



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6622 OF 2025

Vishnu Trimbak Thakur

.. Petitioner

Versus

Principal Commissioner of Income Tax-1,
Thane and Ors.

.. Respondents

Mr. Dharan Gandhi, with Ms. Aanchal Vyas, for the Petitioner.

Mr. Akhileshwar Sharma, for the Respondents-Revenue.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: DECEMBER 23, 2025

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. This Petition, filed under Article 226 of the Constitution of India, challenges the inaction of the Respondents in not issuing Form No. 4 under the Income Declaration Scheme, 2016 (for short “**the Scheme**”) despite the Petitioner having paid the due taxes, surcharge, and penalty. The Petitioner seeks consequential reliefs, including the setting aside of the assessment order for Assessment Year (A.Y.) 2017-18, which taxes the very income

declared under the Scheme, leading to double taxation. The Prayer Clause 12(a) reads thus:

“(a) issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents and successors in office:

i. to forthwith issue Form 4 in respect of the Form 1 filed by the Petitioner on 26.09.2016;

ii. to give consequential effect to the issuance of Form 4, by ignoring the revised return filed on 31.03.2018 and to consider the original return of income filed on 01.11.2017;

iii. to give consequential effect to the issuance of Form 4, by setting aside the assessment order, computation sheet and notice of demand all dated 11.12.2019 for AY 2017-18;”

3. The essential facts, as pleaded in the Petition, are as follows:

a) The Petitioner is an individual engaged in the business of a restaurant and bar. On 26th September 2016, the Petitioner availed the benefit of the Income Declaration Scheme, 2016, by filing a declaration in Form-1, disclosing undisclosed income of Rs. 3,51,10,300/-. The total liability under the Scheme, comprising tax, surcharge, and penalty, was computed at Rs. 1,57,99,635/-.

b) The payment under the Scheme was to be made in three instalments. The first instalment was to be paid on or before 30th November 2016. The

second instalment was to be paid on or before 31st March 2017, and the third instalment was to be paid on or before 30th September 2017. As against the due date of payment, the Petitioner paid the first instalment of Rs. 39,49,909/- on 15th March 2017 and the second instalment of Rs. 39,49,909/- on 7th April 2017.

c) Due to severe financial distress, the Petitioner could not pay the third and final instalment by the due date. A request for an extension of time was made to the Central Board of Direct Taxes (CBDT) on 13th November 2017, which was rejected on 28th November 2017.

d) Moreover, an order was passed by Respondent No. 1 under Section 187(3) of the Finance Act, 2016, on 24th May 2018, for cancelling the Form No. 2 acknowledging the declaration filed under the Scheme.

e) In the meantime, the Petitioner had filed his original return of income for A.Y. 2017-18, declaring a total income of Rs.19,40,880/- on 1st November 2017. In the said return, the undisclosed income under the Scheme was not offered to tax.

f) As per Section 197(b) of the Finance Act, 2016, the consequence of non-payment of the full amount under the Scheme is that the declared undisclosed income becomes chargeable to tax under the Income-tax Act,

1961 (for short “**the IT Act**”) in the previous year in which the declaration was made, i.e., Financial Year 2016-17 (A.Y. 2017-18).

g) Acknowledging this legal position, the Petitioner, in a bona fide manner and suo moto, filed a revised return of income for A.Y. 2017-18 on 30th March 2018, after taking into account the said undisclosed income of Rs. 3,51,10,300/- in his total income. In this revised return, the Petitioner claimed credit for the two instalments already paid under the Scheme totalling to Rs. 78,99,818/- and further paid Self-Assessment Tax of Rs. 45,00,000/- on 27th March 2018.

h) Subsequently, the Petitioner’s case was selected for scrutiny and notices were issued under Section 142(1) of the IT Act, wherein Respondent No. 2, after scrutinising the facts of the case and documents, accepted the revised return filed by the Petitioner and passed the necessary order under Section 143(3) of the IT Act. A minor addition of Rs. 1,80,000/- was made under Section 68 of the IT Act. The undisclosed income was assessed at normal rates. Though the undisclosed income offered in the revised return was accepted, however, in the computation of the income sheet, the system did not allow credit of tax paid under the scheme, and as a result, a demand of Rs. 1,26,35,707/- was raised in the notice of demand dated 11th December 2019.

