IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2023

PRONOUNCED ON : .01.2024

CORAM

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

W.P.Nos.10735 & 10741 of 2022
and
WMP.Nos.10383, 10384 & 10388 of 2022

RJPN Developers,
Rep.by its partner/Authorised Signatory
R.Yuvarajann ... Petitioner in both W.Ps.

vs.

The Principal Commissioner of Income Tax -1,
121, Uttamar Gandhi Road,
Nungambakkam,
Chennai 600 034. ... Respondent in both W.Ps.

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to C.No.IDS/AALFR1836J/2019-20 dated 25.04.2019 and quash the order passed under Section 183 of the Finance Act, 2016 relating to Assessment Year 2017-18 and consequently direct the respondent to give credit to the prepaid taxes remitted by the petitioner.

In both W.Ps.

For Petitioner : Mr.V.S.Jayakumar
Senior Counsel
for M/s.G.Vardini karthik

For Respondent : Mr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

1. By this common order both these writ petitions are being disposed.

2. Both these Writ Petitions have been filed by the same person. Relief sought for in these writ petitions, read as under:-

W.P.No.10735 of 2022	**W.P.No.10741 of 2022**
For the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of respondent in C.No.IDS/ AALFR1836J/ 2019-20/ Dated : 25.04.2019 and quash the order passed under Section 183 of the Finance Act, 2016 relating to Assessment Year 2017-18 and consequently direct the respondent to give credit to the prepaid taxes remitted by the petitioner by issuing Form-4 under the IDS Scheme 2016, and pass appropriate orders in accordance with law.	For the issuance of a writ of Mandamus directing the respondent to consider the rectification petition dated 09.03.2022 filed by the petitioner under Section 154 of the Income Tax Act, 1961 in its proper perspective and pass appropriate order in accordance with law.

3. By the impugned order, dated 25.04.2019 bearing Reference C.No.IDS/AALFR1836J/2019-20 the impugned in W.P.No.10735 of 2022, the declaration filed by the petitioner under the provisions of Income Declaration Scheme, 2016 under Finance Act, 2016 has been rejected. Relevant portion of the impugned order reads as under:-

> 3. The request of the assessee for adjustment of the tax of 1.25 crores towards IDS 2016 was forwarded to the Additional Director General (Systems-2), New Delhi, as the correction of challans has to be done by them. In this regard, a communication has been received from them stating that ‘ as per the IDS Scheme tax paid in the form of Advance tax, Self Assessment tax prior to IDS Scheme (i.e. 1st June 2016) are not allowed to claim under IDS except the TDS payments. In view of the above, the tax payment of 1.25 crores made by the assessee prior to the IDS scheme (i.e. 1st June 2016) cannot be allowed to claim under the IDS Scheme.
>
> 4. Attention is drawn to the provision of IDS 2016 which states that “ Declaration shall be void and shall be deemed never to have been made if the declarant falls to pay the entire amount of tax, surcharge and penalty within the specified dates. “where the declaration is to be held void for the above reason, it shall be deemed never to have been made and all the provisions of the Income Tax Act,

1961 including penalties and Prosecution, shall apply accordingly".

5. As the assessee had failed to pay the amount of Rs.1,24,78,951/- (2,51,40,871 – 90,61,920/-) before the stipulated date indicated in the table supra, the declaration of the assessee is deemed never to have been made and accordingly, all the provisions of the Income Tax Act, including penalties and prosecution, shall apply.

6. As per 197(b) of Finance Act, 2016, where any declaration has been made under Section 183 but no tax, surcharge and penalty referred to in Section 184 and 186 has been paid within the time specified under Section 187, the undisclosed income shall be chargeable to tax under the Income-tax Act. In the previous year, in which such declaration is made i.e. the undisclosed income has to be chargeable to tax in the previous year relevant to the Assessment Year 2017-18. Hence, the AO is directed to take appropriate action as per the extent provisions of the Income Tax Act, which shall apply in the case of the above mentioned assessee.

4. In W.P.No.10741 of 2022, the petitioner seeks for a Mandamus directing the respondent to consider the rectification petition dated 09.03.2022 filed by the petitioner under Section 154 of the Income Tax Act, 1961 in its proper perspective and pass appropriate order in accordance with law.

