

Assistant Commissioner Of Income Tax vs Satwashil Vasant Mane

ID: F2J-C-2437 Court: Kerala High Court
Case: WA NO. 369 OF 2025 Date: 2025-03-03

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Kerala High Court Assistant Commissioner Of Income Tax vs Satwashil Vasant Mane on 3 March, 2025 Author: A.K.Jayasankaran Nambiar Bench: A.K.Jayasankaran Nambiar 2025:KER:18864 WA NO. 369 OF 2025 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

WA NO. 369 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 7.1.2025 IN WP(C)

NO.21868 OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

1 ASSISTANT COMMISSIONER OF INCOME TAX, OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1, KOZHICODE, 7TH FLOOR, AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXE BUILDING, MANANCHIRA, KOZHICODE, PIN - 673001

2 THE PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL), KOCHI, OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX, KERALA, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI, PIN - 682018

BY ADVS.JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA SRI.NAVANEETH.N.NATH 2025:KER:18864 WA NO. 369 OF 2025 2

RESPONDENT/PETITIONER:

SATWASHIL VASANT MANE, AGED 30 YEARS S/O. VASANT RAMCHANDRA MANE, RESIDING AT 1527, CHOYVA P.O., CHOYVA, KANNUR DISTRICT, PIN - 670006

BY ADVS. SAJU S A.V.SAJAN(K/384/2001) SAHDHA K.U.(K/1330/2024)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 2025:KER:18864 WA NO. 369 OF 2025 3

JUDGMENT

Easwaran S., J. This intra-court appeal is preferred by the Revenue aggrieved by the judgment dated 7.1.2025 of the learned Single Judge in WP(C) No.21868/2024 directing the appellants to grant interest on the amount of refund ordered.

2. The brief facts for the disposal of the appeal are as follows:

The 1st respondent-assessee approached the writ court aggrieved by the inaction on the part of the appellants in not releasing interest on the amount of refund to which the 1st respondent-assessee was entitled to in pursuance to issuance of a certificate in Form-5 under Sections 5(2) r/w 6 of the Direct Tax Vivad se Vishwas Act, 2020. By an order of assessment under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2016-17, the assessee was assessed to a total income of Rs.1,86,80,000/-, which includes an addition of Rs.75,00,000/- as unexplained investment. In the meantime, the assessee filed a declaration and undertaking under sub-Section (5) of Section 4 of the Direct Tax Vivad se Vishwas Act, 2020 ('Act', for short). On filing of the said undertaking and declaration, a certificate was drawn by the Assistant Commissioner of Income Tax, 2025:KER:18864 WA NO. 369 OF 2025 4 Central Circle-I, Kozhikkode showing that the assessee was entitled for a refund of Rs.28,81,185/-. Immediately thereof, the Principal Commissioner of Income Tax, Kochi issued a certificate in Form-5 on 24.11.2021 under sub-Section (2) of Section 5 of the Act. Thereafter, on 29.11.2023, the Assistant Commissioner of Income Tax, Central Circle-I, Kozhikkode passed Ext.P4 order giving effect to the refund, but however denying interest. Aggrieved by the said order, the assessee filed a grievance petition on 8.1.2024 which was answered by stating that any amount paid in pursuance of a declaration made under Section 4 shall not be refundable under any circumstances. In these circumstances, the assessee approached the writ court seeking for the following reliefs:

"i). Issue a writ or directions in the nature of or similar to writ of certiorari to quash the Exhibit-P4 so far as it not allowed interest on refund dated 29.11.2023 and also to set aside the Exhibit-P6 and P8 Communication dated 01.02.2024 and 10.04.2024 issued by the Assistant Commissioner of Income Tax Central Circle-1 Kozhikkode, to the petitioner.

ii) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing the 1st to 2nd Respondents to reconsider the Exhibit-P5 grievance application of the petitioner afresh and pass order to giving effect issuing applicable interest 2025:KER:18864 WA NO. 369 OF 2025 5 on refund issued from the date of issuance of Form No.5 dated 24.11.2021, in a time bound manner.

iii) Pass such other and further directions in favour of the petitioner as this Hon'ble Court may deem fit and proper."

3. The learned Single Judge, who considered the writ petition negated the contention of the Revenue that interest on such excess payment is not payable because of a specific exclusion of the provision of Section 244A of the Income Tax Act, 1961 by virtue of Section 7 of the Act. The learned Single Judge proceeded to hold that the requirement of imposing interest on delayed refunds is a matter of accountability of the Department and a measure of recompense for the person who was deprived of the money. It is aggrieved by these findings that the present appeal is preferred by the Revenue.

4. Heard Sri.Jose Joseph, the learned Standing Counsel appearing for the appellants, and Sri.S.Saju, the learned counsel appearing for the 1st respondent-assessee.

