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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 844 OF 2021

Pinnacle Vastunirman Private Limited
1641, Madhav Heritage, Sadashiv Peth,
Tilak Road, Pune 411 030

...Petitioner

Vs.

1. The Union of India
Through The Secretary,
Department of Revenue
Ministry of Finance
Government of India
Room No. 46, North Block,
New Delhi – 110 001.

2. The Central Board of Direct Taxes,
Department of Revenue, Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.

3. Principal Commissioner of Income Tax-2
PMT Building, Swargate, Pune- 411 037.

... Respondents

Mr.Sanket Bora a/w Mr.Aashit A.Kakariya i/by SPCM Legal for the
petitioner.

Mr.Sham Walve for the Respondents.

**CORAM : K.R. SHRIRAM, &
ABHAY AHUJA, JJ.**
DATE : 11th AUGUST 2021

JUDGMENT:- (PER K.R.Shriram, J)

1. By this petition, petitioner has challenged the legality and
validity of the refusal by respondent no. 3 to adjust/give credit to the

amount paid by petitioner under the Income Declaration Scheme, 2016 (“the IDS”), in petitioner’s application made under the Direct Tax Vivad Se Vishwas Act, 2020 (“DTVSV Act”).

2. By Chapter 9 of the Finance Act, 2016, the Government of India announced the IDS and gave an opportunity to any person to make a declaration in respect of any income chargeable to tax under the Income Tax Act for any assessment year prior to the assessment year beginning in April 2017-(a) for which he has failed to furnish a return under Section 139 of the Income Tax Act; (b) which he has failed to disclose in a return of Income Tax furnished by him under the Income Tax Act before the date of commencement of the Scheme; (c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income Tax Act or to disclose fully and truly all material facts necessary for his assessment or otherwise.

3. To put it simply, it gives opportunity to a person to voluntary disclose undisclosed income. Under the IDS it also provided a person immunity from interest, penalty and prosecution except as provided under the IDS.

4. The IDS came into force on 1st June 2016 and was in force upto 30th September 2016. The declaration could have been made between these two dates. The petitioner wanted to take advantage of the IDS and therefore filed a declaration on 30th September 2016 disclosing undisclosed income of Rs. 7,31,89,985/- for assessment year 2016-2017. Under the IDS, Section 184 and Section 185 provides for the tax payable at 30% of such undisclosed income plus 25% of such tax by way of surcharge plus penalty at the rate of 25% of the tax payable. In short, 45% of the undisclosed income, now disclosed, was payable. The amount, therefore, payable by petitioner under the declaration filed was Rs. 3,29,35,493/-. According to petitioner, which is not disputed by respondents, petitioner was to pay upto 25% of the total scheme tax amounting to Rs. 82,33,872/- by 31st November 2016, Rs. 82,33,872/- which would make 50% of the total scheme tax by 31st March 2017 and Rs. 1,64,67,748/- which would make 100% of the total scheme tax by 30th September 2017. Admittedly, petitioner paid on 30th November 2016 the first installment of Rs. 82,33,872/- by two challans of Rs. 41,16,937/- each. This amount was paid after respondent no. 3 acknowledged the declaration made by petitioner by issuing Form-II on 5th October 2016. Subsequent thereto petitioner, for some unavoidable reasons, was unable to pay the balance installments. In view thereof and as provided under Section 187 (3) of the IDS, petitioner was

deemed never to have made declaration under the IDS and the amount disclosed in the declaration as provided under Section 197 (b) of the IDS, was chargeable to tax under the Income tax Act in the previous year in which the declaration was made, i.e., assessment year 2016-17. Petitioners have no dispute with this provision.

5. The Assessing officer, therefore, passed an assessment order dated 29th December 2018 for assessment year 2016-17 and determined a sum of Rs. 3,35,08,445/- as payable by petitioner. In the assessment order, the Assessing officer has observed that petitioner had made declaration under the IDS and that petitioner has not paid the installments in respect of the declaration and that petitioner has only paid the first installment of Rs. 82,33,874/-, but strangely did not give any credit to this amount of Rs. 82,33,874/-. Against this order, petitioner has preferred an appeal under Section 246A before the Commissioner of Income Tax Act (Appeal) by filling Form 35. That appeal is pending.

