IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

**W.P.No.14496 of 2025**

Ramasamy HUF,
rep. by its Kartha, Sakthivel Ramasamy.

...Petitioner

Vs.

1. The Principal Commissioner of Income Tax -3
   Main Building 4th Floor, No.121,
   Mahatma Gandhi Road, Nungambakka, Chennai – 600 034.

2. The Deputy Commissioner of Income Tax,
   Non Corporate Circle – 10 (1) No.121,
   Wanapathy Block, Nungambakkam High Road,
   , Chennai – 600 034.

...Respondents

**Prayer**

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to accept the petitioner's application under Form -I dated 26.12.2024, for the AY 2014-15 filed under DTVSV Scheme, 2024 and accordingly, to issue Form -2.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

**Order**

Heard Mr.M.P.Senthil Kumar learned counsel appearing for the petitioner and Mr.V.Mahalingam, learned Senior Standing Counsel who takes notice on behalf of the respondents. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

**2.** The petitioner has filed this Writ Petition seeking for issuance of a Writ of Mandamus directing the first respondent to accept the petitioner's application under Form -1 dated 26.12.2024, for the AY 2014-15 filed under Direct Tax Vivad Se Vishwas Scheme, 2024 and accordingly, to issue Form -2.

**3.** The learned counsel for the petitioner would submit that the petitioner with an intention to avail the benefit of the Direct Tax Vivad Se Vishwas Scheme (hereinafter, referred to as DTVSV Scheme) paid the tax due for a sum of Rs.52,970/-, and he having been issued with Form-3, was under the bona fide impression that once Form-3 has been issued by the Designated Authority, all the process under the Scheme was complete, however, the vital aspect Form-4 is mandatory for availing the benefit of the scheme was unknown to the petitioner; that in the meantime, the CIT (A) vide order dated 09.06.2023 dismissed the Appeal by wrongly recording that the petitioner has availed the DTVSV Scheme; that though the second respondent, Deputy Commissioner of Income Tax filed a Rectification Petition, wherein, the petitioner has clearly set out the facts that the petitioner has not yet availed the DTVSV Scheme, the CIT (A) however, failed to recall the order dated 09.06.2023 on the ground that once declaration is filed by the petitioner and the Designated Authority issued Form-3 to the declarant (petitioner) on 23.04.2021, containing the particulars of tax arrears and the amount payable and the Appeal has to be deemed to be withdrawn and by holding so, disposed of the said Rectification Petition; that aggrieved against the dismissal of the Appeal dated 09.06.2023 as well as the Order passed in the Rectification Petition dated 29.08.2024. the petitioner filed further Appeal before ITAT and ITAT vide Common order dated 25.11.2024 set aside the order passed by the CIT (A) dated 09.06.2023 for denovo adjudication and further held that the appeal against the order passed in the Rectification Petition dated 29.08.2024 was infructuous; that thereafter, since by virtue of which of the order passed by the ITAT, the Appeal filed by the petitioner as against the assessment order was restored on file for denovo adjudication, the petitioner as an old appellant under the aforesaid Scheme, filed Form-I on 26.12.2024 however, the first respondent refused to entertain Form-1 and rejected the same, which necessitated the petitioner to approach this Court, by way of present Writ Petition seeking for the aforesaid relief.

**3.1** The learned counsel for the petitioner would contend that first respondent without even properly adverting into the facts of the case, grossly erred in rejecting Form 1 of the petitioner by merely displaying in the e-portal stating that the Appeal filed by the petitioner is not pending on 22.07.2024. The learned counsel for the petitioner drawn the attention of this Court to Section 1 of DTVSV Act, 2020, and submitted that in terms of the said provisions, in the event of any violation of the conditions contained therein, all the proceedings and claims, which were withdrawn under Section 4 and all the consequences under the Income Tax Act against the assessee/declarant (petitioner in this case) shall be deemed to have been revived. Therefore, it is submitted by the learned counsel for the petitioner that in terms of the aforesaid provisions, the Appeal filed by the petitioner against the assessment order ought to have been deemed to be restored immediately upon the last date when the payment is effected by the petitioner, in the year 2022 itself and hence, the petitioner is entitled to avail DTVSV Scheme, and accordingly, the petitioner filed Form-1 on 26.12.2024, however, the first respondent refused to consider the same and rejected the same by merely displaying in the e-portal that the Appeal of the assessee was not pending on the specific date, via., 22.07.2024 and therefore, he prays for appropriate orders.

