AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1825 of 2004

Nawal Kishore Agrawal, S/o Jai Prakash Agrawal, R/o 350, Samta Colony, Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur (C.G.)

2. Union of India, Through Secretary, Ministry of Finance, North Block, New Delhi

3. Central Board of Direct Taxes, Through the Secretary, New Delhi

4. Assistant Commissioner of Income Tax, Raipur (C.G.)

5. Income Tax Officer Circle 1(3), Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Siddharth Dubey, Advocate.
For Respondents:	Mrs. Naushina Ali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/11/2017

1. The petitioner made a declaration of capital gains etc., under the Voluntary Disclosure of Income Scheme, 1997 (for short, 'VDIS') before the income tax authorities and also paid the requisite tax, but his declaration of VDIS was not accepted and it was rejected on the ground that the petitioner was not holding the assets on the date of declaration and it was declared invalid. Calling in question, legality, validity and correctness of that order, this writ petition has been preferred by the petitioner holding that his declaration was strictly in accordance with VDIS.

2. Return has been filed opposing the writ petition stating that since the petitioner was not holding the assets on the date of declaration

therefore, it has been rightly declared invalid and the writ petition as framed and filed is liable to be dismissed.

3. Learned counsel for the petitioner would submit that the petitioner had already sold gold and silver articles and utensils and therefore he has submitted the computation of capital gains and thus, the question of holding property on the date of making declaration does not arise, as he had submitted capital gains as on the date of declaration and there was no such condition in the VDIS to hold property on the date of declaration. Therefore, holding declaration to be invalid is without jurisdiction and without authority of law, as there is no such condition precedent enumerated in the VDIS for holding the property on the date of declaration.

4. Learned counsel for the respondents would support the impugned order and would submit that in the clarification issued by the Central Board of Direct Taxes (CBDT) it has clearly been stated that "... where declarants have declared jewellery but have also claimed that they has sold these prior to the date of declaration. According to the scheme, the declarant has to declare the asset that he holds at the time of making the declaration". Therefore, the petitioner's declaration was contrary to the provisions of the Scheme and it has rightly been declared invalid by the income tax authorities.

5. I have heard learned counsel for the parties and considered their rival submissions and also perused the entire material available on record with utmost circumspection.

6. The Voluntary Disclosure of Income Scheme, 1997 came into force with effect from 9-6-1997. Clause 64 (1) (b) of the said Scheme states as under: -

> "64. (1) Subject to the provisions of this Scheme, where any person makes, on or after the date of commencement of this Scheme but on or before the 31st day of December, 1997, a declaration in accordance with the provisions of section 65 in respect of any income chargeable to tax under the Income-tax Act for any assessment year—
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> ....
>
> (b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;
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> ....
>
> then, notwithstanding anything contained in the Income-tax Act or in any Finance Act, income-tax shall be charged in respect of the income so declared (such income being hereinafter referred to as the voluntarily disclosed income) at the rates specified hereunder, namely:
>
> ...."

7. A careful perusal of the aforesaid clause would show that disclosure can be made if an assessee has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme. By virtue of clause 68 of the VDIS, voluntarily disclosed income is not to be included in the total income. The petitioner has not disclosed any gold or silver articles under the above Scheme, but has submitted the computation of capital gains in which he has stated that he had already sold gold and silver articles and utensils, as such, it is a disclosure of the amount received on account of sale of those assets and the computation of capital gains has been filed while making declaration under Section 65 of the Finance Act, 1997, whereas the CBDT clarification dated 16-10-1997 provides as under: -

> "**WHERE DECLARED JEWELLERY TO CLAIMED TO HAVE BEEN SOLD : DO NO 3965/M/INV.-VDIS/97, DATED 16-10-1997**
>
> Instances have come to notice where declarants have declared jewellery but have also claimed that they has sold these prior to the date of declaration. According to

> the scheme, the declarant has to declare the asset that he holds at the time of making the declaration. Therefore, such declarations are contrary to the provisions of the Scheme. Such cases of declarations should not be accepted. Necessary instructions may be issued to the Commissioners."

8. A careful perusal of the aforesaid clarification would show that it relates to declaration of voluntarily disclosed income claiming that the jewellery has already been sold prior to the date of declaration. In the instant case, admittedly and undisputedly, the petitioner has not declared any jewellery towards undisclosed income, whereas he has stated that he had already sold jewellery and computation sheet of capital gains has been filed, therefore, the said clarification would not be applicable to the facts of the present case. There is no enabling provision in the VDIS, 1997 directing holding of assets included in the statement of capital gains on the date of declaration. Therefore, the reason assigned by the Assistant Commissioner of Income Tax rejecting the VDIS by the petitioner as invalid, is contrary to law and also contrary to the provisions of their own VDIS. Accordingly, it is quashed. The competent authority / respondents are directed to consider and accept the declaration as submitted by the petitioner under the VDIS, in accordance with law. Consequently, the certificate, if any, be issued to the petitioner. It is made clear that the petitioner has confined this writ petition to the issuance of certificate under the VDIS and the Court has not commented on the reassessment order dated 28-3-2003 (Annexure P-10).

9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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