6. The Government of India thereafter enacted DTVSV Act to provide a resolution for pending tax disputes which have been locked up in litigation, under which petitioner was eligible to avail the benefit available therein. DTVSV Act came into force on 17th March 2020.

Petitioner accordingly filled the requisite form being form No. 1 for the same assessment year 2016-17 and submitted it on 16th December 2020. As required under the DTVSV Act, in the Form, petitioner also disclosed the amount paid together with proof of payments and that included the amount of Rs. 82,33,874/- paid under the IDS. In response, the designated authority under the DTVSV Act issued Form No. 3 being a form for certificate under sub-Section (1) of section 5 of the DTVSV Act read with DTVSV Rules, 2020 acknowledging receipt of the declaration by petitioner and indicating therein the balance amount payable by petitioner under the DTVSV Act. While arriving at the amounts payable by petitioner, the designated authority did not give credit to the amount of Rs. 82,33,874/- that petitioner had paid under the IDS. Therefore, by a communication dated 23rd December 2020 addressed to respondent no. 3, petitioner once again brought to the notice of respondent no. 3 that there was an error in computation and sought for rectification in Form No.3 issued by the designated authority. Respondent no. 3, however, did not grant the rectification and by communication dated 6th January 2021 informed petitioner that since petitioner failed to abide by the IDS, the amount of Rs. 82,33,874/- stood forfeited. According to respondent, in view of the failure on petitioner's part to pay the remaining amount under the IDS, the declaration made by petitioner as per the IDS was deemed never to

have been made and since Section 191 under the IDS provides that any amount of tax and surcharge or penalty paid by the declarant under Section 183 of the Act shall not be refundable, the amount of Rs. 82,33,874/- paid by petitioner will be forfeited. Of course, respondent no. 3 also has taken a stand that IDS was a scheme, where as DTVSV was an Act and amount paid under the scheme cannot be adjusted under the Act, etc. Aggrieved by this decision of respondent no. 3, petitioner has approached this Court praying that respondent no. 3 should be directed to adjust the amount of Rs. 82,33,874/- paid and issue a revised/rectified Form No. 3 or in the alternative refund the amount of Rs.82,33,874/- with accrued interest, if any.

7. It will be useful to reproduce, for ease of reference, certain provisions of IDS:-

“Short title and commencement.

181. (1) This Scheme may be called the Income Declaration Scheme, 2016.

(2) It shall come into force on the 1st day of June, 2016.

.....

Declaration of undisclosed income.

183 . (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017—

(a) for which he has failed to furnish a return under

section 139 of the Income-tax Act;

(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;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of subsection (1).

(3) The fair market value of any asset shall be determined in such manner, as may be prescribed.

(4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made.

Charge of tax and surcharge.

184. *(1) Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed income declared under section 183 within the time specified therein shall be chargeable to tax at the rate of thirty per cent of such undisclosed income.*

(2) The amount of tax chargeable under subsection (1) shall be increased by a surcharge, for the purposes of the Union, to be called the Krishi Kalyan Cess on tax calculated at the rate of twentyfive per cent of such tax so as to fulfil the commitment of the Government for the welfare of the farmers.
Penalty.

Penalty.

185. *Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration of undisclosed income shall, in addition to tax and surcharge under section 184, be liable to penalty at the rate of twentyfive per cent of*

such tax.

.....

Time for payment of tax.

187. (1) *The tax and surcharge payable under section 184 and penalty payable under section 185 in respect of the undisclosed income, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.*

[Provided *that where the amount of tax, surcharge and penalty, has not been paid within the due date notified under this sub-section, the Central Government may, by notification in the Official Gazette, specify the class of persons, who may, make the payment of such amount on or before such date as may be notified by the Central Government, along with the interest on such amount, at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date and ending on the date of such payment.]*

(2) *The declarant shall file the proof of payment of tax, surcharge and penalty on or before the date notified under subsection (1), with the Principal Commissioner or the Commissioner, as the case may be, before whom the declaration under section 183 was made.*

(3) *If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the date specified under subsection (1), the declaration filed by him shall be deemed never to have been made under this Scheme.* (emphasis supplied).