- i) Subsequently, the Finance (No. 2) Act, 2019, introduced a proviso to Section 187(1) of the Finance Act, 2016, empowering the Central Government to provide a further opportunity to the declarants under the Scheme who had defaulted on their payments. Pursuant to this, Notification No. 103/2019 dated 13th December 2019 was issued, allowing such declarants to pay the balance amount with interest by 31st January 2020.
- j) Accordingly, Respondent No. 1 issued a letter dated 29th December 2019, informing the Petitioner of this opportunity. Seizing this second chance, the Petitioner decided to pay the balance amount due under the Scheme. While calculating the balance of the third instalment, the Petitioner considered Rs. 45,00,000/- already paid as Self-Assessment Tax as part of the payment towards the Scheme's liability. Accordingly, the Petitioner paid the remaining amount of Rs. 34,00,000/- along with interest of Rs. 14,19,444/-, totalling to Rs. 48,19,444, on 27th January 2020.
- k) Having made the full payment under the Scheme, the Petitioner filed Form-3 on 29th January 2020 and requested Respondent No. 1 to issue Form-4, which serves as the formal acceptance of the declaration.
- l) Despite making the full payment under the extended timeline of the Scheme, Respondent No. 1 has failed to issue Form-4.

m) The Petitioner also filed an application under Section 264 of the IT Act and has also filed various representations to allow credit of self-assessment tax paid under the scheme and to accordingly modify the assessment order for A.Y. 2017-18. However, to no avail. On the contrary, the Petitioner has been receiving recovery notices in respect of the assessment for A.Y. 2017-18.

n) Consequently, the Petitioner is faced with a peculiar situation where he has paid the full tax under the Scheme within the extended period provided under the Scheme, but the very same income is also being taxed under the regular assessment for A.Y. 2017-18, and the demand for the same remains outstanding. This has led to the present writ petition.

4. In this factual backdrop, the learned counsel for the Petitioner argued that the actions of the Respondents are arbitrary and result in double taxation of the same income, which is impermissible in law. The primary submissions are:

a) The payment of Rs. 45,00,000 as Self-Assessment Tax for A.Y. 2017-18 was made solely because the Petitioner's declaration under the Scheme was initially rendered invalid. The Petitioner has acted in a bonafide manner and has voluntarily offered the undisclosed income (for which the declaration was rejected under the Scheme) to tax for A.Y. 2017-18, in terms of Section 197(b)

of the Finance Act, 2016. This payment was directly attributable to the tax liability arising from the undisclosed income. When the Government provided a second opportunity to revive the declaration, it is only just and equitable that this amount be treated as a payment towards the liability under the Scheme. To not allow this credit would mean the Petitioner pays this amount twice;

b) that Respondent No. 1 should be directed to issue Form-4 and the revised return of income for the AY 2017-18 should be ignored and the sum of Rs. 3,51,10,300/- should be reduced from the total assessed income of the Petitioner in terms of Section 188 of the Finance Act, 2016. Further, the credit of taxes paid under the scheme and the credit of self-assessment tax should be ignored while computing tax liability for A.Y. 2017-18, and the income should be recomputed, and so also the tax liability and the tax demand. In this regard, he relied upon the clarification issued by CBDT in Circular No. 25/2016 dated 30th June 2016.

c) Alternatively, he submitted that, if for any reason the declaration under the Scheme is not accepted and Form-4 is not issued, then all payments made by the Petitioner, including the two initial instalments and the final payment made in January 2020, must be credited against the tax demand raised in the assessment for A.Y. 2017-18. The Government cannot retain taxes paid under

the Scheme while simultaneously raising a demand for the same income under the IT Act.

d) In support of the aforesaid submissions, the learned Counsel for the Petitioner placed reliance on the following decisions:

i) [2022] 443 ITR 148 (Bom) Kamla Chandrasingh Kabali vs. Principal Commissioner of Income Tax;

ii) [2017] 393 ITR 599 (Del) Kumudam Publications (P.) Ltd. vs. Central Board of Direct Taxes;

iii) [2020] 269 Taxman 207 (SC) Central Board of Direct Taxes vs. Kumudam Publications (P.) Ltd.;

iv) [2021] 438 ITR 27(Bom) Pinnacle Vastunirman (P) Ltd. vs. UOI & Ors.;

v) Order dated 18 November 2025 in Writ Petition No. 13316 of 2024 in Navjeevan Dharmi Associates vs. Principal Commissioner of Income Tax, Pune-2 & Ors.;

5. Per contra, the learned counsel for the Respondents opposed the petition by submitting that:

a) Taxing statutes must be construed strictly. The Income Declaration Scheme, 2016, and the Income-tax Act, 1961, are separate codes. There is no specific provision in either law that permits the adjustment of Self-

Assessment Tax paid under the IT Act against a liability due under the Scheme.

b) Moreover, even the heads/codes of payment under the Challan for payment of tax are different.

c) The payment of Rs. 45,00,000/- was made by the Petitioner under the head of 'Self-Assessment Tax' for the purposes of his revised return under the IT Act, and the subsequent payment under the Scheme was a separate liability. In the absence of an express provision allowing such an adjustment, the tax authorities are not empowered to grant such a credit.

d) Insofar as the alternate prayer is concerned, he submitted that Section 191 of the Finance Act, 2016, specifically debars refund of any sum paid under the Scheme and therefore, there should not be any adjustment of taxes paid under the Scheme in computing the tax liability under the IT Act for A.Y. 2017-18.

