

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Writ Petition No.33881 of 2018
WMP.No.39345 & 39346 of 2018

Krishna Venkata Ramana Shetty

...Petitioner

Vs.

1.Income Tax Settlement Commissioner
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
640, Anna Salai, Nandanam
Chennai-600 035

2.Deputy Commissioner of Income Tax
Central Circle 1(1), Chennai
New No.46, Mahatma Gandhi Road
Chennai-600 034

...Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent 1st respondent in TN/CN 51/2018-19/18/IT in passing the order u/s.245(2C) of the Income Tax Act, 1961 dated 11.12.2018 and quash the same and consequently direct the 1st respondent to proceed with the settlement application u/s.245D(2C) of the Income Tax Act, 1961.

For Petitioner : Mr.Sathish Parasaran for
Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas- SSC

ORDER

The order of the Income Tax Settlement Commission (in short 'SC' or Commission) dated 11.12.2018 is assailed in the present writ petition.

2. The Commission has rejected the application of the petitioner for assessment years (AY) 2011-12 to 2017-18 as 'invalid', since the payment of additional taxes is a primary condition for maintainability of the application. The report of the Commissioner under Rule 2(B) had pointed out that there was a short payment of tax, amounting to Rs.4,58,772/- for AY 2015-16, Rs.3,52,780/- for AY 2013-14 and Rs.7,84,966/- for A Y 2016-17.

3. There have been a significant number of hearings in this matter and both the petitioner and the revenue have filed their versions of the pending arrears for various assessment years, as on date. Vide letter dated 21.01.2020, after considering the consolidated position of pending demands for AYs 2013-14, 2015-16 and 2016-17, the Assessing Authority confirms that there is no shortfall in the tax remitted by the petitioner taking into consideration the TDS credits available for assessment years 2015-16 and 2016-17.

4. According to the petitioner, he has filed applications for rectification of assessment under Section 154 in respect of AYs 2006-07 and 2010-11, which if heard and the errors in assessment corrected, would result in a substantial refund. However, despite this fact having been brought to the notice of the Assessing Officer multiple times during the course of the hearings pending writ petition, these applications remain pending as on date.

5. The revenue has, at long last, circulated a tabulation of the amounts in question, for the three assessment years extracted below:

AY 2015-16

<i>Contention of the Department in Counter Affidavit</i>	<i>Para 3 of the counter affidavit states demand of Rs.5,06,210/- raised u/s 143(1) due to TDS mismatch Application i.e.16.10.2018</i>
<i>Explanation of the Assessee vide</i>	<i>A) As on date of filing settlement application no mismatch in TDS for AY 2015-16. As can be seen no mismatch between TDS</i>

Contention of the Department in Counter Affidavit	Para 3 of the counter affidavit states demand of Rs.5,06,210/- raised u/s 143(1) due to TDS mismatch Application i.e.16.10.2018
reply to counter affidavit	<p>claimed in return filed in response to 153A notice of Rs.28,11,600/- (S No.1 of Additional Type Set) and TDS totaling to Rs.28,11,600/- as per Form 26AS as on 11.10.2018 (S.No.2 of Additional Type Set)</p> <p>B) Originally as per 143(1) demand of Rs.5,06,210/- has arisen due to difference in TDS being of Rs,28,11,600/- claimed in original returns vs. Rs.23,84,892/- as per 143(1) (Ref.Pg.18 in S.No.3 Additional Type Set). This difference was not existing as on date of filing settlement application on 16.10.2018 which is evidenced by Form 26AS as on 11.10.2018 (S.No.2 of Additional Type Set)</p>
Written Submission of the Department on the above issue	The demand of Rs.5,06,210 was raised u/s 143(1) due to wrong quoting of TAN by the assessee in the return of income in respect of M/s Landmark housing Projects Chennai Private Limited to the extent of Rs.4,26,712. Now on verification of the assessee's claim made regarding wrong quoting of TAN vide the application u/s 154 with reference to the 26AS statement, the claim of the assessee is found to be in order. But the order u/s 154 could not be passed on ITBA System due to the technical issue that the bigger proceedings already initiated u/s 153A are pending as on date. When tried to pass the order u/s 154, the ITBA system did not enable to do so. In other words, additional TDS credit to the extent of Rs.4,26,712 is now available to the credit of the assessee and if the same is considered the demand for A Y 2015-16 will get reduced to Rs. Nil.