Undisclosed income declared not to be included in total income.

188. *The amount of undisclosed income declared in accordance with section 183 shall not be included in the total income of the declarant for any assessment year under the Incometax Act, if the declarant makes the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under subsection (1) of section 187.*

.....

Tax in respect of voluntarily disclosed income not refundable.

191. Any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable.

[Provided that the Central Government may, by notification in the Official Gazette, specify the class of persons to whom the amount of tax, surcharge and penalty, paid in excess of the amount payable under this Scheme shall be refundable]

Declaration not admissible in evidence against declarant.

192. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 185, or for the purposes of prosecution under the Incometax Act or the Wealthtax Act, 1957 (27 of 1957).

.....

Removal of doubts.

197. For the removal of doubts, it is hereby declared that-

(a) save as otherwise expressly provided in subsection (1) of section 183, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme;

(b) where any declaration has been made under section 183 but no tax, surcharge and penalty referred to in section 184 and section 185 has been paid within the time specified under section 187, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made;

(c) where any income has accrued, arisen or received or

any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under this Scheme,—

(i) such income shall be deemed to have accrued, arisen or received, as the case may be; or

(ii) the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and the provisions of the Income tax Act shall apply accordingly.”

8. There was no dispute on the fact that under the IDS, the amount of Rs. 82,33,874/- has been paid, but petitioner failed to pay the balance two installments of tax, surcharge and penalty in respect of the declaration made under Section 183 of the IDS. As provided under Section 187(3), the consequence of failure to pay would mean petitioner shall be deemed never to have made any declaration under the IDS and the undisclosed income declared under Section 183 shall be chargeable to tax under Income Tax Act in the previous year in which such declaration was made. It is also not in dispute that petitioner was entitled to take benefit of DTVSV Act provisions.

9. The dispute basically was concerning in provisions of Section 191 of the IDS, i.e., in view of Section 191 providing that any amount of tax and surcharge paid under Section 184 or penalty paid under

Section 185 in pursuance of a declaration made under Section 183 was not refundable. The proviso to Section 191 mentions that refund will be given to only such class of persons as the Central Government, by notification in the official gazette, specifies. What was to be refunded is the amount paid in excess of the amount payable under the IDS.

10. Mr. Walve stated that there was no such notification available but Government of India issued a circular no. 16/2016 dated 28th May 2016 containing explanatory notes of provisions of the Income Declaration Scheme 2016 as provided under Chapter 9 of the Finance Act, 2016. Mr. Walve relied on paragraph 8 of the circular which reads as under:-

*“8. In the following situation, a declaration shall be void and shall be deemed never to have been made:-
 (a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, 30.11.2016;
 (b) Where the declaration has been made by misrepresentation or suppression of facts or information.
 (c) Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.
 Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.”*

This circular, in effect, only says what is there in the scheme.

11. In the year 1997, the Government of India had announced a voluntary disclosure of income scheme 1997 (VDIS) in which Section 67 (2) and 70 read as under:-

“67. (1)

(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.

.....

70. Any amount of tax paid in pursuance of a declaration made under sub-section (1) of section 64 shall not be refundable under any circumstances.”

12. The provision of sub-Section 2 of Section 67 and Section 70 are *pari materia* to Section 187(3) and Section 191 of IDS. In fact, under Section 70 of VDIS it says “..... under any circumstances”, which is not found in Section 191 of IDS. The Apex Court in **Hemlatha Gargya Vs. Commissioner of Income Tax, A. P. and Anr.**¹, considered the provisions of VDIS. In that case, appellants had paid the amount beyond the time limit prescribed and the Court held that time prescribed under VDIS scheme was mandatory in view of the language of the provision and that it cannot be extended by the Court on any equitable considerations, but the Court went on to hold that since the payments made beyond the time limit fixed would not entitle the assessee the benefit of the scheme, Revenue should be directed to refund or adjust

¹(2003) 9 Supreme Court Cases 510

in accordance with law the amounts so deposited. Paragraphs 5,6,7,9 and 18 reads as under:-

"5. We are concerned with Sections 66 and 67 and the language used therein, since the answer to the question framed at the outset would depend on the interpretation of the provisions of these sections. These Sections provide:

"66. The tax payable under this 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 section 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."

