IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.1909 of 2022
and
W.M.P.No.2061 of 2022

Harbinder Singh ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax-4,
Nungambakkam,
Chennai - 600 034.

2.The Deputy Commissioner of Income Tax,
LTU-1,
Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the first respondent to dispose the petition filed by the petitioner to rectify Form-3 issued under the Vivad Se Vishwas Scheme, 2020 for AY 2008-09 by considering the tax payment challans to the tune of Rs.51,69,000/- and consequently issue Form-5 under the said Scheme.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel.

ORDER

The case was heard at length.

2. The petitioner was in arrears of tax for the Assessment Years 2005-2006, 2006-2007, 2007-2008 and 2008-2009. After the Vivad Se Vishwas Scheme, 2020 was announced under the Finance Act, 2020, the petitioner decided to settle the dispute under the aforesaid Scheme for the Assessment Years i.e., 2005-2006, 2006-2007 and 2007-2008. Form-5 has been also issued to the petitioner for these Assessment Years.

3.The dispute pertains to the assessment year 2008-09. The petitioner opted to settle the dispute under the Vivad Se Vishwas Scheme, 2020 under The Direct Tax Vivad Se Vishwas Act, 2020.

4.The petitioner had filed Form-1 and Form-2 declaration on 29.12.2020. The 1st respondent herein has issued Form-3 on 26.12.2021, wherein the petitioner was directed to pay Rs.66,26,115/- on or before 31.03.2021 or Rs.72,88,726/- on or after 31.03.2021.

5.The period for payment of the aforesaid amount stood extended till 31.10.2021 in view of the outbreak of Covid-19 (Corona Pandemic). The petitioner appears to have already paid a sum of Rs.51,69,000/- in two installments as detailed below for the Assessment Year 2008-2009:-

S.No.	BSR Code	Date of payment	Serial Number of Challan	Amount
1.	6360085	16/12/2013	19	40,69,000
2.	0000000	26/03/2013	00000	11,00,000
	Total payments against tax arrears			51,69,000

6.In response, the petitioner filed Form-4 for the assessment year 2008-09 on 28.10.2021. The petitioner has paid the following amounts as detailed below:

Sl.No.	Date	Challan No	Amount
1.	27.10.2021	1442	Rs.13,21,486.00
2.	27.10.2021	2312	Rs.6,56,390.00
3.	28.10.2021	3280	Rs.1,47,850.00
Total			Rs.21,25,726.00

7.Thus, as against a amount of Rs.66,26,115/- payable on or before

31.03.2021 or Rs.72,88,726/- on or after 31.03.2021, the petitioner has ended up paying a sum of Rs.72,94,726/- (Rs.21,25,726.00 + Rs.51,69,000/-) as against the aforesaid amount of Rs.66,26,115/-.

8.Thus, the petitioner paid a sum of Rs.21,25,726/- and asked the Department to adjust the refund of Rs.51,69,000/- towards the tax due towards the balance payable under the Vivad Se Vishwas Scheme, 2020 for the Assessment Year 2008-2009. The petitioner has also sent representations dated 05.04.2021 asking for adjustment of Rs.51,69,000/- followed by a further representations dated 05.04.2021, 01.10.2021 & 08.10.2021.

9.However, it appears that the Department had adjusted the aforesaid amount of Rs.51,69,000/- towards the tax amount due for the Assessment year 2007-2008. This was without proper intimation to the petitioner.

10.Thus, after adjusting the amount of Rs.59,16,315/- for the Assessment Year 2007-2008, the respondent in their Form-5 dated 19.04.2021 have stated that an amount of Rs.47,64,095/- was paid in excess by the petitioner for the Assessment Year 2007-2008. It is the case of the petitioner that for the aforesaid amount of Rs.47,64,095/- was to be adjusted by the respondent against the tax due of the petitioner for the Assessment Year 2008-2009.

11.However, for the two Assessment Years namely 2010-2011 and 2012-2013, the respondents have passed two separate orders under Section 154 of the Act, whereby, out of Rs.47,64,095/-, a sum of Rs.39,46,821/- was ordered to be refunded by the respondents which is yet to be refunded back as detailed below:

Thereafter the order under Section 154 was issued for the Assessment Year 2010-2011 and 2012-2013 vide letter dated 25.04.2023 and 24.05.2023 and refund ordered	Rs.29,39,382/- A.Y.2010-11 Rs.10,07,439/- A.Y.2012-13
	Rs.39,46,821/- (refund due not received by the petitioner as on date).

12.In the result, thus if the aforesaid amount of Rs.39,46,821/- is adjusted against the balance due of Rs.51,69,000/- for the Assessment Year 2008-2009, the petitioner will be required to pay only a sum of Rs.12,22,179/- (51,69,000 - 39,46,821). However, it is informed that the aforesaid amount of Rs.29,39,382/- for the Assessment Year 2010-2011 and Rs.10,07,439/- for Assessment Year 2012-2013 is proposed to be credited into the petitioner's account.

13.Considering the above, the following orders are passed:

(i) The petitioner shall pay a sum of Rs.51,69,000/- within a period of six weeks from the date of receipt of a copy of this order.

(ii) The respondents shall proceed independently to credit the refund amount of Rs.39,46,821/- as mentioned above into the petitioner's account as the refund due is ordered vide letter dated 25.04.2023 and 24.05.2023 for the Assessment years 2010-2011 and 2012-2013 as expeditiously as possible within a period of six weeks from the date of receipt of a copy of this order.

(iii) The respondents shall also issue rectified Form-3 and Form-5 to the petitioner for the Assessment Year 2008-2009.

(iv) The entire exercise shall be carried out by the respondents and the petitioner within a period of nine weeks from the date of receipt of a copy of this order.

14.This writ petition is disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

21.07.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
jas / krk

C.SARAVANAN, J.

jas / krk

To

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