IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1992 OF 2021

Karan Ventakeshwara Associates ... Petitioner
Vs.
Income-Tax Officer-ITO Ward 7(3),
Pune and Ors. … Respondents

Mr. Mihir Naniwadekar with Mr. Ruturaj Gurjar, Advocates for the Petitioner.
Mr. Sham Walve, Advocate for the Respondents.

CORAM : SUNIL P. DESHMUKH & ABHAY AHUJA, JJ.

DATE : 24TH JUNE 2021

(THROUGH VIDEO CONFERENCING)

P. C.

1. By this Petition filed under Article 226 of the Constitution of India, 1950, Petitioner challenges the order dated 17th April 2021, whereby Respondent No.2 has rejected Petitioner’s application under the Direct Tax Vivad Se Vishwas Act, 2020 (the “DTVSV Act”) on the ground that there is no appeal pending in the case of Petitioner.

2. It is the case of Petitioner that Assessment Order for Assessment Year 2014-15 was passed under Section 144 read with Section 147 of the Income Tax Act, 1961 on 26th December 2019. Being aggrieved by the said order, Petitioner had filed an appeal before the concerned

Commissioner of Income Tax (Appeals) on 6th February 2020 and BY an application for condonation of delay on 20th February 2020. Thereafter, in view of the enactment of the DTVSV Act, Petitioner had made an application by way of a declaration in Form 1 and an undertaking in Form 2 to the designated authority on 18th December 2020 and a revised declaration and undertaking on 29th January 2021. It appears that there was protracted correspondence between Petitioner and the department, which eventually resulted in the rejection of Petitioner's application by order dated 17th April 2021 as per department's affidavit dated 23rd June 2021 on the ground that the deemed condonation of delay was granted on 25th December 2020, but the declaration under DTVSV Act was filed on 18th December 2020. The department is thereby urging that in view of this, Petitioner is not qualified as its condonation of delay was not granted on the date of making the application under the DTVSV Act.

3. The only issue that therefore that needs to be addressed is whether Petitioner is an eligible appellant under the provisions of the DTVSV Act. In this context, it would therefore, be apposite to set forth Section of the DTVSV Act, as under :-

> "2.(1) In this Act, unless the context otherwise requires,-
> '(a) "appellant" means—
> (i) a person in whose case an appeal or a writ petition

> or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;
> (ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the
> (iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 and the Dispute ResolutionPanel has not issued any direction on or before the specified date;
> (iv) a person in whose case the Dispute Resolution Panel has issueddirection under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;
> (v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date."

4. The issue at hand revolves around Section 2(1)(a)(i) as quoted above i.e., if the appeal before the appellate forum, CIT(A) in this case, is pending before the specified date i.e. 31st January 2020, then the applicant would be an eligible appellant. Therefore, the moot question to be answered is whether the delay in filing of the appeal by Petitioner was condoned or not.

5. After hearing learned counsel for the parties and with their able assistance, having perused the pleadings in the matter, the undisputed facts that emerge are that Assessment Order being passed on 26th

December 2019, the demand was raised before the specified date i.e., 31st January 2020. Petitioner had filed appeal before Commissioner of Income Tax (A) on 6th February 2020 and the condonation of delay application was filed on 20th February 2020. The condonation delay as per the affidavit of the department came on 25th December 2020.

6. In view of the department's own stand that the delay in filing the appeal before the CIT(A) has been condoned, there is nothing left for us to say further. It is a matter of first principles that the order of condonation of delay relates to the appeal and once delay has been condoned in the filing of appeal that means in this particular case appeal has been filed in time i.e. before the specified date i.e. 31st January 2020 as required under the DTVSV Act thereby making Petitioner an eligible appellant to avail the benefit of the DTVSV Scheme. Moreover, the department has in its affidavit in reply clearly stated that the Petitioner is an eligible appellant under the DTVSV Act and that Petitioner also does not fall within the disqualification in Section 9 of the DTVSV Act.

7. In this view of the matter, Petition is allowed in terms of prayer clause (b), which reads thus:

" b. That the Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India appropriate writ or order or direction including a writ in the nature of 'Mandamus' directing the Respondent No. 2 to forthwith cancel the rejection of the Petitioner's application and to further direct the Respondent to verify and accept the declaration filed by the Petitioner on 29.01.2021 in Form 1 & 2 under DTVSV Act and issue Form No. 3 determining the amount payable by the Petitioner as per the provisions of Section 3 of DTVSV Act"

8. Petition is accordingly disposed of. No costs.

(ABHAY AHUJA, J.) **(SUNIL P. DESHMUKH, J.)**