of Central Excise, Bombay reported in (2002) 7 SCC 145 wherein the Hon'ble Supreme Court held that it is no part of duty of the department to levy and collect tax which is not due to the department. Relevant passage from the said decision reads as follows:

> “12. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law-no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.”

26.The above passage squarely applies to the facts of the present case as the department has also not disputed the fact that the petitioner has settled the dispute under the Vivad se Vishwas scheme for the assessment year 2011-12 as a consequence of which the tax offered and paid by the petitioner during the assessment year 2014-15 had become excess.

27.That apart, under Section 237 under Chapter XIX of the Income Tax Act, there is no limitation prescribed for granting refund of the amount paid in excess as tax. Therefore, I do not find any merits in the submissions made by the learned Senior Standing Counsel appearing on behalf of the respondents. Therefore, these Writ Petitions deserves to be allowed.

28.These Writ Petitions are thus allowed. No costs. The respondents are directed to ascertain the correct amount and refund the amount paid in excess for the Assessment Year 2014-15 by the respective petitioner together with interest preferably within a period of 45 days from the date of receipt of a copy of this order.

15.The above case is squarely applicable to the facts of the present Writ Petitions. Therefore, these Writ Petitions are allowed with consequential relief to the petitioners in terms of the above order. No cost.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jen
To

1.The Deputy / Assistant Commissioner of Income Tax,
Central Circle – 2(2), Investigation Wing,
Room No.109, 1st Floor, New No.46,
M.G.Road,
Chennai – 600 034.

2.The Additional Commissioner of Income Tax,
Central Circle - 2, Investigation Wing,
Room No.108, 1st Floor, New No.46,
M.G.Road, Chennai - 600 034.

+4cc to Mr.A.P.Srinivas, Advocate Sr.25793
+1cc to Mr.M.Vivekanandan, Advocate Sr.26022

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& 16029 of 2021

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srg 04/05/2022