68. Voluntarily disclosed income not to be included in the total income."

6. In the several appeals which have been filed before us, some of the appellants are the assesseees. In each of their cases it is not in dispute that they had not paid the tax within the time prescribed either under Sec, 66 or within the extended time under Sec. 67(1). The period of default is varied and the explanations given in each of the assesseees' cases are also different. All of them however, have contended that the reason for non- payment was beyond their control. The assesseees have relied upon those decisions referred to earlier which held that the period mentioned in Sec. 67(1) was extendable. According

to the assessees the purpose of the Scheme was to unearth black money which was in circulation. The time fixed under Sec. 67(1) is not rigid according to the assesses, not only because there was express provision for making payment of interest in case of delayed payment but also because the Revenue would be benefitted by disclosure of undisclosed income, quick recovery of the same with payment of interest by 31st March, 1998 (since the Scheme was operative till that date) thus fulfilling the object of the Scheme. It is further submitted that because the Scheme was operative until 31st March, 1998, therefore, it was open to a person to file a declaration on the last date, namely, 31st December, 1997 and make payment by 31st March, 1998 under Sec. 67 (1). It would be discriminatory and entirely arbitrary if persons who had submitted their declarations voluntarily earlier were penalised for doing so by insisting on payment on an earlier date. The next submission of the assessee is that even if the provisions of Sec. 67(1) were mandatory, nevertheless, the Court could under certain circumstances dilute the severity of its operation, provided the assessees were acting bona fide. Reference has been made to the decision of this Court in *M/s Hindustan Steel Ltd. v. State of Orissa* reported in [1969] 2 SCC 627 in this context. The assessees have also argued that the first decision in the field was the decision of the Punjab and Haryana High Court in 238 ITR 51 *Laxmi Mittal* case (*supra*) where the High Court had held that the period fixed under Sec. 67(1) was not immutable and that for sufficient reason the time could be extended. The Department had not chosen to challenge that decision and had accepted that interpretation. It is contended on the basis of the decisions of this Court in *Union of India and Ors. vs. Kaumudini Narayan Dalai and Anr.*, 249 ITR 219 and *Union of India vs. Satish Panalal Shah* 249 ITR 221 that the Revenue cannot pick and choose cases in which they would challenge a similar decision unless there was just cause. According to the assessees, there was no cause shown justifying the Department's decision to challenge the principle enumerated in *Laxmi Mittal's* case (*Supra*) only in the case of a few assessees. It was submitted that in any case this Court should not interfere under Art. 136 in those matters decided in favour of the assessees by the High Court. The final submission of the assessees is that the

Revenue Authorities could not be permitted to retain the payments made by the assesseees under the Scheme and contend at the same time that the assesseees were not entitled to the benefit of the Scheme. The Revenue could either accept the payment as having been made under the Scheme. and if not, refund the same to the assesseees.

7. In some of the appeals, the appellants are the Revenue Authorities. They have contended that the Scheme did not form part of the [Income Tax Act](#), 1961, but formed self-contained Code in which there was no provision whatsoever for extension of time in the event the period under Sec. 67(1) lapsed. According to the learned counsel appearing on behalf of the Revenue, the provisions of the Scheme make it clear that the Scheme envisaged the payment to be made first whereafter the declaration was to be filed with proof of such payment. It is only with a view to dilute the rigidity of this requirement that Sec. 67 allowed the assessee to make payment subsequent to the making of the declaration but subject to making payment of interest at the rate of 2% per month upto a period of three months and not further. Apart from the reasoning adopted by the various High Courts in the decisions in favour of the Revenue, (it has been contended that the language used in Sec. 67(2) makes it amply clear that the period specified was mandatory.) Even if there were any doubt, according to settled principles of interpretation no extension could be granted beyond the period of three months as specified under Sec. 67 (1). It has further been submitted that since there were conflicting decisions of the different High Courts there was sufficient cause for the Department to agitate the issue before this Court. Finally, it is submitted that as far as the payments made by the assesseees were concerned if any payment had been made but not in terms of the Scheme, clearly the Department could not retain such payment and would either have to refund it or set it off in accordance with the prescribed procedures available under the [Income Tax Act](#), 1961. (emphasis supplied).

