IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.5149 of 2025
and
W.M.P.No.5716 of 2025

Suppana Gounder Karuppanasamy
37 Mariamman Kovil Street Kalapatti
Coimbatore-641 048. .. Petitioner

Vs.

1. The Assistant Commissioner of Income tax
   Non Corporate Circle -2, Coimbatore.

2. THE INCOME TAX OFFICER HQRS-2
O/O. THE PRINCIPAL COMMISSIONER OF INCOME TAX-1
COIMBATORE-1. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records from the file of the 2nd Respondent in PAN No.BWCPK9001L and quash the impugned rejection order in VSVS(102)/2024-25/PCIT-1/CBE dated 27.01.2025 passed under Direct Tax Vivad Se Vishwas Act 2020 for the Assessment year 2017-18 on the file of the 2nd Respondent as illegal and consequently direct the 2nd respondent to accept the Petitioners application in Form-1 filed as valid application and issue Form No.3 as per the Direct Tax Vivad Se Vishwas Act 2020 in accordance with law.

For Petitioner : Mr.A.Muthuprakash

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the second respondent dated 27.01.2025 under Direct Tax Vivad Se Vishwas Act 2020 for the Assessment year 2017-18 and consequently, to direct the 2nd respondent to accept the petitioner's application in Form-1 filed as valid application and issue Form No.3 as per the Direct Tax Vivad Se Vishwas Act 2020 in accordance with law.

2. Mr.A.Muthuprakash, learned counsel appearing for the petitioner would submit that the petitioner intended to avail a Scheme, called "Direct Tax Vivad Se Vishwas Scheme (in short, 'DTVSV Scheme'); that in terms of the said Scheme, if any Appeal is pending as on 22.07.2022, the assessee is entitled to avail the Scheme; that according to the petitioner, the Appeal filed by the petitioner against the assessment order passed by the first respondent dated 30.12.2019 is pending before the ITAT as on 22.07.2022 and the same was disposed only on 14.08.2024; that therefore, the petitioner filed Application to avail the said Scheme, however, the second respondent by order dated 27.01.2025, rejected the same and challenging the said order, the present Writ Petition is filed.

2.1 It is the contention of the learned counsel appearing for the petitioner that the second respondent has erroneously interpreted FAQ No.24 of Circular No.12 of 2024 and passed the impugned order by wrongly holding that set-aside matters to the AO, whether fully or partly is not an appeal pending and were not covered under the Scheme, and secondly by holding that though in terms of FAQ No.36 of Circular 19 of 2024, Appeal pending as on 22.07.2022 was disposed of subsequently on merits or withdrawn for the purpose of the Scheme, such cases are eligible for the Scheme, but in the present, the petitioner's Appeal was neither disposed of on merits nor was dismissed as withdrawn for the purpose of the Scheme, and therefore, the declaration in Form I filed by the petitioner does not qualify for settlement under DTVSV Scheme. Hence, the learned counsel prays for setting aside the impugned order.

3. Dr.B.Ramaswamy, learned Senior Standing Counsel on behalf of the respondents submitted that based on Rules 24 and 36 of the DTVSV Scheme, the second respondent has passed an order of rejection of the petitioner's application, and in the event, this Court is inclined to pass any orders, the same would be complied with.

4. Heard Mr.A.Muthuprakash, learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel on behalf of the respondents and perused the materials placed on record.

5. It is an undisputed fact that challenging the assessment order passed by the first respondent/Assessing Officer dated 30.12.2019, the petitioner has filed second Appeal before the Income Tax Appellate Tribunal (for short, 'ITAT') and the same was pending as on 22.07.2024 and was subsequently, was partly allowed by the ITAT vide order dated 14.08.2024. Though the second respondent by virtue of the impugned order rejected the petitioner's Form 1 on two grounds, firstly, by assigning the reasons that, in terms of FAQ No.24 of Circular 12 of 2024, a set aside matters to AO cannot be deemed as an Appeal pending as on 22.07.2024 and secondly, on the ground that in terms of FAQ No.36 of Circular 19 of 2024, the Appeal filed by the petitioner was neither disposed of on merits nor dismissed as withdrawn for the purpose of availing the Scheme, therefore, the petitioner is not eligible to avail the said Scheme.

6. However, this Court would like to point out that, when the fact remains that as on 22.07.2024, the Appeal filed by the petitioner was pending before ITAT, certainly, the petitioner is eligible to avail the said Scheme and merely because, in terms of FAC No.24 of Circular 12/2024, the set asides matters to AO, whether partly or fully cannot be deemed to be appeal pending and covered under the Scheme, and that in terms of FAC No.36 of Circular 19 of 2024, in cases, where the Appeal pending as on 22.07.2024 and subsequently disposed of on merits or withdrawn for the purpose of the Scheme alone entitled for the Scheme, and in the present case, the petitioner's Appeal was neither disposed of on merits or dismissed as withdrawn by the petitioner, the same would not dis-entitle the petitioner from relishing the benefits of the Scheme, for the simple reason that, both FAQ 24 and FAQ 36 enables the Taxpayers to become eligible for the Scheme, once the Appeal filed by them is pending as on 22.07.2024 and when one of the condition enumerated thereunder is satisfied by the taxpayer, the taxpayer are definitely eligible to avail the benefit of the Scheme, after all, what the legislature intends by bringing out such Scheme is to reduce the litigation and also to ensure that the revenue is generated in a timely manner. Thus, this Court is of the view that the impugned order passed by the second respondent is untenable and has to be set aside.

7. In the result, the Writ Petition is allowed, the impugned order is set aside. While setting aside the matter before the second respondent, this Court directs the second respondent to accept the Petitioner's application in Form-1 filed as valid application and issue Form No.3 as per the Direct Tax

Vivad Se Vishwas Act 2020 in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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