IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.19910 of 2023
and
W.M.P.No.19258 of 2023

Ramesh Pejathaya ... Petitioner

Vs.

1. Central Board of Direct Taxes
Department of Revenue,
Ministry of Finance,
245A, North Block,
New Delhi – 110 011.

2. Chief Commissioner of Income Tax – 1,
121 Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3. Principal Commissioner of Income Tax – 1,
Room No:401, Wanaparthy Block, 4th Floor,
121 Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

4. TRO, PCIT-1,
Office of the Tax Recovery Officer,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to refund the excess amount of Rs.9,32,536/- paid by the petitioner for the Assessment Year 2013-2014 and pay compensation for the inordinate delay in granting the refund of the excess amount paid.

For Petitioner : Mr.G.Vardini Karthik

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel and
Mr.Prabhu Mukunth Arun Kumar
Junior Standing Counsel

ORDER

The writ petition has been filed for the following relief:-

The case of the petitioner is that the petitioner had opted for a Vivad se Vishwas Act, 2020 (VSVS Act) and had filed Form 1 and 2 on 22.01.2021. The scheme was came to an end on 30.09.2021. Meanwhile, the respondent proceeded to attach the petitioner's account for recovery of sum of Rs.93,25,366/-. It is a case of the petitioner that petitioner has been mulct with a further amount of Rs.10,04,104/- towards late payment of the amount that was determined by the designated Authority under VSVS Act, 2021.

2. The petitioner had earlier suffered an Assessment Order dated

30.12.2019 under Section 143(3) of the Income Tax Act read with Section 147 of the Income Tax Act for the Assessment Year 2012-2013. Therefore, the petitioner preferred an appeal before the CIT (Appeals) on 31.01.2020 against the Assessment Order dated 30.12.2019.

3. The petitioner opted to settle the dispute under the Vivad Se Vishwas Scheme announced under the Finance Act, 2020. The petitioner filed Form 1 before the Designated Authority under the aforesaid scheme on 22.01.2021. By a communication dated 05.02.2021 in Form 3, the respondent confirmed that the petitioner was required to pay a sum of **Rs.1,00,41,044/-.**

4. The petitioner was required to pay the aforesaid amount by 30.09.2021. However, the petitioner's bank account with Karnataka Bank Limited, KSN Adiga Smaraka Bhavana, Kadri Road, Mangalore, Karnataka bearing Account No.506250010045430 was attached by the Income Tax Authorities on 02.08.2021 and therefore, the petitioner was unable to pay the aforesaid sum.

5. The Income Tax Department however have appropriated only an

amount of **Rs.93,25,336/-** out of **Rs.97,48,586/-** [Rs.52,43,887/- + Rs.45,04,699/-] by encashing cheque Nos.244429 and 244428 on 29.09.2021 towards Rs.1,00,41,044/- that was to be paid by the petitioner under the scheme.

6. The balance of Rs.7,15,678/- thus remained unpaid. The petitioner could not pay the balance amount of Rs.7,15,678/- as the petitioner's bank account had already been attached by the Income Tax Department on 02.08.2021.

7. Since the balance amount was not appropriated from the petitioner's bank account by the due date on 30.09.2021, the Income Tax Department has collected a sum of Rs.17,19,782/- from the petitioner account on 30.10.2021 by encashing Cheque No.244433.

8. The petitioner seeks for refund of the excess amount. According to the petitioner, there was no delay on the part of the petitioner as the account had been attached by the respondent / Income Tax Department. Therefore, the petitioner prays for a direction to refund the excess amount

of Rs.9,32,536/- on the balance amount of Rs.7,15,678/-.

9. On the other hand, the learned Senior Standing Counsel and the Junior Standing Counsel for the respondents would submit that although the petitioner's account was attached on 02.08.2021, there were several withdrawals in between the date on which the attachment was effected on 02.08.2021 and the date when the attachment order was lifted on 29.10.2021 and therefore would submit that the matter requires a detailed consideration regarding attachment of bank account and its implementation.

10. It is however submitted that the petitioner's representation dated 22.06.2023 will be considered and disposed on merits and in accordance with law.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel and the Junior Standing Counsel for the respondents.

12. The petitioner is a 82 year old senior citizen who has suffered

by an adverse Assessment Order dated 30.12.2019. The petitioner had opted to settle the dispute after the Vivad Se Vishwas Scheme announced under the Finance Act, 2020.

13. The application filed by the petitioner in Form 1 on 22.01.2021 was accepted on 05.02.2021. The petitioner was required to pay a sum of Rs.1,00,41,044/-. However, only a part of the amount for a sum of Rs.93,25,366/- was also appropriated out of **Rs.97,48,586/-** encashed on 29.09.2021.

14. The Income Tax Department later appropriated a sum of Rs.17,19,782/- by encashing cheque No.244433 on 30.10.2021. There is no justification in saddling the petitioner with the excess liability, as admittedly there was sufficient amount in the account of the petitioner on 29.09.2021. It was open for the Income Tax Department to have also appropriated the balance amount of Rs.7,15,678/- after appropriating a sum of Rs.93,25,366/- from the petitioner's account on 29.09.2021.

15. Considering the above, the excess amount recovered from the

petitioner's account on 30.10.2021 shall be refunded back to the petitioner after adjusting a sum of Rs.71,568/- as 10% towards interest for the delay in appropriation of the balance amount of Rs.7,15,678/-.

16.In the result, the Writ Petition stands allowed by directing the respondents to refund a sum of Rs.9,32,536/- [Rs.17,19,782/- - (Rs.7,15,678/- + Rs.71,568/-)], as expeditiously as possible preferably within a period of six (6) weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

08.08.2023

Neutral Citation: Yes/No
Speaking/Non-Speaking Order
rgm / krk

To

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Department of Revenue,
Ministry of Finance,
245A, North Block,
New Delhi – 110 011.

C.SARAVANAN, J.

rgm / krk

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