AY 2016-17

Contention of the Department in Counter Affidavit	Petitioner in WP had submitted that the difference in 143(1) due to TDS mismatch being Rs.7,84,960/- was duly considered by petitioner itself in computing taxes to be paid before ITSC. No specific comments in counter affidavit on difference of Rs.7,84,960/-.
Explanation of the Assessee vide reply to counter affidavit	<p>A) TDS as claimed by assessee in return filed in response to 153A for A.Y.2016-17 was Rs.24,07,220/- (S.No.4 Additional Set) but TDS ultimately taken into consideration for computing taxes before ITSC was only Rs.17,45,527/- (S.No.5 Additional Type Set)</p> <p>B) Originally as per 143(1) demand of Rs.7,84,960 had arisen due to difference in TDS being of Rs.24,07,220/- claimed in original return vs. Rs.17,45,528/- as per 143(1) (Ref Pg.23 in S.No.3 Additional Type Set).</p> <p>This difference was not existing as on date of filing settlement</p>

	<i>application on 16.10.2018 since the petitioner itself has taken only Rs.17,45,528/- for computing taxes before ITSC (S.No.5 Additional Type Set)</i>
<i>Written Submission of the Department on the above issue</i>	<i>Though a demand of Rs.7,84,960 was raised u/s 143(1) due to TDS mismatch of Rs.6,61,692 (Rs.24,07,220 claimed in the return-Rs.17,45,528 available in 26AS, it is noticed on verification of the petitioner's claim that the petitioner considered TDS credit at a lower amount of Rs.17,45,528 (to the extent of the credit available in 26AS) for the purpose of computation of tax payable as per the Settlement Application. Therefore, there is no additional demand payable by the petitioner for the A.Y 2016-17 in the regard.</i>

AY 2013-14

<i>Contention of the Department in Counter Affidavit</i>	<i>Issue of demand of Rs.3,52,780/- as per Assessment Order u/s 143(3). No specific comment in counter affidavit. Comments on refund due as per settlement application of Rs.1,10,796/- which is available for adjusting against the demand of Rs.3,52,780.</i>
<i>Explanation of the Assessee vide reply to counter affidavit</i>	<p><i>A) Difference ought to be adjusted against increase in TDS of Rs.3,34,971/- for A.Y.2016-17 being amounts credited into petitioner's account on 23.11.2018 before receipt of report u/s 245D(2B) on 27.11.2018 (Ref Pg.25 in S.No.3 Additional Type set) and excess refund of Rs.1,10,796/- (Annexure E in Pg.24 of Type Set)</i></p> <p><i>B) In Para 3 of the Counter Affidavit the Department states credit of Rs.2,34,972/- was available to the Petitioner as on date of filing settlement application. Thus, along with its interest impact u/s.234B the short fall becomes NIL as on the date of filing settlement application Revised computation of income considering additional TDS credit of Rs.2,34,972/- is submitted in S.No.6 of the Additional Type Set. Original computation of Income submitted before ITSC is enclosed in S.No.5 of the Additional Type Set. As can be seen if additional TDS credit of Rs.2,34,972/- is considered, taxes payable reduces by Rs.3,31,281/- for A.Y.2016-17 which would set off the demand of Rs.3,52,780/- for A.Y.2013-14 when considered along with refund already due as per settlement application of Rs.1,10,796/-.</i></p> <p><i>C) No shortfall as on date of filing settlement application if interest u/s234B is correctly computed Interest u/s.234B for A.Y.2012-13, 2013-14 and 2014-15 ought to have been calculated only until such date of adjustment of excess tax for A.Y.2015-16 (taxes for A.Y.2015-16 and in March 2018 and May 2018 itself) and not till the date of filing application before ITSC i.e., October 2018. on recalculating interest u/s234B in</i></p>

this basis the refund due to petitioner as on date of filing settlement application is Rs.20,18,724/- (Rd.pg32-37 in S.No.3 Additional Type Set) Department in Counter Affidavit states in Para 6 (c) that interest is to be calculated independently for each assessment year till date of payment of taxes for each Assessment Year. The scheme of settlement allows taxes paid in excess in one year to be adjusted against taxes payable for other years within the block of years before ITSC. When adjustment of taxes between years is allowed interest should stop on the date of adjustment. Reference is made to section 245C(1D) dealing with computation of additional amount of income tax in case where the application relates to more than one year which specifically states that the aggregate of the amount of tax is the additional amount of income tax payable in respect of applications referred in 245C(1D).