8. We are of the view that the submissions of the Revenue must be accepted. A plain reading of the provisions of the Scheme would show that the tax payable under the Scheme "shall be paid: within the time specified in the general rule

provided in Section 66, namely, payment prior to the making of a declaration. The exception to this general rule has been carved out by Section 67(1) which allows a declarant to file a declaration without paying the tax. This exception, however, is subject to two conditions; viz., (1) the payment of tax within three months from the date of the filing of the declaration together with (2) the payment of simple interest at the rate of 2% for every month or part of a month. The period of interest is to commence from the date of filing the declaration and shall end with the date of payment of tax. It may be noted that under Section 67 (1) not only must these two conditions be fulfilled within the period of three months but proof of such payment must also be filed within the same period.

9. The use of the word "shall" in a Statute, ordinarily speaking, means that the statutory provisions is mandatory. It is construed as such unless there is something in the context in which the word is used which would justify a departure from this meaning. There is nothing in the language of the provisions of the Scheme which would justify such a departure. On the other hand the provisions of Sec. 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the Scheme. In the words the consequences of non-compliance with the provisions of Sec. 67(1) relating to the payment have been provided. It is well-settled that when consequences of the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory (See : [Maqbool Ahmad and Ors. v. Onkar Pratap Narayan Singh](#). AIR (1935) Privy Council, 85, 88.)

.....

18. As a consequence, in our view, the appeals preferred by the assesseees must be and are hereby dismissed whereas the appeals preferred by the Revenue Authorities must be and are hereby allowed. However, having held that the assesseees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the

Scheme, we direct the Revenue Authorities to refund or adjust the amounts already deposited by the assesseees in purported compliance with the provisions of the Scheme to the concerned assesseees in accordance with law. All the appeals are accordingly disposed of without any order as to costs.” (emphasis supplied)

13. This Court in an unreported Judgment² dated 13th June 2005, following the judgment of the Apex Court in *Hemalatha Gargya (Supra)*, directed the Revenue authority to adjust the amounts already deposited by the assesseees.

14. Similarly, in **Patchala Seethramaiah Vs. Commissioner of Income Tax, Vijayawada and Anr³**., dealt with the Section 67 (2) of the VDIS scheme and directed the Revenue to refund the amounts deposited.

Paragraphs 7, 8 and 9 reads as under:-

“7. Thus, from a reading of the aforesaid provisions and the scope and ambit of the Scheme as contemplated, it is quite apparent that if one has to avail the benefit under the Scheme, he has to mandatorily comply with the requirements. It contemplates the payment of tax along with the declaration itself, but at the same time, making a provision for payment of tax at a later stage not beyond three months from the date of filing the declaration with interest. Further, sub-section (2) of [Section 67](#) stresses upon the mandatory requirement of payment of tax within the outer limit of time and in the event of any such non-payment of tax, the declaration shall be deemed never to have been made under the Scheme, i.e., it will be non-est. [Section 70](#) of the Scheme contemplates that no amount of tax paid in pursuance of a declaration shall be refundable

² *Sajan Enterprises Miraj Vs The Commissioner of Income-Tax & Ors.in Writ Petition No. 4132 of 1999.*
31999 SCC OnLine AP 495.

under any circumstances. Necessarily, it would only mean that the expression "declaration" used in Section 70 should be a declaration as contemplated by Section 66 read with Section 67(1) of the Scheme. When the very Scheme contemplates that a declaration without payment of tax is void and non-est and the declaration filed by the assessee was not acted upon, the question of retention of the tax paid under such declaration will not arise. The Revenue cannot retain any amounts paid under a declaration falling within the mischief of Section 67(2). There is no provision under the Scheme whereby the Revenue can retain the tax so paid in respect of a declaration which is void and non-est. In the absence of any such authority of law, the retention of tax contrary to the very Scheme is in the teeth of Article 265 of the Constitution of India. Therefore, the provision under Section 70 of the Scheme cannot have any application to a situation where the tax is paid beyond the prescribed period and accordingly, the retention of the said tax by the department is illegal and the petitioner is entitled to refund of the same. (emphasis supplied).