5. The learned counsel for the appellants primarily contended that the Direct Tax Vivad se Vishwas Act, 2020 being a special enactment, the provisions thereof will have to be given a strict interpretation. He further pointed out that with reference to 2025:KER:18864 WA NO. 369 OF 2025 6 Section 7 of the Act, when the provision of Section 244A of the Income Tax Act, 1961 has been specifically excluded, the assessee cannot claim any interest on the amount of refund.

6. We have considered the rival submissions raised across the bar and are of the view that the contention of the appellants has to fail for the reasons to follow.

7. Section 244A of the Income Tax Act, 1961 reads as under:

"244A. Interest on refunds.--(1) Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:--

(a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period,--

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or 2025:KER:18864 WA NO. 369 OF 2025 7

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i); (aa) where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

Provided that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub- section (1) of section 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of 5[one-half per cent.] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII--

B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which-- 2025:KER:18864 WA NO. 369 OF 2025 8 (a) claim for refund is made in the prescribed form; or (b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted. (2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, as the case may be,] whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable under sub-section (1) or (1A) or (1B), and where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final. (3) Where, as a result of an order under sub- section (3) of section 115WE or section 115WF or section 115WG or sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where 2025:KER:18864 WA NO. 369 OF 2025 9 the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly. (4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years:

Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.

Explanation.--For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(1A) In a case where a refund arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the 2025:KER:18864 WA NO. 369 OF 2025 10 rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted."

The scheme of Section 244A provides for calculation of the interest in different scenarios as provided therein.

8. In order to appreciate the contention of the Revenue that because of the exclusion provided under the Act, the assessee is not entitled to claim interest under Section 244A of the Income Tax Act, 1961, we need to consider Sections 5 and 7 of the 2020 Act closely. Section 5, which provides for the time and manner of payment, is extracted hereunder:

"5. Time and manner of payment.-(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed 2025:KER:18864 WA NO. 369 OF 2025 11 form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount. (3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

Explanation.--For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute." Sub-Section (2) creates an obligation on the declarant to pay the amount determined under sub-Section (1) within fifteen days of the date of receipt of the certificate.

9. Section 7 of the Act reads as under:

"7. No refund of amount paid.-Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.

2025:KER:18864 WA NO. 369 OF 2025 12 Explanation.--For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under sub-section (1) of section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act."

Section 7 speaks about refund of any amount paid in pursuance of a declaration made under Section 4. The contention of the Revenue that once a declaration under Section 4 is accepted, the excess amount, if any, found though has to be refunded, the assessee cannot claim interest, appears to be far fetched for the reason that we could not find any absolute prohibition under the Act disentitling the assessee from claiming interest. What is provided under Section 7 is exclusion of interest as provided under Section 244A of the Income Tax Act, 1961.

10. The facts presented before us would clearly establish that the appellants were clearly under fault in not releasing the amount in due time. The declaration was accepted by Ext.P3 on 24.11.2021. Going by Section 5, if any amount was liable to be paid by the assessee, the assessee was bound to pay the same within 2025:KER:18864 WA NO. 369 OF 2025 13 fifteen days. We are inclined to think that, since an obligation is created on the assessee to pay the amount within fifteen days, though not expressly provided, the Department is also equally bound under law to refund the excess amount within a reasonable time. In the present case, the fifteen-day period calculated from Ext.P3 order expired on 8.12.2021. The Assistant Commissioner of Income Tax, Central Circle-I, Kozhikkode, unreasonably sat over the matter after Ext.P3 order and took consequential action only on 29.11.2023.

11. In this context, it is pertinent to mention that the power of the court to grant interest is always available under the provisions of Section 3 of the Interest Act, 1978. Notwithstanding the provisions of the Income Tax Act, 1961 and also the Direct Tax Vivad se Vishwas Act, 2020, the Court can always grant reasonable interest if it is satisfied that the delay occurred is solely due to the fault of the Revenue. We are fortified in our views in the light of the provisions contained under Section 4 of the Interest Act, 1978.

12. We also take note of the fact that on similar facts, a Division Bench of the Bombay High Court in UPS Freight Services India Pvt. Ltd. v. Deputy Commissioner of Income Tax, Central Circle 3-2, Writ Petition Civil No.10314/2023 decided on 28.8.2023 [2023 SCC OnLine Bom 2960] held that interest is leviable since the State 2025:KER:18864 WA NO. 369 OF 2025 14 having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. We are in respectful agreement with the view expressed by the Division Bench of the Bombay High Court and therefore, cannot find fault with the findings of the learned Single Judge in the impugned judgment. Hence, we see no reason to interfere with the findings rendered by the learned Single Judge. Accordingly, the writ appeal fails and the same is dismissed. No order as to costs.

Sd/- DR.A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/- EASWARAN S., JUDGE jg