D) No shortfall as on date of filing settlement application if interest u/s 234B is correct computed. Interest u/s234B for A.Y.2012-13, 2013-14 and 2014-15 ought to have been calculated only until such adjustment of excess tax for A.Y.2015-16 (taxes for A.Y.2015-16 paid in March 2018 and May 2018 itself) and not till the date of filing application before ITSC i.e., October 2018. On recalculating interest u/s.234B in this basis the refund due to petitioner as on date of filing settlement application is Rs.20,18,724/- (Td.Pg.32-37 in S.No.3 Additional Type Set) Department in Counter Affidavit states in Para 6(c) that interest is to be calculated independently for each assessment year till date of payment of taxes for each Assessment Year. The scheme of settlement allows taxes paid in excess in one year to be adjusted against taxes payable for other years within the block of years before ITSC. When adjustment of taxes between years is allowed, interest should stop on the date of adjustment. Reference is made to section 245C(1D) dealing with computation of additional amount of income tax in case where the application relates to more than one year which specifically states aggregate of the amount of tax is the additional amount of income tax payable in respect of applications referred in 245C(1D).

E) Without prejudice, if interest u/s 234B is to be calculated till date of filing settlement application i.e., if taxes paid in excess in A.Y.2015-16 in March and May 2018 is allowed to adjusted against taxes payable for other years only in October 2018, then u/s 244A interest is to be allowed for taxes paid in March and May 2018 till October 2018. Hence there would be no shortfall as on date of filing settlement application if interest u/s244A is considered (Rdf.Pg.38-40 in S.No.3 Additional Type Set). Claim of petition is allowable u/s 244A. Either 234B has

to be reduced or 244A ought to be allowed to the petitioner in this regard Department cannot have huge amount due to the assessee and also claim there is shortfall in payment of taxes as on date of filing settlement application.

F) Without prejudice decision in the case of Dr.Prathap Reddy V. ITSC & other in W.P.No.5333 of 2018 was not properly appreciated by ITSC. No specific comments in this regard in counter affidavit Self-assessment tax of Rs.7.5 lakhs paid by assessee on 18.11.2018 even before receipt of report u/s245D(2B) on 27.11.2018.

G) Without prejudice, Petitioner eligible for refund of Rs.3,15,344/- pertaining to A.Y.2006-07 and refund of Rs.17,42,099/- for A.Y.2010-11 which is also available for adjustment against demand for A.Y.2013-14. For A.Y.2006-07 refund of Rs.9,36,007/- is due to the petitioner as per Assessment order for A.Y.2006-07 in S.No.7 of the Additional Type Set as against this the petitioner has received only Rs.6,20,663/- as refund till date. Hence, Petitioner eligible for refund of Rs.3,15,344/- (Rs.9,36,007/- minus Rs.6,20,663/-) pertaining to A.Y.2006-07. Though the Form 26AS for A.Y.2006-07 shows additional refund of Rs.4,69,785/- for A.Y.2006-07 (S.No.8 of Additional Type Set), the same was never received by Petitioner. For A.Y.2010-11, the TDS credit given as per 143(3) order dated 07.01.2016 is Rs.27,28,824/- (S.No.9 of Additional Type Set). However since, 07.01.2016 but before filing settlement application on 16.10.2018, the TDS credit for the A.Y.2010-11 has increased to Rs.44,70,854/- which is evidenced by Form 26AS S.No.10 of Additional Type Set. So difference between Rs.44,70,854/- and Rs.27,28,824/- amounting to Rs.17,42,099/- not allowed by AO in the assessment order is due as refund even on date of making application before ITSC. No specific comments in this regard in counter affidavit.

H) Demand for A.Y.2013-14 is disputed demand and same not to be considered in calculation of tax and interest at the 245D(2C) proceedings before ITSC.

