IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.4251 of 2025
and W.M.P.No.4763 of 2025

Sahaya Francis Jeganatham Mahendran,
11, Flora Road, #02-09,
Avila Gardens,
Singapore 509 732. .. Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Room No:401, BSNL Building,
4th Floor, Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai, Tamil Nadu 600 006.

2.The Income Tax Officer,
Int. Taxn. Ward 1(2) Che,
Room No.413, BSNL Building,
4th Floor, Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai, Tamil Nadu 600 006.

3.The Commissioner of Income Tax, Appeals -16,
Aayakar Bhavan, Main Building 2nd Floor,
121, Nungambakkam High Road,
Thousand Lights West, Thousand Lights,
Chennai, Tamil Nadu 600 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorarified Mandamus, to call for the records in the DTVSV Form-1 scheme of 2024 for AQKPM1531G, Acknowledgment Number/Order/Certificate Number 580680420071024 dated 12.12.2024 on the file of the 1st respondent for AY 2016-17 and to quash the same and direct the 1st respondent to accept the Form-1 dated 04.10.2024 filed by the petitioner for AY 2016-17, under the Direct Tax Vivad Se Vishwas Act, 2024.

For Petitioner : Mr.Sandeep Bagmar R

For Respondent : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

for Mr.B.Ramanakumar
Senior Standing Counsel

ORDER

This writ petition has been filed by the petitioner challenging the impugned order rejecting the application filed by the petitioner under Direct Tax Vivad Se Vishwas Scheme, 2024 (hereinafter referred as 'DTVSV Scheme').

2.Learned counsel for the petitioner would submit that the petitioner was issued with show cause notices dated 24.03.2022 and 27.03.2022, calling upon the petitioner to show cause as to why the consideration received by him for the sale of his share of property in FY 2015-16 should not be brought to tax. Since the petitioner was non-resident of India and his email Id was hacked, he was not aware of the show cause notices. Subsequently, the draft assessment order came to be passed on 30.03.2022. Later, when the petitioner was intimated about the proceedings by his brother, the petitioner filed his reply stating that he was unaware of the re-assessment proceedings and he sought time to submit his detailed reply along with necessary documents. However, the assessment order came to be passed on 17.05.2022, computing the total income of the petitioner for the assessment year 2016-17 as Rs.1,09,00,000/- raising a consequential total tax demand of Rs.24,57,168 (excluding interest).

3.He would further submit that the petitioner filed a revision application dated 05.08.2022, seeking revision of assessment order dated

17.05.2022. While filing the revision application, the petitioner recomputed his tax liability and according to the petitioner his tax liability along with interest would amount to Rs.28,73,463/- i.e (tax amount of Rs.11,54,001/- and interest of Rs.17,19,462/-) and the petitioner paid the said amount of Rs.28,73,463/- towards his tax liability. However, the petitioner's revision application was dismissed on the ground of maintainability stating that the petitioner's proper course of action was to file an appeal before the Appellate Authority. Accordingly, the petitioner immediately filed an appeal under Section 246(A) of the Income Tax Act, 1961, on 01.04.2024.

4.While so, the petitioner came to know about the Direct Tax Vivad Se Vishwas Scheme, 2024 (hereinafter referred as 'DTVSV Scheme') and he chose to seek full and final settlement of disputes related to tax arrears for the assessment year 2016-17, by way of filing Form-1 dated 04.10.2024. Meanwhile, the petitioner requested the Appellate Authority to keep the appeal pending until his Form-1 under the DTVSV Scheme, 2024 was processed. However, the petitioner's Form-1 was rejected by the 1st respondent stating that petitioner has already waived his right of appeal and therefore, the petitioner was ineligible for applying under the DTVSV Scheme, 2024.

5.Therefore, the learned counsel for the petitioner would submit that the amount of Rs.28,73,463/- paid by the petitioner towards tax liability is much higher than the amount payable under the DTVSV Scheme and as per the DTVSV Scheme, the tax liability of the petitioner would only be Rs.24,57,168/-. The petitioner preferred an appeal on 01.04.2024 and the DTVSV Scheme came into effect only on 19.09.2024. Accordingly, the petitioner chose to avail the benefit under the DTVSV scheme. In terms of provision of Clause 89(1)(J)(A) of Chapter IV of the DTVSV Scheme, since the appeal filed by the petitioner is pending, he is entitled to avail the benefit under the DTVSV scheme. Without considering this aspect, merely citing the reason that no appeal remedy was available for the petitioner since the petitioner has already filed revision against the assessment order dated 17.05.2022, the Taxing Authority has dismissed the Form-1 filed under the DTVSV Scheme. Hence, the present writ petition has been filed.

