Govindachary vs The Principal Commissioner Of Income ...

ID: F2J-C-2536 **Court:** Karnataka High Court
Case: WRIT PETITION NO.19696 OF 2024 (T-RES) **Date:** 2024-09-18

Complete searchable public court-text reproduction. This clean reference PDF is generated by Finin2min; the linked public source remains controlling.

[Cites 8, Cited by 0]

Karnataka High Court Govindachary vs The Principal Commissioner Of Income ... on 18 September, 2024 Author: S.R.Krishna Kumar Bench: S.R.Krishna Kumar -1- NC: 2024:KHC:38773 WP No. 19696 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2024

BEFORE THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR WRIT PETITION NO.19696 OF 2024 (T-RES) BETWEEN:

GOVINDACHARY S/O LATE SRI DASACHARY AGED ABOUT 75 YEARS NO.17/1 AMBALIPURA VILLAGE AGARA POST, BELLANDUR GATE VARTHUR HOBLI, SARJAPUR ROAD BENGALURU - 560 102. ...PETITIONER (BY SRI. SHREEHARI KUTSA, ADVOCATE) AND:

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX BENGALURU - 2, BENGALURU BMTC BUILDING, 80 FT ROAD, 6TH BLOCK NEAR KHB GAMES VILLAGE, KORAMANGALA BENGALURU - 560 095 THE 'DESIGNATED AUTHORITY' UNDER THE Digitally signed DIRECT TAX VIVAD SE VISHWAS ACT, 2020. by LEELAVATHI SR

2. ASSISTANT COMMISSIONER OF INCOME TAX Location: HIGH CIRCLE - 4(3) (1), BENGALURU COURT OF KARNATAKA CENTRAL REVENUE BUILDING, QUEENS ROAD BENGALURU - 560 001. THE ASSESSING OFFICER UNDER THE INCOME TAX ACT, 1961.

3. THE COMMISSIONER OF INCOME TAX (APPEALS) BENGALURU -15, BENGALURU CENTRAL REVENUE BUILDING, QUEENS ROAD BENGALURU - 560 001 THE APPELLATE AUTHORITY UNDER SECTION 246A OF THE INCOME TAX ACT, 1961. ...RESPONDENTS (BY SRI. E.I. SANMATHI, ADVOCATE) -2- NC: 2024:KHC:38773 WP No. 19696 of 2024

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DIGITALLY SIGNED AND ELECTRONICALLY COMMUNICATED FORM NO.3 I.E., FORM FOR CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 5 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 AND DIRECT TAX VIVAD SE VISHWAS RULES, 2020 DATED 26/01/2021 ISSUED BY THE RESPONDENT NO.1 FOR THE ASSESSMENT YEAR 2006-07 AND BEARING ACKNOWLEDGMENT NO. 227623830260121 AND ENCLOSED AS ANNEXURE E1.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER In this petition, petitioner seeks the following reliefs:

"a. Issue a writ of certiorari or any other suitable writ for quashing of the digitally signed and electronically communicated Form No. 3 i.e., Form for Certificate under sub-section (1) of Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 dated 26/01/2021 issued by the Respondent No. 1 for the assessment year 2006-07 and bearing acknowledgment no. 227623830260121 and enclosed as Annexure E1;

b. Issue a writ of certiorari or any other suitable writ for quashing of the digitally signed and electronically communicated Form No.3 i.e., Form for Certificate under sub-section (1) of Section 5 of the Direct Tax Vivad Se. Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 dated 26/01/2021 issued by the Respondent No.1 for the assessment year 2007-08 and bearing acknowledgment no.227624440260121 and enclosed as Annexure E2; -3-

