IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5065 OF 1999

1. **Gopinath Manohar Wadi,**
Age : Adult, Occu. : Trade,
R/o Viabhav Nagar,
At Dhule.

2. Bhikan Bapu Shelke,
Age : Adult, Occu. : Trade,
R/o Plot No. 40, Vishal Nagar,
At Dhule.

3. **Ashok Kumar Bhagvandas Sangtani,**
C/o Mahendra Auto Service,
Awdhan, Agra Road,
Dhule.

(The petition is disposed as withdrawn as against petitioner Nos. 1 and 3 vide order dated 25.02.2015)

4. Rajendra Popatrao Shinde,
Age : Adult, Occu. : Trade,
R/o Mohadi (Upnagar),
At Dhule.

5. Prithviraj Chandrakant Shinde,
Age : Adult, Occu. : Trade,
R/o Sambhaji Nagar, Plot No. 15,
Deopur, At Dhule.

6. Bharat Maharu Pawar,
Age : Adult, Occu. : Trade,
R/o Mohadi (Upanagar),
At Dhule.

7. Smt. Ujjawala Sanjay Pawar,
L.R. of the deceased Sanjay
Maharu Pawar), Age : Adult,
Occu. : Trade, R/o Mohadi (Upnagar),
At Dhule.

8. **M/s Mahendra Auto Service,**
Awdhan, Agra Road, Dhule,
through representative,
Shri Gopinath Manohar Wadi. .. Petitioners

(The petition is disposed as withdrawn as against petitioner No. 8 vide order dated 25.02.2015)

Versus

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

2. The Commissioner of Income Tax,
Nashik Division, Nashik. .. Respondents

Shri S. P. Shah, Advocate h/f Shri P. M. Shah, Senior Counsel for Petitioners.
Shri Alok Sharma, Standing Counsel for Respondents.

CORAM : S. V. GANGAPURWALA AND A. I. S. CHEEMA, JJ.
DATE : 27TH MARCH, 2015.

ORAL JUDGMENT (***Per S. V. Gangapurwala, J.***) **:**

. Vide present writ petition the petitioners are challenging the orders passed by the respondent No. 2 whereby the

Commissioner of Income Tax has refused to grant statutory certificate contemplated U/Sec. 68(2) of the V. D. I. S. 1997, so also are seeking directions to issue certificate in favour of petitioners. In the alternative the petitioners seek directions restraining the respondents from forfeiting the amount paid by petitioners pursuant to the declaration made under the V.D.I.S.

2. Mr. Shah, the learned counsel for petitioners state that, the writ petition filed by the petitioners challenging vires of Sec. 2 of the V.D.I.S. has been dismissed.

3. In view of the fact that, the writ petition challenging the vires of the said provision has been dismissed, the prayers “A” and “B” of present writ petition axiomatically would stand negated and the petitioners will not be entitled for the said relief.

4. Mr. Shah, the learned counsel submits that, pursuant to the declaration under the V.D.I.S, the petitioners have deposited tax of Rs. 44,17,656/-. They would be entitled for the refund of the said amount or in the alternate to get the said amount adjusted if there is outstanding liability. If there is no outstanding liability, the petitioners would be entitled for the refund of the said amount.

5. Mr. Shah, the learned counsel further submits that, the legitimate amount of petitioners has been withheld by the respondents. As such, the petitioners are entitled for interest by

way of damages at the rate of 18% per annum.

6. According to Mr. Sharma, the learned counsel for respondents, the scheme specifically prohibits the refund of the amount of tax paid under the V.D.I.S. The learned counsel refers to Clause 17 of the said scheme. According to the learned counsel, the writ petition is already dismissed as withdrawn as against petitioner Nos. 1, 3 and 8, as such, no relief can be granted to those petitioners.

7. Mr. Shah, the learned counsel for petitioners relies on the judgment of the Apex Court in a case of **Hemelatha Gargya Vs. Commissioner of Income Tax, A.P. and another** reported in **(2003) 9 SCC 510** to contend that, if a assessee is not entitled for the benefit of the scheme, then the revenue authority should refund or adjust the amount paid by the assessee under the V.D.I.S.

8. Mr. Sharma, learned counsel for respondents submits that, in fact, as per the scheme, the petitioners are not entitled for the refund of the amount. The respondents have not derived any benefit from the said amount. Even the Apex Court, in the case of **Hemelatha Gargya Vs. Commissioner of Income Tax, A.P. and another** referred supra has not awarded any interest while refunding the amount.

9. The writ petition already stands withdrawn as far as

petitioner Nos. 1, 3 and 8 are concerned. In view of the withdrawal of writ petition, no relief can be granted to petitioner Nos. 1, 3 and 8.

10. The petitioners independently paid the tax pursuant to the declaration under the V.D.I.S.

11. It is held that, the petitioners would not be entitled for the benefit of the said scheme, in effect the said scheme would not be applicable to the petitioners. It is submitted that, a search U/Sec. 132 of the Income Tax Act was made and because of the same, the scheme of V.D.I.S. is not applicable.

12. The Apex Court in a case of **Hemlatha Gargya Vs. Commissioner of Income Tax, A.P. and another** referred supra has observed that, having held that, assessee are not entitled to the benefit of the scheme since the payments made by them are not in terms of the scheme, the revenue authorities are to be directed to refund or adjust the amount already deposited by the assessee in the purported compliance with the provisions of the scheme.

13. In the light of the above, the only limited order that could be passed is that the amount of tax deposited by petitioner Nos. 2, 4, 5, 6 and 7 pursuant to declaration under the V.D.I.S. is required to be adjusted in tax liability, if any, of these petitioners and if as on date there is no tax liability outstanding against these petitioner Nos. 2, 4, 5, 6 and 7, then the amount of tax paid

by these petitioners pursuant to the declaration under V.D.I.S. will have to be refunded to these petitioners.

14. It is submitted that, the petitioner No. 2 has paid tax of Rs. 9,54,000/-, the petitioner No. 4 has paid tax of Rs. 5,97,840/-, the petitioner No. 5 has paid the tax of Rs. 7,57,476/-, the petitioner No. 6 has paid tax of Rs. 10,06,470/- and the petitioner No. 7 has paid tax of Rs. 1,69,670/-.

15. It would appear that the petitioners have claimed refund of amount in the year 1998 itself. The petition is filed in the year 1999. The respondents ought to have adjusted the amount lying with them paid by petitioners pursuant to the declaration under the V.D.I.S. towards the tax liability outstanding against the petitioners. However, the Department has failed to do so. It is certainly not a commercial transaction for which 18% interest can be awarded. In view of the fact that the amount has been withheld by the Department, we would award the nominal interest at the rate of 6% per annum from the date of the petition that is from September 1999. However, the same would be restricted to the extent of petitioners prosecuting the Writ Petition i. e. petitioner Nos. 2 and 4 to 7.

15. In the light of the above, we pass the following order.

16. The writ petition stands dismissed as far as prayer clauses “A” and “B” are concerned. The respondents shall adjust the

amount paid by petitioner Nos. 2, 4, 5, 6 and 7 towards their tax liability, if any, outstanding as on the date and if, no such liability, is outstanding against them as on the date, then the respondents shall refund the said amount to petitioner Nos. 2, 4, 5, 6 and 7 along with interest at the rate of 6% per annum on the said amount from 1.9.1999 till the date of adjustment or refund as the case may be. The writ petition accordingly is disposed of. Rule disposed of. No costs.

Sd/-
[A. I. S. CHEEMA, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/March 15