IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.4174 OF 1999

Pravin Dwarkaprasad Jaiswal,
Age: major, Occ; Business,
Proprietor of Colour Home,
Tilak Path, Gulmandi, Aurangabad. **PETITIONER**.

VERSUS

1) The Union of India,
Through Ministry of Finance,
North Block, New Delhi.

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

3) The Commissioner of Income
Tax, Nashik Range,
Nashik. **RESPONDENTS**

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Shri S.P. Shah, Advocate for Petitioner.
Shri Alok Sharma, Standing Counsel for Respondents

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CORAM: **T.V. NALAWADE**
AND
SUNIL K. KOTWAL, JJ.

DATED : **28 March, 2018**

JUDGMENT : (Per Sunil K. Kotwal, J.)

1) By filing this Writ Petition, the Petitioner has claimed quashment of the order, dated 10/08/1998, passed by Respondent No. 3 the Commissioner of Income Tax, Nashik Range, Nashik, who refused to issue certificate in favour of the Petitioner under Section 68 (2) of the Finance Act, 1997.

Respondent No. 1 is the Union of India and Respondent No. 2 is the Central Board of Direct Taxes, New Delhi (hereinafter referred to as "C.B.D.T" for short).

2) The Voluntary Disclosure of the Income Scheme 1997 (in Short "V.D.I.S.") was made effective from 1st July 1997, which came to an end on 31st December 1997.

3) Brief facts of this petition are that the Petitioner has filed a declaration under V.D.I.S. on 30th December 1997. The said declaration was not filed along with payment of tax assessed therein as per Section 67 (1) of the Finance Act, 1997. The income tax assessed and payable was to be paid within the period of three months from the date of filing of the declaration along with interest at the rate of 2% per month or part thereof a month comprised in the period beginning from the date of filing of the declaration and ending on the date of payment of such tax with proof of payment within the period of three months.

4) The contention of the Petitioner is that as he paid income tax on 31st March 1998 i.e. within three English calendar months, the Commissioner of Income Tax, Nashik ought to have issued certificate under section 68 (2) of the Finance Act, 1997. However, as the application filed by the Petitioner to grant such

certificate was rejected by the Commissioner of Income Tax vide his order dated 10/08/1998, the Petitioner was constrained to file this writ petition.

5) Shri S.P.Shah, learned counsel for the Petitioner has submitted that the period of three months cannot be counted in 90 days as calculated by Respondent No.3, but should have been calculated in three English calendar months and three English calendar months end on 31st March 1998. The payment of tax with interest by the Petitioner was well within limitation under Section 67 (1) of the Finance Act, 1997. He drew our attention to the Circular No. 755 dated 25/07/1997, specially question No.48 and the answer to that question. The text of question No.48 together with its answer is reproduced here under : -

> Q. No. 48 :- If disclosure is made on 31/12/1997, would the declaration be held to be valid if total tax payment is made by 31/03/1998 ?
>
> Answer :- Yes.

6) Shri S.P. Shah, learned counsel for the Petitioner has drawn our attention to : -

(1) the judgment of Kerala High Court in the case of "**S. Sudarsana Babu Vs The Income Tax Officer & Anr."**

[(2011) 339 ITR 428], 2) the judgment of Apex Court in the case of "**Saketh India Ltd. And Others Vs India Securities Ltd.," [(1999) 3 Supreme Court Cases 1]** and 3) the judgment of High Court of Gujarat in the case of "**Kangold (India) Ltd., Vs The Commissioner of the Income Tax" [(1999) 151 CTR (Guj) 659]**.

7) In reply, Shri Alok Sharma, standing Counsel for the respondents submitted that if the declaration by the Petitioner was filed on 30/12/1997, the payment of tax with interest should have been made on or before 30/03/1998, if the Petitioner wants to claim that citation of question No.48 applicable to him. He relied on the case of "**Hemalatha Gargya Vs Commissioner of Income Tax, A.P. And another" [(2003) 9 SCC 510]**.

8) At the outset, we must make it clear that in **Hemalatha Gargya**'s case, the Apex Court has settled that the time for payment fixed under section 67 of V.D.I.S. scheme is not extendable in any case. Therefore, the contention of learned Counsel Shri S.P. Shah is not acceptable that due to unavoidable circumstances, the Petitioner could not deposit the income tax before 31st March 1998. So also, there is no question of imposition of penalty under the scheme. What has been prescribed under section 67 (2) is merely consequence of the

failure to comply with Section 67 (1) of the Act. Therefore, prior hearing to the Petitioner need not be given before passing any orders by Respondent No. 3.

9) The Circular No. 755, dated 25/07/1997 referred by the Petitioner is the clarification in continuation of Circular No.754 which is in the form of series of questions and answers. The question No. 48 and answer given to it referred by the Petitioner do not apply to the facts of the present case, as the case quoted in this question is with respect to the declaration made on 31st December 1997 for which payments are made on 31st March 1998 i.e. well within the time and therefore, the declaration is held as valid. In the case of Petitioner, the declaration is filed on 30th December 1997 and the payment was made on 31st March 1998. Thus, the case of the Petitioner is beyond the ambit of the question No. 48 and the answer to it. In fact, the Petitioner ought to have paid the income tax on or before 30th March 1998 with interest thereon.

10) The contention of the learned Counsel for the Respondents is correct that the guidelines issued by C.B.D.T. are binding on the authority of the Income Tax Department. The clarification vide D.O. No. 3953/M/(Inv.)/VDIS/97 dated 15/10/1997 states that the month shall comprise of 30 days. In

the case at hand, the Petitioner has filed declaration on 30th December 1997 and deposited Income Tax with Interest on 31st March 1998. Including the day of 30th December 1997, the period of 90 days expires on 30th March 1998. Thus, the tax and interest deposited by the Petitioner on 31st March 1998 is beyond the period of limitation of three months from the date of filing of declaration. Thus, as per Section 67 (2) of the V.D.I.S., if the declarant fails to pay income tax before the expiry of three months, the declaration made by him shall be deemed never to have been filed. Same fact has been communicated to the Petitioner by the impugned letter which is the subject matter of this writ petition. The provision of Section 67 (1) is absolutely clear that the period of three months for the payment of tax "*begins from the date of filing of declaration*" and ends on the date of the payment of tax. The Petitioner has interpreted this section in a way to exclude the date 30th December 1997 i.e. the date of filing of declaration by the Petitioner while calculating the period of limitation of three months, which is not permissible in view of Section 67 (1) of the Act. In the circumstances, the above cited authorities relied upon by the Petitioner are distinguishable on facts. When language of Section 67 (1) is clear and unambiguous, its interpretation under General Clauses Act is not necessary.

11) In view of the discussion, it has become clear that the Petitioner has made declaration on 30th December 1997, therefore, the payment of tax along with interest as provided under Section 67 (1) of the Act was due for payment on 30th March 1998. The Petitioner failed to pay the tax and interest by that date and instead of that he paid the amount on next date i.e. on 31st December 1999. Even if the period of three English Calender months is calculated, which begins from 30/12/1997, it ends on 30/03/1998. Thus, in any case payment made by the Petitioner on 31/03/1998 is beyond the period of limitation. Therefore, the declaration was rightly deemed to have never been filed by virtue of Section 67 (2) of the Act by respondent No. 3. We hold that the impugned order passed by Respondent No.3 denying for issuance of certificate to the Petitioner is not at all contrary to the provisions of the Act and scheme. In view of this, the writ petition being devoid of merits, deserves to be dismissed. Petition stands dismissed. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

sbm/