5. The petitioner had opted to settle the dispute under the Income Declaration Scheme, 2016 by filing Form Nos.1, 2 & 3 declaring the total taxable income not disclosed for the Assessment Years 2012-13 to 2015-16 as **Rs.4,78,68,595/-.**

6. On the aforesaid undisclosed income, the petitioner agreed to pay a sum of **Rs.2,15,40,870/-** (actually **Rs,2,10,35,871/-**) towards tax surcharge and penalty as detailed below under the Income Declaration Scheme, 2016 under Finance Act, 2016 : -

Table -2

S.No. (1)	***A.Y*** (2)	***Undisclosed Income as per Form No.1*** (3)	***Undisclosed Income eligible for the scheme*** (4)	***Tax*** (5)	***Surcharge*** (6)	***Penalty*** (7)
1	2012-13	31,38,44,100	3,13,84,100	94,15,230	23,53,808	23,53,808
2	2013-14	1,20,26,610	1,20,26,610	36,07,983	9,01,996	9,01,996
3	2014-15	18,70,635	18,70,635	56,191	1,40,298	1,40,298
4	2015-16	25,87,250	25,87,250	7,76,175	1,94,044	1,94,044
Total		4,78,68,595	4,78,68,595	**1,38,55,579**	35,90,146	35,90,146
Amount agreed to be paid				**Rs.2,10,35,871**		

Wrongly quantified as ***1,43,60,579**

7. The petitioner had earlier paid a sum of Rs.1,25,00,000/- during Assessment Year 2012-2013 on various dates as detailed below:-

Table -3

S.No.	**Nature of Payment**	**Date of Payment**	**BSR Code**	**Challan No.**	**Amount in (Rs.)**
1	Advance Tax for A.Y.2012-13	31.03.2012	6360218	80407	15,00,000
2	Self-Assessment Tax for A.Y.2012-13	05.09.2013	6360218	80471	1,00,00,000
3	Self-Assessment Tax for A.Y.2012-13	21.10.2013	6360218	80028	10,00,000
				Total	1,25,00,000

8. The above amount was paid apparently without filing a Return of Income under Section 139 of the Income Tax Act, 1961. The petitioner further TDS Certificate for a sum of Rs,17,791/- for the same Assessment year as under:-

Table- 4

S.No.	**Nature of Payment**	**Date of Payment**	**BSR Code**	**Challan No.**	**Amount in Rs.**
3	TDS by City Union Bank for A.Y.2012-13				16,791

9. The petitioner wanted to adjust a sum of Rs.1,25,16,791/- [Rs.1,25,00,000/- + Rs.16,791/-] towards the tax liability under the aforesaid Scheme which has been denied.

10. The learned Senior Counsel for the petitioner has placed reliance on the following cases:-

i. **Kumudam Publications Pvt.Ltd., vs. Central Board of Direct Taxes and Others**, (2017) 393 ITR 0599

ii. **Central Board of Direct Taxes & Others vs. Kumudam Publications Pvt.Ltd.,** (2020) 269 Taxman 0207 (SC)

iii. **Atluri Purnachandra Rao vs. Principal**

Commissioner of Income Tax, (2019) 419 ITR 0462

iv.**Kamla Chandrasingh Kabali vs. Principal Commissioner of Income Tax and Others,** (2022) 286 Taxman 0580

v.**Umesh D.Ganore & Another vs. Principal Commissioner of Income Tax & Another**, (2019) 413 ITR 0066

vi.**Palam Gas Service vs. Commissioner of Income Tax,** (2017) 394 ITR 0300

vii.**M.M.Aqua Technologies Ltd. vs. Commissioner of Income Tax**, (2021) 436 ITR 0582

viii.**M/s.Southern Explosives Company P.Ltd., vs. The Principal Commissioner of Income Tax and 3 Others**

11 The case of the petitioner before this Court is that the petitioner is entitled to adjust the aforesaid amount of Rs.1,25,00,000/- towards the amount to be paid under Income Deduction Scheme, 2016.

12. The learned Standing Counsel for the respondent would submit that Chapter IX of the Finance Act, 2016 containing the Income Declaration Scheme, 2016 (IDS, 2016) is a complete code in itself and all provisions of the

Income Tax Act, 1961 are not applicable to the IDS, 2016. Only such powers vested by the IDS, 2016 can be exercised by the respondent in respect of issues under the IDS, 2016 and just because a power is vested in an authority under the Income Tax Act, 1961 it does not mean that the same power is available to the authority when it discharges its functions under the IDS, 2016.

13. The learned Standing Counsel would submit that as per Section 195 of the Finance Act, 2016 containing the Income Declaration Scheme, 2016 (IDS, 2016) only provisions of Chapter XV of the Income Tax Act, 1961 relating to liability in special cases and of Section 119, Section 138 and Section 189 of the Income Tax Act, 1961, shall, so far as may be, apply in relation to proceedings under the IDS, 2016 as they apply in relation to proceedings under the Income Tax Act, 1961. Hence, avenue under Section 154 of the Income Tax Act, 1961 was not applicable to the IDS, 2016 and therefore there can be no direction to the respondent to pass orders under Section 154 of the Income Tax Act, 1961 in respect of a dispute under the IDS, 2016.