NC: 2024:KHC:38773 WP No. 19696 of 2024 c. Issue a writ of certiorari or any other suitable writ for quashing of the digitally signed and electronically communicated Form No.3 i.e., Form for Certificate under sub-section (1) of Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 dated 26/01/2021 issued by the Respondent No.1 for the assessment year 2008-09 and bearing acknowledgment no.227602690260121 and enclosed as Annexure E3;

d. Issue a writ of certiorari or any other suitable writ for quashing of the digitally signed and electronically communicated Form No.3 i.e., Form for Certificate under sub-section (1) of Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 dated 26/01/2021 issued by the Respondent No.1 for the assessment year 2009-10 and bearing acknowledgment no.227624940260121 and enclosed as Annexure E4;

e. Issue a writ of mandamus or writ of direction or any other suitable writ declaring that the levy of interest in the manner made in Form No.3 i.e., Form for Certificate under sub-section (1) of Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 issued by the Respondent No.1 in Annexures E1, E2, E3 and E4 is not in accordance with the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 and Direct Tax Vivad Se Vishwas Rules, 2020;

f. Issue a writ of mandamus or writ of direction or any other suitable writ directing the Respondent No.1 to issue fresh Form No.3 i.e., Form for Certificate under sub- section (1) Section 5 of the Direct Tax Vivad Se Vishwas Act, -4- NC: 2024:KHC:38773 WP No. 19696 of 2024 2020 and Direct Tax Vivad Se Vishwas Rules, 2020 and permit the Petitioner to make payment under the said scheme in such manner that this Hon'ble Court may deem fit in the facts and circumstances of the case.

g. Grant such other reliefs as this Hon'ble Court deems fit in this matter including but not limited to costs of this petition."

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that aggrieved by the Assessment orders passed by respondent No.2 - Assistant Commissioner, the petitioner filed appeal before respondent No.3, which was dismissed and the further appeal filed by the petitioner before the ITAT was remitted back to respondent No.3 before whom the petitioner filed additional grounds for the Assessment years 2006-07 to 2009-10. During the pendency of the appeals, the Parliament passed the Direct Tax Vivad Se Vishwas Act, 2020 (for short, the 'DTVSV Act') on 17.03.2020 and Rules were framed in this regard. In pursuance of the same, the petitioner filed applications in Forms - 1 and 2 undertaking to make payment of disputed taxes in terms of the provisions of the DTVSV Act and that he would pay 125% of the disputed taxes. It is the -5- NC: 2024:KHC:38773 WP No. 19696 of 2024 grievance of the petitioner that instead of accepting the declaration made by the petitioner, the respondent No.1 issued Form - 3 on 26.01.2021 determining liability much higher than what was declared by the petitioner, who filed submissions on 22.04.2021 before the respondent No.2 as well as an application for rectification before respondent Nos.1 and 2. Since, the respondents did not take any further steps in this regard and instead the Central Board of Direct Taxes (for short, 'CBDT') issued a standing order at Annexure - L dated 27.06.2024 permitting issuance of Form - 3 as requested by the petitioner within 30.09.2024, petitioner is before this Court by way of the present petition.

4. Per contra, learned counsel for the respondents would support the impugned Certificate in Form - 3 at Annexures - E1 to E4 and submits that there is no merit in the petition and the same is liable to be dismissed.

5. A perusal of the Assessment orders passed in relation to the petitioner for the aforesaid Assessment years will indicate that the same were issued pursuant to search proceedings under Section 132 of the Income Tax Act by specifically quantifying the -6- NC: 2024:KHC:38773 WP No. 19696 of 2024 tax and interest payable by the petitioner. In this context, a perusal of the provisions contained in Section 3 of the DTVSV Act will indicate that the same does not make any difference as regards waiver of interest on disputed taxes and interest on tax not in dispute unlike non-search cases where it is only the interest on disputed taxes which are waived as can be seen from Section 3 of the DTVSV Act, which reads as under:

"Section 3 :- Amount payable by declarant - Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before such date as may be notified, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:--

Amount payable Amount payable under this Act on or st under this Act on or after the 1 day of st before the 31 day of January, 2021 or Sl No Nature of tax arrear December, 2020 or such later date as such later date as may may be notified but be noticed. on or before the last date.

(a) where the tax arrear Amount of the disputed the aggregate of the is the aggregate tax. amount of disputed amount of disputed tax and ten per cent tax, interest of disputed tax: chargeable or provided that where charged on such the ten per cent of disputed tax and disputed tax exceeds penalty leviable or the aggregate -7- NC: 2024:KHC:38773 WP No. 19696 of 2024

levied on such amount of interest disputed tax. chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act .