6. We have considered the submissions of both parties and perused the record. The core issue for determination is whether the Self-Assessment Tax of Rs. 45,00,000/- paid by the Petitioner can be considered as payment towards the liability under the Scheme.

7. The facts of this case are unique. The Petitioner's liability to pay Self-Assessment Tax arose for one reason and one reason alone: the initial failure to pay the third instalment under the Scheme, which, by operation of law [Section 197(b) of the Finance Act, 2016], shifted the tax liability for the undisclosed income to the regular assessment under the IT Act. The payment of Rs. 45,00,000/- is, therefore, inextricably linked to or related to the undisclosed income of Rs. 3,51,10,300/-.

8. When the Central Government, through the Finance (No. 2) Act, 2019, and the subsequent notification, provided a second opportunity to declarants, the intent was clearly to allow them to regularise their declarations and come clean. This was a beneficial provision aimed at resolving disputes and collecting revenue. The objective was not to penalise declarants with double taxation arising from procedural complexities.

9. The argument of the Revenue that there is no specific provision for such an adjustment is hyper-technical and ignores the substance of the transaction. The Petitioner paid Rs. 45,00,000/- towards the tax liability on the undisclosed income. When the Scheme was revived for the Petitioner, the liability for the same undisclosed income was restored under the Scheme. This is more so when Respondent No. 1 himself issued a letter to the Petitioner to avail of the second opportunity under the Scheme. It would

therefore be unjust to require the Petitioner to pay this amount again under the Scheme while the Revenue retains the same amount paid earlier for the very same income. Such an approach would be contrary to the principles of equity and fairness, and would violate Article 265 of the Constitution, which prohibits the collection of taxes without the authority of law.

10. We find that the payment of Self-Assessment Tax was made only because the declaration under the Scheme was deemed to have been rejected. There was no other reason for the Petitioner to offer the undisclosed income to tax in the revised return of income for A.Y. 2017-18. Therefore, in a way, the payment of self-assessment tax can also be considered to arise on account of the deeming fiction created by Section 197(b) of the very same Scheme. Thus, such self-assessment tax is also, in a way, a payment of tax under the scheme or by virtue of a fiction created under the Scheme. Since this payment is directly linked to the undisclosed income, credit for the same ought to have been given when the Petitioner made the final payment under the revived Scheme. The refusal of the Respondents to acknowledge this payment and their failure to issue Form-4 is therefore arbitrary and unsustainable in law.

11. We find support from the clarification issued by the CBDT in Circular No. 25/ 2016 (supra). The issue raised in question 4 and the reply to the same is reproduced hereunder for the sake of convenience:

“Question No.4: Whether credit for tax deducted, if any, in respect of income declared shall be allowed?”

Answer: Yes; credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.”

Thus, the clarification is categorical that the related taxes to the undisclosed income should be allowed under the Scheme. In our view, the above clarification would apply with more force to the facts of the present case. This is because, the self-assessment tax of Rs. 45,00,000/- was paid only on such undisclosed income and in light of non-acceptance of the declaration under the Scheme. Once the declaration is revived by the law, the said tax paid has to be considered as related to the undisclosed income and due credit should be given while computing liability under the Scheme.

12. In light of the above findings, the petition succeeds. We accordingly, pass the following order:

a) Respondent No. 1 is directed to treat the payment of Rs. 45,00,000/- made as Self-Assessment Tax by the Petitioner on 27 March 2018, as a valid payment towards the third instalment liability under the Income Declaration Scheme, 2016. Respondents shall take all necessary steps in this regard, including a change in the head of payment in the challan as well as in their system, if so necessary.

b) Respondent No. 1 shall issue Form-4 to the Petitioner, acknowledging the acceptance of the declaration filed on 26 September 2016.

c) As a consequence of the issuance of Form-4, and in accordance with Section 188 of the Finance Act, 2016, undisclosed income of Rs. 3,51,10,300/- should be reduced from the total income of the Petitioner for A.Y. 2017-18. Respondent No. 2 shall pass necessary orders giving effect to this order in this regard and modify the assessment order dated 11th December 2019 for the A.Y. 2017-18.

d) As a consequence, Respondent No. 2 shall revise the computation of income and notice of demand issued for A.Y. 2017-18, after reducing the total income by Rs. 3,51,10,300/- and by not granting credit of self-assessment tax of Rs. 45,00,000/- in A.Y. 2017-18.

13. Since we have considered and have found favour with the first argument of the Petitioner, the alternate argument of the Petitioner becomes academic and does not necessitate any adjudication.

14. The entire exercise of giving credit and issuance of Form-4 and modifying the income and demand under the assessment order dated 11th December 2019 for the A.Y. 2017-18 by passing a necessary rectification

order, shall be completed within a period of 60 days from the date of uploading of this order.

15. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]