IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

WP(C) NO. 38265 OF 2024

PETITIONER:

MAHALI ASSANAR AZEEZ,
AGED 60 YEARS
MAHALI HOUSE, MUTTIKULANGARA, PUTHUPARIYARAM,
PALAKKAD, PIN – 685 608.

BY ADVS.
PADMANATHAN K.V.
R.SREEJITH

RESPONDENTS:

1. **THE INCOME TAX OFFICER,**
   WARD-1, AAYAKKAR BHAVAN, ENGLISH CHURCH ROAD,
   PALAKKAD, PIN – 678 014.

2. **THE COMMISSIONER OF INCOME TAX (APPEALS),**
   AAYAKKAR BHAVAN, SAKTHAN THAMPURAN NAGAR,
   THRISSUR, PIN – 680 001.

3. **THE PRINCIPAL COMMISSIONER OF INCOME TAX,**
   AAYAKKAR BHAVAN, NORTH BLOCK, NEW ANNEXE
   BUILDING, MANANCHIRA, KOZHIKODE, PIN – 673 001.

BY ADVS.
P.G.JAYASHANKAR (Sr.SC)
KEERTHIVAS GIRI (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R

JUDGMENT

The petitioner is an individual assessee under the provisions of the Income Tax Act, 1961. For the assessment year 2009-2010, there was a demand for a sum of Rs.85,00,041/- (Eighty-five Lakhs Forty-one only) as tax. A penalty of Rs. 40,92,205/- (Forty Lakhs Ninety-two Thousand Two Hundred Five only) was also imposed on the petitioner. While appeals were pending against the order of assessment as well as the order imposing the penalty, the petitioner preferred an application to settle the liability under the ***Direct Tax Vivad se Vishwas Act, 2020***. The amount payable by the petitioner was determined to be Rs.19,69,747/- (Nineteen Lakhs Sixty-nine Thousand Seven Hundred Forty-seven only) after giving credit to a sum of Rs.53,50,029/- (Fifty-three Lakhs Fifty Thousand Twenty-nine only) already paid by the petitioner pending the proceedings. According to the petitioner, by an inadvertent error, the petitioner paid only a sum of Rs.19,57,182/- (Nineteen Lakhs Fifty-seven Thousand One Hundred Eightytwo only) and thereby there was a short remittance of Rs.12,565/- (Twelve Thousand Five Hundred Sixty-five only).

2. The petitioner is before this Court being aggrieved by the fact that on account of the short remittance of Rs.12,565/-, the competent among the respondents has not completed the proceedings by treating the issue as settled. It is submitted that, on noticing the error, the petitioner subsequently remitted the amount of Rs.12,565/- and the same may be treated as substantial compliance with the provisions of the Settlement Scheme (the Scheme).

3. The learned Senior Standing Counsel appearing for the Income Tax Department would submit the terms of the Scheme under the ***Direct Tax Vivad se Vishwas Act, 2020*** are specific, and if the amount payable by the petitioner is not paid in full before the date specified, the petitioner will lose the benefit of the Scheme. It is submitted that though the petitioner had remitted substantial amounts, there is an admitted short remittance of a sum of Rs.12,565/-, making the petitioner ineligible for settling the matter in terms of the provisions contained in the Scheme.

4. Having heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the Income Tax Department and having regard to the facts and circumstances of the case, I am of the opinion that the petitioner is entitled to succeed. The admitted facts are that after giving credit to the sum of Rs.53,50,029/- paid by the petitioner pending the proceedings, the petitioner was required to remit a sum of Rs.19,69,747/- to settle the liability in terms of the Scheme. However, the petitioner remitted only a sum of Rs.19,57,182/- and thus there was a short remittance of Rs.12,565/-. According to the petitioner this was on account of a clerical error. While the learned Senior Standing Counsel may be right in contending that strict compliance with the provisions of the Scheme is mandatory, it is seen from the facts of the case that the petitioner had substantially complied with the terms of the Scheme and had remitted a sum of Rs.19,57,182/- before the last date specified. The doctrine of substantial compliance was considered in ***CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236***. It was held:-

"Doctrine of substantial compliance and "intended use"

32. *The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute* *and accomplish the reasonable objectives for which it was passed.*

33. *A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.*

34. *The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements*

> *relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."*

Applying the aforesaid principles to the case on hand, I am of the view that the petitioner should not be denied the benefit of the Scheme for the short remittance of a sum of Rs.12,565/-. It is also not disputed that the shortfall was made up and later remitted by the petitioner.

5. Accordingly, the writ petition is allowed by directing that if the petitioner has, by now, remitted the full amount required to be remitted by the petitioner in terms of the provisions of the ***Direct Tax Vivad se Vishwas Act, 2020,*** the liability of the petitioner for tax, penalty and interest for the assessment year 2009-2010 will be treated

as settled and the petitioner will be eligible for all benefits under the ***Direct Tax Vivad se Vishwas Act, 2020*** (including any immunity from prosecution).

The Writ petition stands ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 38265/2024

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE ASSESSMENT ORDER DTD. 29-04-2014 PASSED BY THE 1ST RESPONDENT
Exhibit P2	TRUE COPY OF THE PENALTY ORDER DTD. 29-04-2014 PASSED BY THE 1ST RESPONDENT
Exhibit P3	TRUE COPY OF THE APPEAL MEMORANDUM IN FORM 35 DTD. 19-05-2014 AGAINST THE ASSESSMENT ORDER
Exhibit P4	TRUE COPY OF THE APPEAL MEMORANDUM IN FORM 35 DTD. 19-05-2014 AGAINST THE PENALTY ORDER
Exhibit P5	TRUE COPY OF THE DECLARATION IN FORM 1 DTD. 31-01-2021 FILED BEFORE THE 3RD RESPONDENT
Exhibit P6	TRUE COPY OF THE CERTIFICATE DETERMINING AMOUNT PAYABLE IN FORM 3 DTD.20-04-2021 ISSUED BY 3RD RESPONDENT
Exhibit P7	TRUE COPY OF THE INTIMATION OF PAYMENT IN FORM 4 ALONG WITH GRIEVANCE DTD. 09-11-2021
Exhibit P8	TRUE COPY OF THE LETTER DTD. 12-08-2024 FILED BY THE PETITIONER BEFORE 3RD RESPONDENT