IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3850 OF 2021

Premlata Mohan Agarwal (Mrs.)
Age : 52 years, Occ.: Housewife
Plot No.64/65, Gangadham Phase – I, Bibwewadi, Lulla Nagar Road, Market Yard, Pune – 411 037, Maharashtra, India
PAN : AAQPA9294A ….Petitioner

V/s.

1. The Principal Commissioner of Income Tax – 3, Pune
Designated Authority under the Direct Tax Vivad Se Vishwas Act, 2020
PMT Building, Shankar Sheth Road, Pune – 411 037
Email : pune.pcit3@incometax.gov.in

2. The Income Tax Officer, Ward 6 (3), Pune
3rd Floor, "A" Wing, PMT Building Swargate, Pune – 411 037
Email : pune.ito10.1@incometax.gov.in

3. The Commissioner of Income Tax (Appeals) – 4, Pune
1st Floor, B.O. Bhawan, Pune Satara Road, Pune – 411 009
Email : pune.cit.apl6@incometax.gov.in

4. The Union of India
Through the Principal Secretary, Department of Revenue, Ministry of Finance, Room No.128-B, North Block, New Delhi – 110 001 ….Respondents

----

Mr. Suyog Bhave i/b. Adv. Farzeen Khambatta for petitioner.
Mr. Sham V. Walve for respondents.

CORAM : K.R. SHRIRAM &
M.S. KARNIK, JJ.
DATED : 22nd SEPTEMBER 2021

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 Since pleadings are completed, we decided to dispose this petition at the admission stage itself.

Rule.

Rule made returnable forthwith. Heard by consent of parties.

2 Petitioner has filed this petition aggrieved by an order of rejection dated 30th January 2021 passed by respondent no.1 rejecting petitioner's declaration and undertaking filed under the provisions of Direct Tax Vivad Se Vishwas Act 2020 (the VSV Act).

3 Petitioner had filed her returns for the Assessment Year 2012-2013. The assessment was reopened under Section 147 of the Income Tax Act, 1961 (the Act). Petitioner filed a response to the notice issued and based on the response received from petitioner, an assessment order dated 18th December 2019 came to be passed. Petitioner had returned income of Rs.94,91,780/- and the total income assessed under Section 143 (3) read with Section 147 of the Act was also Rs.94,91,780/-. The total income under Section 288A was, therefore, the returned income, i.e., Rs.94,91,780/-. Interest under Section 234B, 234C and 234D was charged as per calculation given in ITNS-150 which was part of the order (It looks like it should be Section 234A, 234B AND 234C because the calculation of interest states Section 234A, 234B and 234C and even in the petition, it is stated Section 234A, 234B and 234C). Section 234A relates to interest

for defaults in furnishing return of income, Section 234B relates to interest for defaults in payment of advance tax, Section 234C relates to interest for deferment of advance tax. The demand raised by the Assessing Officer on the interest component was Rs.16,86,800/-. Unhappy with this demand, petitioner filed an appeal before the Commissioner of Income Tax (Appeals) under Section 246A and challenged the amount of disputed demand in the sum of Rs.16,86,800/-. This appeal was filed on 17th March 2020, almost two months after the time to file appeal expired. The assessment order dated 18th December 2019 was received by petitioner on the same day and the 30 days expired on 17th January 2020.

4 In the meanwhile, the VSV Act came into force and petitioner decided to take the benefit of the VSV Act. Petitioner, therefore, filed a declaration and undertaking in Form 1 under the VSV Act and offered to settle the disputed amount of Rs.16,86,800/-. According to petitioner, as stated in the declaration and undertaking in Form 1, the amount payable under the VSV Act, on or before 31st March 2021, was Rs.4,21,700/- and thereafter, Rs.5,06,040/-. This declaration was filed on 18th December 2020. On 31st January 2021 petitioner received an order of rejection of its declaration under the VSV Act and the reason for rejection reads as under :

> "*There is no disputed income, as the return filed by assessee has been accepted in assessment proceedings. The assess has disputed interest charged u/s 234A/B/C of the Act. Since, interest charged is mandatory and there is disputed income.*"

5 Petitioner also received a communication dated 30th January 2021 whereby petitioner was informed that petitioner's application for condonation of delay in filing the appeal under Section 246A has been allowed and the delay was condoned. Therefore, petitioner filed a revised Form 1 under the VSV Act on 30th January 2021 informing about the condonation of delay. On 17th March 2021, petitioner received an order rejecting its revised declaration in Form 1, in which the reason given is as under :

> "*The Form-1 in this case was rejected earlier. The assessee has again filed Form-1 with same particulars. The issue is related to charging interest u/s. 234A, 234B and 234C. Since there is no disputed income, the case is rejected.*"

Aggrieved by this rejection, petitioner has approached this Court.