6.Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel for Mr.B.Ramanakumar, learned Senior Standing Counsel appearing for the respondents would submit that in the present case, the petitioner filed a revision under Section 264 of the Income Tax Act against the assessment order dated 17.05.2022 and the same was dismissed on 26.03.2024. Therefore, the question of filing appeal would not arise at all and hence, according to the respondents, as on date, tax liability is not disputed. Further, once the petitioner lost the chance of filing appeal, he has no right to avail the benefit under the DTVSV scheme. Therefore, the Form-1 filed by the petitioner under DTVSV Scheme has been rightly rejected.

7.Heard the submissions made by the learned counsel for the petitioner as well as the learned Junior Standing Counsel appearing for the respondent and perused the materials available on record.

8.Upon hearing and perusal of records, it is seen that the Government has introduced the DTVSV scheme with an intention to resolve the issues relating to the tax liability. The pre-condition for availing the benefit under

DTVSV scheme is that the tax liability has to be disputed by way of appeal or writ petition or Special Leave Petition. For better appreciation, it is appropriate to extract the relevant provision of the DTVSV scheme. As such, Clause 89(1)(J)(A) of Chapter IV of the DTVSV Scheme, is extracted hereunder:-

> "89.............
>
> (j) "disputed tax", in relation to an assessment year or financial year, as the case may be, means the income-tax including surcharge and cess (hereafter in this Chapter referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax, as computed hereunder:-
>
> (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him."

A reading of the above would show that the pre-condition for filing Form-1 under the DTVSV Scheme is that the tax liability supposed to have been disputed in the form of appeal, writ petition or special leave petition, pending before the appellate forum as on the specified date. In the present case, the petitioner filed Form-1 under the DTVSV Scheme on 04.10.2024, and the appeal filed by the petitioner against the assessment order dated 17.05.2022, before the Commissioner of Income-tax (Appeals) was pending at that time. According to the respondents, since the petitioner filed revision against the assessment order dated 17.05.2022 and the same was dismissed, there is no scope for the petitioner to claim the benefit under the DTVSV Scheme. The learned Junior Standing counsel appearing for the respondents repeatedly argued that the petitioner without any jurisdiction has preferred an appeal before the Commissioner of Income-tax and the jurisdictional aspect.

9.Taking into consideration of the provision prescribed under the DTVSV Scheme, this Court is of the view that the maintainability of the appeal has to be decided by the Appellate Authority. Since the Revisional Authority has dismissed the revision petition filed by the petitioner citing the reason that the petitioner is entitled to avail appeal remedy, the petitioner has filed appeal before the Appellate Authority. The appeal has been numbered and taken on file. It is for them to decide whether the appeal has to be entertained or rejected. Even the appeal got rejected on the ground of maintainability, still the petitioner is entitle to challenge the same by way of writ petition since no other alternate remedy is available. Therefore, in the present case, the tax liability assessed by the Taxing Authority has been disputed and the same is pending before the Appellate Authority. As per the provision of the DTVSV Scheme, the tax liability assessed by the Taxing Authority has been disputed by way of appeal. As stated above, the very purpose of the aforesaid scheme was to resolve the issues relating to the tax liability. Therefore, the respondents rather than giving quietus to the issue, rejecting the application citing the jurisdictional issue which needs to be decided by the Appellate Authority is not proper. Hence, this Court is inclined to set aside the order dated 12.02.2024, rejecting the Form-1 filed by the petitioner under DTVSV Scheme.

10.Accordingly, the order impugned herein is set aside and the 1st respondent is directed to accept the petitioner's application filed under DTVSV Scheme on 04.10.2024 and to issue discharge certificate to the petitioner in accordance with the provision of the DTVSC scheme.

11.With the above, directions, the present writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

18.02.2025

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Index : Yes
Neutral Citation: Yes

Note: Issue Order Copy on 14.03.2025

To:

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Room No:401, BSNL Building,
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KRISHNAN RAMASAMY, J.

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