14. The learned Standing Counsel would further submit that as per

Section 154 of the Income Tax Act, 1961, an income tax authority can pass orders under that Section with a view to rectifying any mistake apparent from the record to:

(a) Amend any order passed by it under the provisions of the Income Tax Act, 1961

(b) Amend any intimation or deemed intimation under sub-Section (1) of Section 143 of the Income Tax Act, 1961

(c) Amend any intimation under Section 200A(1) of the Income Tax Act, 1961

(d) Any intimation under Section 206CB(1) of the Income Tax Act, 1961

15. The petitioner has not sought for amendment/rectification of any of the above types of orders. Therefore, the rectification petition seeking for a rectification of Form 4 under the IDS, 2016 cannot be directed to be disposed.

16. The case was argued at length and reserved for orders. Only question that arises for consideration is whether the amount of Rs.1.25,00,000/- which was paid by the petitioner towards Advance Tax during the Assessment Year 2012-13 and towards Self Assessment Tax as detailed in Table-3 can be

adjusted towards against the tax liability of the petitioner under Income Declaration Scheme, 2016. The respondent has rejected the request and adjusted only TDS amount of Rs.16,791/-.

17. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent. Income Declaration Scheme, 2016, is a beneficial piece of legislation intended to encourage defaulters to settle their income tax dispute by paying the tax due together with surcharge and penalty. Benefit of Income Declaration Scheme, 2016, is applicable to the following categories of declarants under Section 183 of the Income Declaration Scheme, 2016 reads as under:-

> a) for which he has failed to furnish a return under Section 139 of the Income Tax Act;
>
> b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;
>
> c) which has escaped assessment by reason of the omission or failure on the part of such

> person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise."

18. As per Section 183(4), no deduction of any expenditure or allowance shall be allowed against the income in respect of which declaration has been filed. Section 187 prescribes time for payment of tax. It reads as under :-

> 187(3) : If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183 on or before the date specified under sub-section 91), the declaration filed by him shall be deemed never to have been made under this Scheme.

19. The petitioner has satisfied the requirements of Section 183 of the Finance Act, 2016. Therefore, there is no doubt that the petitioner is entitled to settle the dispute under the aforesaid Income Deduction Scheme.

20. As per Section 193 of the Finance Act, 2016, a declaration made by misrepresentation or suppression of facts is void and shall be deemed never to have been made under the Income Declaration Scheme, 2016 under Finance Act, 2016. Section 193 of the Finance Act, 2016 containing the Income

Declaration Scheme, 2016 reads as under:-

> Section 193. Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Scheme.

21. If the amount paid by the petitioner during the assessment year 2012-2013 towards **"Advance** Tax" and **"Self Assessment** Tax" after due date for filing of the Return under Section 139 of Income Tax Act, 1961 was **Rs.1.25,00,00,000/-,** it remains to be unexplained as to how the tax liability of the petitioner for the said Assessment Year was reduced to **Rs.94,15,230/-** by the petitioner in the declaration filed under the Income Declaration Scheme, 2016 to **Rs.94,15,230/-** as detailed in **Table-1.**

22. But for the aforesaid issue regarding the tax liability of the petitioner for the Assessment Year 2012-13 in the Declaration filed by the petitioner under Income Declaration Scheme, 2016, I see no impediment in allowing the petitioner to adjust the amount paid as "Advance Tax" and "Self Assessment Tax" towards tax liability of the petitioner under Income

Declaration Scheme, 2016.

23. Therefore, the impugned order dated 25.04.2019 bearing Reference C.No.IDS/AALFR1836J/2019-20 is set aside for limited purpose. The case is remitted back to the respondent along with the Assessing Officer for redo the exercise after examining the accounts of the petitioner for Assessment Year 2012-13 and ascertain whether the petitioner has indeed made a correct declaration of Income for the Assessment Year 2012-13 in the Declarations.

24. If so, the Declaration filed by the petitioner may be accepted and closed under the provisions of the Income Tax and Income Declaration Scheme, 2016. As pointed out in Table-2, there are also certain arithmetical error in so far as the amounts to be paid by the petitioner under the Income Declaration Scheme, 2016. This aspect also may be examined by the respondent along with the Assessing Officer. If any discrepancy is noticed, the benefit of the Income Tax and Income Declaration Scheme, 2016 may be denied to the petitioner. W.P.No.10735 of 2022 stands disposed with the above observation.

25. In view of order in W.P.No.10735 of 2022, no further order is required to be passed in W.P.No.10741 of 2022. Accordingly, W.P.No.10741 of 2022 is closed. Consequently, connected miscellaneous petitions are closed. No costs.

.01.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

kkd

To

The Principal Commissioner of Income Tax -1,
121, Uttamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

C.SARAVANAN, J.

kkd

Pre-delivery Common Order in
W.PNos.10735 & 10741 of 2022

.01.2024