8. This Court in *Shankarlal v. TTO*, (1998) 230 ITR 536, while considering the scope and effect of the Scheme, has, on a consideration of Section 70 and the limitations on the tax refund contemplated thereunder, held that if this is understood as forfeiting the tax paid in cases where the declarations are ineligible under Section 64(2), such a forfeiture would be confiscatory and unconstitutional, unless it is properly qualified. It was further held:

"It appears to us that the intention of this section was only to state that there will be no cash refund of the tax paid in pursuance of the declaration made under sub-section (1). It will not, however, stand in the way of adjustment of the amount if the declaration itself is not acceptable as not falling under Section 64(1)". (emphasis supplied).

9. Therefore, in view of the above reasons, it cannot be said that the Revenue can retain the tax paid and the petitioner is not entitled for the refund."

15. The Karnataka High Court in **Smt. Atamjit Singh Vs. Commissioner of Income-Tax**,⁴ also while dealing with Section 67 of the VDIS Scheme directed Revenue to refund the amounts deposited. The Court held that due to failure of making the payment when the scheme provides that the declaration itself would be void and *non-est*, the question of retention of tax paid under the declaration will not arise. The Kerala High Court in **R. Ranganatha Reddiar Vs. Income Tax Officer and Ors.**⁵, also directed the Revenue to refund the amounts paid under the VDI Scheme in a similar situation.

16. Sub-Section (3) of Section 187 of IDS also categorically provides if the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183 on or before the dates specified in sub-Section 1, the declaration filed by him shall be deemed never to have been made under the Scheme. This would mean that the declaration will be *non-est*. When the scheme itself contemplates that a declaration without payment of tax is void and *non-est* and the declaration filed by the assessee would not be acted upon (because Section 187 (3) says the declaration filed shall be deemed never to have been made under the Scheme), the question of retention of the tax paid under such declaration will not arise. The Revenue cannot

⁴1999 SCC OnLine Kar 640
⁵2004 SCC OnLine Ker 612

retain any amounts paid under a declaration which contemplated under the Scheme is deemed never to have been made. The Scheme does not provide for Revenue to retain the tax so paid in respect of a declaration which is void and *non-est*. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. This would mean there must be a law, the law must authorise the tax and the tax must be levied and collected according to the law.

17. In the absence of any such authority of law, a retention of tax contrary to the very Scheme cannot be permitted. Therefore, the provision of Section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid and accordingly the retention of the tax by respondent no.1 is illegal. At the time of the argument, counsel for petitioner stated that petitioner will be happy if rectified Form No. 3 is issued by respondent no. 3 after giving credit to this amount of Rs. 82,33,874/-. Petitioner is entitled to an adjustment by giving credit to the amount of Rs. 82,33,874/- paid under IDS. Respondent no. 3 is directed to rectify Form No. 3 issued under the DTVSV Act read with DTVSV Rules, to give credit to this amount of Rs. 82,33,874/- and issue fresh Form No. 3, within two weeks from the day, an authenticated copy of this order is served upon

respondent No. 3 by petitioner. Petitioner to make payment of disputed tax in accordance with revised / rectified Form-3 within a period of two weeks from the issuance of revised Form-3.

18. The statement of petitioner's counsel, on instructions, to withdraw the appeal dated 25th January 2019 for assessment year 2016-17 under Section 248 of the Act, within one week from the date of uploading of this decision, is accepted.

19. Petition disposed accordingly, with no order as to costs.

20. All to act on authenticated copy of this order.

(ABHAY AHUJA, J)

(K.R.SHRIRAM, J)