IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5134 OF 2022

Rajendra Lilachand Sanghavi **…Petitioner**
Versus
The Principal Commissioner of Income Tax-2,
Pune & Ors. **…Respondents**

Mr. Mihir Naniwadekar, with Mr. Rohan Deshpande, i/b. Ms. Farzeen Khambatta, for Petitioner.
Mr. Suresh Kumar, for Respondent-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 12th March, 2024

PC:-

1. Petitioner had filed return of income ("**ROI**") on 27th March 2018 for Assessment Year 2017-18 declaring an income of Rs.8,36,800/-. Petitioner had received notice dated 31st March 2021 under Section 148 of the Income Tax Act, 1961 ("**the Act**"). According to the reason for reopening the assessment, the total tax liability of Rs.26,05,390/- was payable on declared income of Rs.57,89,755/- in the Income Declaration Scheme, 2016 ("**IDS**"). Petitioner was called to discharge the total liability by 31st January 2020. Petitioner paid only Rs.2,40,000/- on 22nd March 2018 and, therefore, Petitioner was called upon to pay the balance amount of Rs.23,56,390/-.

2. It is Petitioner's case that if the advance tax and self assessment tax that Petitioner had paid for AY 2012-13, 2013-14 and 2014-15

together with the payments made for AY 2017-18 under the IDS are considered, Petitioner would have paid a total amount of Rs.26,74,784/- which was in excess of the liability determined under the IDS. Petitioner was informed that advance tax and self assessment tax paid by Petitioner could not be adjusted against the liability under the IDS. Therefore, this Petition was filed.

3. An affidavit in reply of one Aparna M Aggarwal, Principal Commissioner of Income Tax-2, Pune, affirmed on 5th May 2022 is filed. In the said affidavit, Respondents have agreed to give credit to a sum of Rs.4,50,000/- that Petitioner had paid as advance tax. With regard to self assessment tax of Rs.15,78,210/- paid for AY 2013-14, it is stated that the legal opinion of the standing counsel has been sought in view of the decision of the Apex Court in ***Kumudam Publications (P) Ltd. v. Central Board of Direct Taxation***[1] and since it was a policy matter and opinion is yet to be received, input from the CBDT is also being sought. One thing is clear that Respondents are not averse to giving credit for the self assessment tax, but they wanted somebody to tell them to go ahead and give credit. In our view, credit for the self assessment tax of Rs.15,78,210/- paid for AY 2013-14 has to be given. Mr. Suresh Kumar states, his information is that the Board has expressed an opinion that credit for self assessment tax paid cannot be given. In our view, any amount paid by

1 (2017) 393 ITR 599.

Petitioner for those relevant Assessment Years, credit has to be given and we find support for this view in judgments of this Court in ***Kamla Chandra Singh Kabali v. Prinicpal Commissioner of Income Tax-27 & Ors.,***[2] and ***CEAT Limited v. Commissioner of Income Tax***.[3]

4. Therefore, the assessment order dated 31st March 2022 has to be quashed and set aside. Ordered accordingly. Consequently, demand notice dated 31st March 2022 and penalty notice also dated 31st March 2022 are also quashed and set aside.

5. Respondents shall issue Form 4 under the IDS within four weeks from today after giving credit to all amounts paid including the advance tax and self assessment tax.

6. Petition disposed.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**

2 2022 (137) taxmann.com 346 (Bombay).
3 2024 SCC OnLine Bom. 557