IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 5445 OF 1999

G. K. Sharma and Sons
State Bank Road, Deepak Building Shrirampur,
District Ahmednagar,
Through its Partner
Shri Anand Gorakhnath Sharma. **...Petitioner..**

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Nasik Division, Nasik. **..Respondents..**

Mr A. S. Bajaj, Advocate for petitioner
Mr Alok Sharma, Advocate for respondents No. 1 to 3

CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.

DATE OF RESERVING THE JUDGMENT : DECEMBER 4TH, 2014.
DATE OF PRONOUNCING THE JUDGMENT : DECEMBER 24TH, 2014.

JUDGMENT: (PER A. V. NIRGUDE, J.)

1. The facts leading to this petition are as under: -

Voluntary disclosure of Income Scheme, 1997 (in short "VDIS") was made effective from 1st July, 1997, which was to come to an end on 31st December, 1997. The petitioner on

31st December, 1997, made a declaration under the Scheme that he was liable to pay income tax of Rs. 82,327/-. Out of the said amount, a sum of Rs. 10,000/- was paid on the same day through a Challan. The remaining amount of tax was payable within 90 days with 2% interest per month. On 19th March, 1998, the petitioner deposited the remaining tax along with interest of Rs. 3,340/-. Subsequently, it was revealed that there was mistake in calculation of interest. The interest payable on the tax on 19th March, 1998, was Rs. 4,340/-, so there was short payment of Rs. 1,000/- towards interest. On 6th April, 1998, this amount was deposited along with interest, but the authorities did not accept the declaration and refused to issue certificate of VDIS to the petitioner. Despite representations of the petitioner, the authorities did not issue certificate and therefore this petition is filed. The relevant provisions of the Scheme are as under:-

Time for payment of tax.

66. The tax payable under the Scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax.

Interest payable by declarant.

67. (1) Notwithstanding anything contained in section 66, the declarant may file a declaration without paying the tax *under that sectio0n and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.*

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme.

2. Mr Bajaj, the learned Counsel for the petitioner, by referring the provisions of Section 67(2) of VDIS and placing emphasis on the word 'Tax' pointed out that the word 'Tax' has only been referred in the provision which render the declaration 'after the expiry of three month from the date of filing the declaration, as redundant. The legislature in their wisdom not included the delay or failure to make payment of interest within the ambit of Section 67(2) of VDIS. The circular sought to be relied as a clarification issued by the Department of Income Tax cannot override the substantive provision. It is further contended that the interpretation, which is tried to be made by the Department, cannot be accepted for the sole reason as it

would amount to reading something which is not there in the provision. The leaned Counsel has submitted that it is settled position in law that where provisions of the taxing statute give rise to two interpretations then the interpretation which is favourable one to the taxpayer should be adopted. In support of this submission, the learned Counsel relied on the judgment of the Hon'ble Apex Court in the case of ***Cemento Corporation Ltd. Versus Collector, Central Excise*** reported in *(2002) 8 SCC 139.*

3. On the other hand, Mr Alok M. Sharma, the learned Counsel for the respondents argued that the provision is unambiguous and calls for no interpretation. It is contended that, Section 67(2) cannot be read in isolation of Section 67(1). It is submitted that Section 67(2) lays down the failure on the part of the declarant to pay tax and interest calculated in accordance with the declaration made under Section 67(1) within the stipulated period. The learned Counsel has submitted that, while interpreting the provision of any statute, the provision cannot be interpreted by choosing some word from the provision. He has contended that for the purpose of interpretation, the provision is to be read in its entirety so as to

give meaning to the objective, which is sought to be achieved by the particular provision in the statute.

4. We are inclined to accept the contention of Mr Alok Sharma, the learned Counsel for respondents that, while interpreting the provision, the provision is to be read in its entirety.

5. In this case, the petitioner, who was under obligation to pay the entire tax with interest within three months from the date of declaration i.e. 31st December, 1997, the amount of interest and tax ought to have been deposited by him on or before 31st March, 1998. Since this was not done, the petitioner's case would squarely fall within sub-section 2 of Section 67. The provisions of scheme are required to be interpreted strictly. The scheme is one time exercise. The scheme therefore would not go beyond the last date contemplated by it. This scheme's last date was 31st March, 1998. If the entire procedure is not completed before 31st March, 1998, then a declarant would not get benefit of the scheme. Such conclusion is necessary for successful implementation of the scheme.

6. If the petitioner's contention is accepted, then the declarants would be permitted to keep paying interest on the tax for number of months after the end of the scheme. Since the scheme was floated for giving benefit to declarants, it is expected that they comply with the provisions of the scheme scrupulously. So, in this case though the amount was not paid by the end of the scheme i.e. on or before 31st March, 1998, yet it must be held that the petitioner-declarant did not comply with the required procedure and so the decision of the Income Tax Department was lawful. Similar question arose before the learned single Judge of Rajasthan High Court at Jodhpur in S.B. Civil Writ Petition No. 1850 of 2001 along with connected matters. It was urged before the Court that, in case of such delay in payment of interest the Department has ample scope to condone the delay. In the alternative, it was submitted that in case there is no power to condone the delay with the Department, the Court in extraordinary writ jurisdiction under Article 226 of the Constitution is sufficiently empowered to condone the delay etc. The Rajasthan High Court did not accept this submission particularly in view of the the judgment of Supreme Court in the case of ***Hemalatha Gargya Versus***

Commissioner of Income Tax, A.P. and another reported in *(2003) 9 SCC 510*. The Supreme Court in this judgment held that time schedule for payment of tax under VDIS, 1997, is mandatory and cannot be extended.

7. We have thoroughly considered the submissions advanced in the light of the provisions of Section 67 of the VDIS, in its entirety. While interpreting the provision, the provision cannot be interpreted in a manner sought to be interpreted by th learned Counsel for the petitioner. Failure to make payment of tax together with interest by the declarant within the time prescribed invites consequences mentioned in Section 67(2). We are therefore of the view that the contention of the learned Counsel that there is ambiguity in Section 67(2) and the word 'Tax' has to be interpreted in a restricted sense, cannot be accepted on considering the entire provisions in its totality and the objective sought to be achieved under the said provisions vis-a-vis the very objective of the VDIS. There is no scope for any equitable consideration. In view of this, the petition should fail. Same stands dismissed.

(V. L. ACHLIYA, J.) **(A. V. NIRGUDE, J.)**

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