**4.** Mr.V.Mahalingam, the learned Senior Standing Counsel for the respondents would submit that the respondents are not aware of the restoration of the Appeal filed by the petitioner, and hence, the first respondent refused to issue Form-2 and rejected Form-1 filed by the petitioner, however, fairly submits that in the event, this Court issues any direction, directing the Authority to issue Form-2, the same would be complied with in a letter and spirit and Form 2 would be issued to the petitioner forthwith, probably, by coming Monday, i..e. 28.04.2025.

**5.** I have given due considerations to the submissions made on either side and perused the materials available on record.

**6.** The petitioner was engaged in the business of selling pharmaceutical products; that Return of Investment of the petitioner for AY 2014-15 was taken up for scrutiny and an assessment order under Section 143 (3) of the Act was passed by the respondent-Income Tax Department on 26.12.2016, whereby and whereupon, the petitioner's income was assessed at Rs.54,45,200/- and a demand of Rs.9,75,494/-was raised.

**6.1** Aggrieved by the said assessment order dated 26.12.2016, the petitioner preferred an Appeal before the Commissioner of Income Tax (Appeals) [(CIT (A)]; that during the pendency of the Appeal, a Scheme, called 'Direct Tax Vivad Se Vishwas was introduced and the petitioner intended to avail Direct Tax Vivad Se Vishwas Scheme, 2020 and filed Forms 1 and 2 on 25.03.2021. On 23.04.2021 the petitioner also received Form-3 from the designated Authority. In terms of the DTVSV Scheme, **Form-3 is nothing but an intimation of payment made by the declarant/petitioner intimating the Authority that the outstanding amount has been made successfully and Form-4 is the final order issued by the Designated authority confirming the full and final settlement of the tax dispute, which is inclusive of the amount paid by the taxpayer/petitioner.**

**6.2** In the case on hand, unfortunately, the Designated Authority had omitted to mention the tax paid by the petitioner for a sum of Rs.52,970/- and the petitioner, who was ignorant of the vital aspect that the payment made by the petitioner has not been recorded by the Designated Authority while issuing Form-3, under the belief that once tax has been paid by the petitioner and the Form-3 has been issued by the Designated Authority, the process of the said Scheme would be complete, failed to submit Form-4, which is mandatorily required to avail the said Scheme.

**6.3** In the interregnum, the CIT (A) passed an order under Section 250 of the Act dated 09.06.2023, dismissing the Appeal on an erroneous ground that the petitioner has availed the DTVSV Scheme, which is not so. It is to be noted that, the CIT (A) before passing such order, failed to hear the petitioner. Had the petitioner was afforded with an opportunity of hearing, the petitioner would have, perhaps, cleared his position that he has not availed the DTVSV Scheme.

**6.4** Thus, it is clear that the order passed by the CIT (A) is an ex parte order, as the petitioner was not heard before passing such order. Therefore, setting out all such facts, the second respondent filed a Rectification Petition was filed 12.10.2023, seeking to recall the order passed by the CIT (A) dated 09.06.2023. However, the CIT (A) without taking note of the vital fact that the petitioner has not availed the DTVSV Scheme, disposed of the said Rectification Petition by merely recording that subsequent to the filing of Declaration filed by the petitioner under the said

DTVSV Scheme, the Designated Authority has granted a certificate under Form-3 to the petitioner/declarant on 23.04.2021, therefore, there is no necessity to re-call the order.

