



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 575 OF 2023

Arihant Developers

...Petitioner

Versus

Principal Commissioner of Income Tax-5 Akurdi,
Pune & Ors

...Respondents

Mr. Sanket S. Bora, a/w Vidhi K. Punmiya, Amiya Rajan Das & Unnati T., i/b SPCM Legal, Advocates for the Petitioner.

Mr. Suresh Kumar, Advocate for Respondents.

**CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : AUGUST 13, 2024

ORAL JUDGMENT (PER : G.S. KULKARNI, J.)

1. Rule. Rule is made returnable forthwith. By consent of the parties the Writ Petition is taken up for final disposal.

2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

A. Issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order or direction, directing Respondent No. 1 to act in furtherance of the declaration made by the Petitioner under IDS and issue the appropriate Form 4 Certificate of Declaration;

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August 13, 2024

Ashwini Vallakati

B. Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, quashing the Impugned assessment order dated 224 March, 2022 passed w/s 147 r.w.s. 144 and 144B of the ITA, the demand notice u/s 156 and the Penalty notice w/s 274 r.w.s 271 AA(1) both dated 22TM March, 2022 along with the issue letter dated 374 August, 2022 as being .wholly without jurisdiction illegal and arbitrary;

3. As urged by the learned Counsel for the Petitioner, the entire basis for the Assessing Officer to issue the impugned notice and to pass the assessment order dated 22 March, 2022 under Section 147 read with Section 144 and 144B of the Income-tax Act, 1961 (“***the Act***”) and also to issue the consequential notice under Section 156 and the penalty notice under Section 274 read with 271AA(1) dated 22 March, 2022 was that the Petitioner had although made a declaration/ in form-1 under Income Declaration Scheme, 2016 (***IDS***) brought into effect from 1 June 2016, the Petitioner had not deposited the tax amounts which would liable to be deposited. This is clear from the annexure to the notice under Section 142(1) dated 27 December, 2021 wherein paragraph 1 thereof was recorded as under:-

“1. It has been noted that your assessee firm, has filed application in IDS,2016, for declaration of undisclosed income of Rs.3,30,00,000/-. As per the provision of section 184 & 185 has had to pay Rs.1,48,50,000/- on account of tax, surcharge and penalty. However, it is noticed that you have not paid the same within the time allowed as per the provision of section 187. Please give explanation why the said

amount may not be added to your taxable income for the A.Y. in reference and taxed accordingly.”

4. Learned Counsel for the Petitioner has submitted that the entire basis for the Assessing Officer to proceed on such assumption that the Petitioner had not deposited the tax was incorrect, inasmuch as the Petitioner had deposited the tax amounts on 30 November, 2016, 30 March, 2017 and 30 September, 2017, the challans of which are also annexed to this petition at Exhibit B1 and B2. It is therefore submitted that there was no question of any mismatch and/or such payments not being taken into consideration while issuing the impugned notice as also passing of the reassessment order under Section 147 read with Section 144 and 144B of the Act as impugned.

5. Mr. Suresh Kumar, learned Counsel for the Respondents has tendered a reply affidavit of Mr. Santosh Kumar, Income Tax Officer Ward-9(1), Pune. In para 2(x), it is stated that as per the details available with the Respondent and as per the details of challans furnished by the assessee, the seven payments were made by the Petitioner totaling to an amount Rs.1,48,50,000/- towards the liability against the declaration made under the IDS.

6. In this view of the matter, the basis on which, the Assessing Officer had proceeded that the Petitioner has not complied with the terms and conditions of the IDS and had not deposited the tax certainly was erroneous.

7. Learned Counsel for the Petitioner submits that in view of such deposit, it was incumbent on the Respondents to issue a certificate to the Petitioner in form-4, which has also not been issued so far.

8. Having heard learned Counsel for the parties and having perused the record as also the reply affidavit, we are of the opinion that the contention as urged on behalf of the Respondents in the reply affidavit, that the Petitioner in fact complied with all the requirements under the IDS as also appropriate amount of tax was deposited is sufficient for this Court to accept the case of the Petitioner. Thus, the impugned assessment order cannot be held to be legal. It would be accordingly required to be quashed and set aside on the Respondents own showing that the Petitioner had deposited all the amounts under the IDS. The Petitioner accordingly had become entitled to the benefit under such scheme. We accordingly allow this petition in terms of prayer clause (A) and (B). The Respondents are also directed to issue an

appropriate certificate of the deposit of tax under IDS to the Petitioner within a period of four weeks from the date of a copy of this order being presented before the competent officer.

9. At this stage, learned Counsel for the Petitioner submits that the Petitioner had already filed an appeal before the Commissioner of Income-tax Appeal (“*CIT-A*”). The said appeal is rendered infructuous in view of the present order and stands disposed of. This order accordingly be informed by the learned Counsel for the parties to the CIT(A).

10. Rule is accordingly made absolute in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]