IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.12.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.25398 and 25401 of 2021
and
W.M.P.Nos.26822 of 2021, 10695, 17265 of 2022 and 28429 of 2023
W.P.No.11102 of 2022

Mr.Govindarajan Jayakumar ...Petitioner in all W.Ps.
S/o. Govindarajan

Vs.

1. The Additional /Joint/Deputy Assistant Commissioner, of Income Tax/Income Tax Officer, National Faceless-Assessment Centre, Delhi.

2. The Income Tax Officer, Non Corporate Ward- 1(2) No.121, Mahatma Gandhi Road, Nungambakkam, Chennai – 34.

...Respondents 1 and 2 in all W.Ps.

3. Commissioner of Income Tax-1, Chennai, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai – 34.

...R-3 in W.P.Nos.25398 and 25401/2021

Prayer in W.P.No.25398/2021:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the second respondent and to quash the impugned order in ITBA/AST/S/147/2021-22/1035820934 (1) dated 23.09.2021 passed by the first respondent as illegal.

Prayer in W.P.No.25401/2021:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the third respondent to issue Form 4 as per the Income Declaration Scheme 2016.

Prayer in W.P.No.11102/2022:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the second respondent and to quash the impugned order in ITBA/PNL/F/271AAC(1)/2021-22/10412988616(1) dated 23.03.2022 for the assessment year 2017-18 passed by the first respondent as illegal.

For Petitioners : Mr.R.Sivaraman

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

COMMON ORDER

The petitioner has filed three Writ Petitions, and in W.P.Nos.25398 of 2021 and 11102 of 2022, he has challenged the order passed by the first respondent dated 23.09.2021 and 23.03.2022 respectively and in W.P.No.25401 of 2021, the petitioner has sought for a direction on the third respondent to issue Form 4 as per the Income Declaration Scheme, 2016.

2. Since the issue involved in all these Writ Petitions is one and the same and interconnected, they same were taken up together and disposed of vide this Common Order.

3. The case of the petitioner is that he has availed the amnesty Scheme called as "Income Declaration Scheme 2016" on 30.09.2016 and filed Form No.1, whereby, he declared the undisclosed income. After scrutiny of the same, the respondent-Department issued Form No.2, quantifying the tax/surcharge/penalty on 13.10.2016. Thereafter, on deposit of entire amount of tax, surcharge and penalty, the petitioner filed Form

No.3 on 05.03.2019. The petitioner would submit that the tax amount was quantified for a sum of Rs.10,50,000/- but as far as surcharge and penalty are concerned, the same were quantified at Rs.2,62,500/- respectively. Therefore, the total amount payable by the petitioner is Rs.15,75,000/- and when the respondent issued Form No.2, they have indicated the last date for payment of the amount quantified, which the petitioner is liable to pay on or before 30.09.2017.

4. Mr.R.Sivaraman, the learned counsel for the petitioner would submit that the petitioner has remitted the entire amount, as per the due date provided by the respondent and with regard to the third final payment, the petitioner has stated that he has paid upto Rs.7,87,500/- and on 02.03.2019, the respondent extended time limit for payment of tax upto 31.01.2020. After the payment of the entire amount, Form No.3 was filed, and once Form No.3 is filed, it is the duty of the respondent to issue Form No.4 with regard to the discharge of entire liability of tax, penalty and surcharge. In these circumstances, the respondent came out with a Notification, dated 13.12.2019, for the payment of interest at 1% and citing the said notification, since the petitioner has not paid the interest, the respondent has not issued Form No.4. Hence, the present Writ Petitions.

5. Mr.B.Ramana Kumar, learned Senior Standing Counsel for the respondents fairly submitted that the present notification for payment of interest fromthe original due date till the payment of entire amount as quantified by the Department in Form No.2 shall be payable retrospectively

6. In reply, the learned counsel for the petitioner would submit that since the petitioner has paid the entire undisclosed income by availing the said Scheme and also filed Form No.3, he had no occasion to comply with this notification, however, he would submit that he would pay the said amount subsequently.