**6.5** However, the petitioner, on coming to know that Form-4 has not been issued, which is mandatory for the purpose of the availing the DTSTV Scheme, so as to buy peace with the respondent-Department, paid the remaining tax due, as determined in the original Assessment order dated 26.12.2016 and also filed further Appeal before the Income Tax Appellate Tribunal (ITAT) as against the order of dismissal passed by the CIT (A) dated 09.06.2023 and the order passed by CIT(A) in Rectification Petition dated 29.08.2024. The ITAT vide Common Order dated 25.11.2024 set aside the order dated 09.06.2023 passed by CIT (A) inasmuch as, the Appeal was dismissed on an erroneous ground that the petitioner has availed the DTVSV Scheme, and further held that Appeal against the order passed in Rectification Petition dated 29.08.2024 has become infructuous.

**6.6** Thus, by virtue of the order passed by ITAT, the Appeal filed by the petitioner as against the assessment order dated 26.12.2016 has been revived, inasmuch as, the said order is an ex parte order, as the petitioner has not been heard. In the interregnum period, i.e. During the pendency of further Appeal before ITAT, the respondent-Income Tax Department again floated a Direct **Vivad se Vishwas Scheme 2024, w.e.f 22.07.2024,** and therefore, the petitioner is entitled to avail the benefit of the Scheme. Accordingly, the petitioner has filed Form-1 on 26.12.2024 under the said Scheme to settle the dispute, however, the first respondent refused to issue Form-2, and further, it has been displayed in the e-portal account that Form-1 filed by the petitioner was rejected by the first respondent on 11.03.2025, on the ground that Appeal was not pending as on 22.07.2024.

**6.7** It is no doubt true that the earlier attempt made by the petitioner to avail the DTVSV Scheme, 2020 ended in vain, as the petitioner failed to comply with the terms and conditions, that is to say, failed to submit Form-4, which is mandatorily required to avail the said Scheme. However, it is the contention of the learned counsel for the petitioner that in terms of

Section 1 of the DTVSV Scheme, 2020, in the event of any violation of the conditions contained therein, on the part of the taxpayer/declarant, all the proceedings and claims, which were withdrawn under Section 4 and all the consequences under the Income Tax Act against the assessee/declarant (petitioner in this case) shall be deemed to have been revived. In this connection, it would be apposite to refer Section 4 (6) of the said Scheme, which is reproduced as under:-

> "(6) The declaration under sub-section (1) shall be presumed never to have been made if,—
>
> (a) any material particular furnished in the declaration is found to be false at any stage;
>
> (b) the declarant violates any of the conditions referred to in this Act;
>
> (c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

> and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived. "

**6.8** In the light of the aforesaid facts, as discussed supra, it is clear that in terms of the aforesaid provision and by virtue of the order passed by ITAT dated 25.11.2024, and subsequent to the introduction of DTVSC Scheme, 2024, w.e.f. 22.07.2024, the petitioner is entitled to the DTVSV Scheme, inasmuch as, the Appeal filed by the petitioner as against the assessment order dated 26.12.2016 was revived/restored/alive.

**6.9** Therefore, this Court is inclined to pass the following order/direction:-

i) The first respondent/Principal Commissioner of I.T.-3 is directed to accept Form-1 and issue Form-2 enabling the petitioner to avail Direct Tax

Vivad Se Vishwas Scheme on or before 28.04.2025, since it has been stated by the learned counsel for the petitioner that the time limit to avail the Scheme is about to expire within this month, i.e. on 30.04.2025.

and

ii) The learned Senior Standing Counsel for the respondents is also directed to orally communicate the order passed by this Court and instruct the first respondent to take immediate steps for issuance of Form-2 to the petitioner, as per the direction issued hereinabove.

**7.** The Writ Petition is disposed of with the above direction. No costs.

**23.04.2025**

sd

Index : yes/no
Neutral Citation : yes/no

**Note to Office** : Issue order copy by 24.04.2025

To

1. The Principal Commissioner of Income Tax -3
   Main Building 4th Floor, No.121,
   Mahatma Gandhi Road, Nungambakka, Chennai – 600 034.

2. The Deputy Commissioner of Income Tax,
   Non Corporate Circle – 10 (1) No.121,
   Wanapathy Block, Nungambakkam High Road,
   , Chennai – 600 034.

**Krishnan Ramasamy,J.,**

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**W.P.No.14496 of 2025**

**23.04.2025**