I) Additions made through assessment order u/s.143(3) not offered as income through the application and in fact disputed and pending in appeal before CIT(A) and hence the payment of tax thereon does not arise in terms of section 245C(1)

Written
Submission of the
Department on the
above issue

As per the 26AS Statement for the AY 2016-17 as on date, TS credit available for the petitioner is Rs.20,80,499 (as against the TDS amount of Rs.17,45,527 available as on date of filing the Settlement Application). In other words, excess TDS credit available now for the AY 2016-17 works out to Rs.3,34,972. Coupled with the excess taxes paid of Rs.47,430

(Rs.5,57,59,992 paid for AY 2015-16-Rs.5,57,12,562 payable for AYs 2012-13, 2013-14, 2014-15, 2016-17 & 2017-18 as per the computation filed along with the Settlement Application), the total credit available to the petitioner as on date works out to Rs.3,82,402 (Rs.3,34,972) + Rs.47,430), which is more than the demand of Rs.3,52,780 due for the AY 2013-14.

6. Thus, the admitted position is that there is no shortfall as on date as confirmed by the officer, even though there was a shortfall, according to the Department, as on date of application before the SC. On an overall consideration of the matter, I am of the view that this is not a case where the assessee has consciously short-paid admitted tax. There are computational differences that exist that could well be the reason for the remittances falling short of the required amounts. This is apparent from the contentions of the assessee/petitioner and revenue extracted above. In addition, the differences are quite insignificant in the context of the entirety of the payments made. I am thus of the view that in the interests of substantial justice the petitioners' case should be considered on merits by the Commission. The impugned order treating the application as invalid is thus set aside and the Settlement Commission is directed to take the matter up for hearing on merits and pass appropriate orders, in accordance with law.

7. This writ petition is allowed in the above terms. Consequently, connected miscellaneous petitions are closed with no order as to costs.

22.01.2020

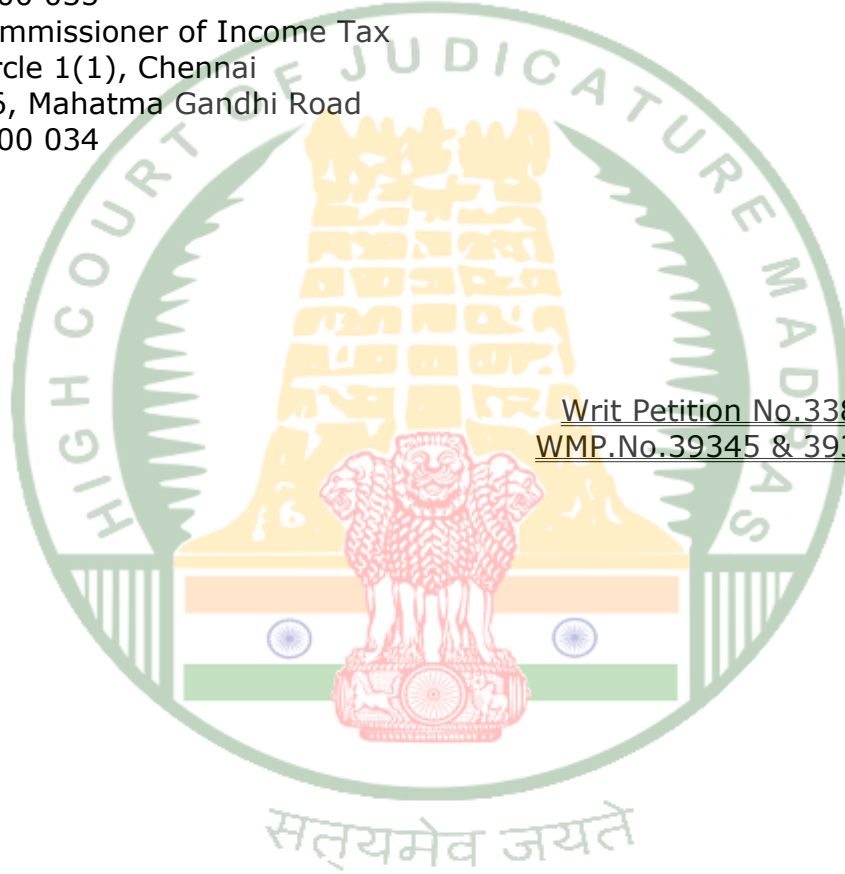
Index : Yes/No
Speaking Order/Non speaking Order
ska/sl

Dr.ANITA SUMANTH, J.

ska/sl

To

- 1.Income Tax Settlement Commissioner
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
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