7. I have heard the learned counsel for the petitioner and the respondents.

8. The issue to be decided in this case is as to whether the petitioner is liable to pay interest in terms of Notification issued by the Ministry of Finance, Department of Revenue, dated 13.12.2019.

9. The petitioner availed the amnesty Scheme called as "Income Declaration Scheme 2016" on 30.09.2016 and filed Form No.1, whereby, he declared the undisclosed income, pursuant to which, the respondent-Department issued Form No.2, quantifying the tax/surcharge/penalty along with interest on 13.10.2016. After payment of entire amount, viz., the amount of tax, surcharge and penalty, the petitioner filed Form No.3 on 05.03.2019. When Form No.2 was issued, the respondent fixed the time limit for payment of tax at 25% on or before 30.11.2016; and thereafter, 25% on or before 31.03.2017 and the balance 50% on or before 30.09.2017, and since the petitioner has expressed his inability to pay the interest, the respondent extended time upto 31.01.2020, without payment of any interest.

10. In the present case, the petitioner utilized such option and paid 50% of tax amount on 02.03.2019 and 50% was paid by virtue of two installments within the original due date prescribed by the respondent and the petitioner, after payment of entire amount, he has also filed Form No.3, in which case, the respondent ought to have issued Form No.4 with regard to discharge of entire tax liability, however, the respondent has not issued Form No.4 in spite of clearance of entire tax liability, in the meantime, since the Department of Revenue came out with a Notification dated 13.12.2019, thereby, imposing 1% interest from the due date till the date of payment and the respondent, by citing the said notification, has came to the conclusion that the petitioner has not remitted the entire amount, and therefore, issued a show cause notice and passed assessment orders 23.09.2021 and consequential order on 23.03.2022. Therefore, Writ Petition No.25398 of 2021 and W.P.No.11102 of 2022 are filed challenging the same and seeking direction for issuance of Form No.4, W.P.No.25401 of 2021 is filed.

10.1. There is no doubt on the fact with regard to the payment of entire amount made by the petitioner within the time limit prescribed by the respondent, as mentioned in Form No.2 issued by the respondent. In the meantime, a Notification was issued by the Ministry of Finance, Department of Revenue dated 13.12.2019, wherein, it is stated that payment of tax and surcharge payable under Section 184 and penalty payable under Section 185 of the Act, in respect of the undisclosed income shall be paid along with interest at 1% for every month or part of a month comprised in the period commencing on the date immediately following the said due date as notified and ending on the date of such payment.

10.2 After the said notification, the provisions of Section 187 of the Finance Act 2016 was amended, whereby, in respect of payment of tax/surcharge/penalty amount from the date of due till the date of payment no interest shall be chargeable and that there is no mention about the last date for making final payment.

10.3 Therefore, this Court taking into consideration of the submission made by the learned counsel for the petitioner, directs the petitioner to pay the interest payable by him from the due date till the date of payment as per the provisions of the notification dated 13.12.2019 within 30 days from the date of receipt of copy of this order, in which case, first respondent is directed to issue Form No.4 with regard to the discharge of entire tax liability of the petitioner. In such view of the matter, automatically, the assessment order passed by the first respondent dated 23.09.2021 and the notice dated 23.03.2022 are quashed.

11. Accordingly, Writ Petition No.25398 of 2021 and W.P.No.11102 of 2022 are allowed and W.P.No.25401 of 2021 is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.12.2023

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Index : yes/no
Neutral Citation : yes/no

To

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   of Income Tax/Income Tax Officer,
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   Delhi.

2. The Income Tax Officer,
   Non Corporate Ward- 1(2)
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   Chennai, No.121, Mahatma Gandhi Road,
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Krishnan Ramasamy,J.,

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andW.P.No.11102 of 2022

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