(b) where the tax arrear the aggregate of the the aggregate of the includes the tax, amount of disputed tax amount of disputed interest or penalty and twenty-five per tax and thirty-five per determined in any cent. of the disputed cent. of disputed tax: assessment on the tax: provided that where provided that where basis of search the twenty-five per cent the thirty- five per under section 132 or of disputed tax provided cent. of disputed tax section 132-A of the that where the twenty- exceeds the Income-tax Act. five per cent of disputed aggregate amount of tax exceeds the interest chargeable aggregate amount of or charged on such interest chargeable or disputed tax and charged on such penalty leviable or disputed tax and levied on such penalty leviable or disputed tax, the levied on such disputed excess shall be tax, the excess shall be ignored for the ignored for the purpose purpose of of computation of computation of amount payable under amount payable. this Act.

(c) where the tax arrear twenty-five per cent. of thirty per cent. of relates to disputed disputed interest or disputed interest or interest or disputed disputed penalty or disputed penalty or penalty or disputed disputed fee disputed fee: fee.

Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed: -8-

NC: 2024:KHC:38773 WP No. 19696 of 2024 Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed."

6. It is needless to state that even as per the respondents themselves, the DTVSV Act is a benevolent piece of legislation which was enacted for the benefit of the tax payer / assessee and the petitioner would be entitled to full / complete benefit of the said scheme envisaged under the DTVSV Act. A plain reading of the provisions contained in Section 3 of the DTVSV Act is sufficient to come to the conclusion that no distinction has been made / drawn between waiver of interest on disputed taxes and waiver of interest -9- NC: 2024:KHC:38773 WP No. 19696 of 2024 on tax not in dispute; it follows therefrom that in the instant case, in the light of the undisputed fact that the Assessment orders were passed pursuant to search proceedings and the provisions contained in Section 3 of the DTVSV Act supra, the petitioner would be entitled to waiver of the entire interest amount as determined in the Assessment orders and consequently, the applications in Forms - 1 and 2 submitted by the petitioner undertaking to make payment of the disputed taxes in the manner laid down under Section 3 of the DTVSV Act by granting waiver of interest deserve to be allowed. It is therefore clear that the respondents have failed to consider and appreciate this aspect of the matter while issuing Form - 3 and have erroneously called upon the petitioner to pay the interest by issuing the impugned Forms at Annexures - E1 to E4, which are not only without jurisdiction or authority of law but also illegal, arbitrary and contrary to facts and the provisions of the DTVSV Act warranting interference by this Court in the present petition.

7. Learned counsel for the petitioner submits at this stage that in view of the present petition being allowed, petitioner would - 10 - NC: 2024:KHC:38773 WP No. 19696 of 2024 withdraw the pending appeals / rectification applications as expeditiously as possible. The said submission is placed on record.

8. Insofar as the CBDT standing order at Annexure - L dated 27.06.2024 directing the process under the DTVSV Act to be completed by 30.09.2024 is concerned, having regard to the present petition being filed on 12.07.2024 and being allowed by the present order, the respondents are directed to comply with the directions issued in the present order even though the same is beyond 30.09.2024.

9. In the result, I pass the following:

ORDER

(i) The petition is hereby allowed.

(ii) The impugned Certificates at Annexures - E1 to E4 dated 26.01.2021 in Form - 3 issued by the respondents for the Assessment years 2006-07 to 2009-10 are hereby quashed.

(iii) The respondents are directed to accept Forms -

1 and 2 at Annexures - D1 to D4 submitted by the petitioner and issue fresh Certificate in Form - 3 in favour of the - 11 - NC: 2024:KHC:38773 WP No. 19696 of 2024 petitioner within a period of four weeks from the date of receipt of a copy of this order.

(iv) The submission of the learned counsel for the petitioner that he would withdraw the pending appeals and rectification applications are placed on record. Sd/- (S.R.KRISHNA KUMAR) JUDGE SV List No.: 1 Sl No.: 20