6 The VSV Act was enacted to provide for resolution of disputed tax and for matters connected therewith and incidental thereto. In the VSV Act, there is no provision to exclude interest charged under Section 234A, 234B or 234C of the Act as stated in the order impugned. Moreover, under Section 3 of the VSV Act, it is provided that where a declarant files under the provisions of this Act a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrear, then notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant under this Act, where tax arrear relates to disputed interest amount payable under the

Act, on or before 31st March 2020 will be 25% of disputed interest and if paid after 1st April 2020 but before the last date, 30% of disputed interest. The tax arrear is defined under Section 2 (1) (o) to mean "….. disputed interest ….". The disputed interest is defined under Sub Clause h (ii) of Sub Section 1 of Section 2 to mean "the interest determined in any case under the provisions of the Income Tax Act, 1961 where an appeal has been filed by the appellant in respect of such interest". Appellant means under Clause a (i) of Sub Section 1 of Section 2 "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". Therefore, petitioner was eligible to file this declaration under the VSV Act for the disputed interest that was charged under Section 234A or Section 234B or Section 234C. The concerned authority was, therefore, not correct in rejecting the declaration of petitioner for reasons quoted above.

7 In the affidavit in reply filed by one K.P.C. Rao, Principal Commissioner of Income Tax and affirmed on 16th August 2021, a new ground is raised that the appeal filed by petitioner was not pending on the specified date, i.e., 31st January 2020 because the appeal has been filed only on 17th March 2020, after a delay of two months. It is also alleged that the delay in filing the appeal has not been condoned before the date of declaration in Form 1 and 2 under the DTVSV Act, i.e., 30th January 2021.

As noted above, the delay had been condoned by 30th January 2021 and a copy of that communication is annexed to the rejoinder. In our view, the affiant K.P.C. Rao, who has affirmed the affidavit in reply on 16th August 2021, ought to have been aware that on 30th January 2021 a communication has been addressed to petitioner that the delay has been condoned.

8 In the affidavit in reply, reliance has been placed to Question 59 and answer thereto in the CBDT Circular No.21 of 2020 dated 4th December 2020. Question 59 and answer thereto reads as under :

> *Q.59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?*
>
> *Ans. If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020.*

9 This has been dealt with by this Court in Writ Petition (lodging) No.12932 of 2021 dated 21st September 2021 in which paragraphs 6 to 9 read as under :

> *6. The Central Board of Direct Taxes issued a Circular dated December 4, 2020 in which question 59 and answer thereto reads as under :-*
>
> *"Q.59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?*

Answer : If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020."

7. Therefore, where the time limit for filing of appeal has expired before January 31, 2020 but an appeal with an application for condonation is filed before the date of the Circular, i.e., December 4, 2020, such appeal will be deemed to be pending as on January 31, 2020. In the answer to question 59 expression used is "an appeal is admitted by the appellate authority before the date of filing of the declaration". This has been dealt with by a Division Bench of Delhi High Court in the case of Shyam Sunder Sethi Vs. PR. Commissioner of Income Tax-10 and ors. in Writ Petition (C) 2291/2021 and CMAPPL. 6677/2021 dated 3rd March, 2021 wherein it is held that an appeal would be "pending" in the context of Section 2(1)(a) of the VSV Act when it is first filed till its disposal and the Act does not stipulate that the appeal should be admitted before the specified date, it only adverts to its pendency. The Court opined that the respondent could not have wrongly equated admission of the appeal with pendency. The Court, therefore, held that the appeal would be pending as soon as it is filed and up until such time it is adjudicated upon and a decision is taken qua the same. We respectfully agree with the view expressed by the Division Bench in Shyam Sunder Sethi (supra).

8. In the case at hand, the time limit to file appeal expired on January 18, 2020, and the condonation of delay application was filed on February 6, 2020, before December 4, 2020, the date of the Circular, the appeal would be pending as required under the VSV Act. In any event, the Commissioner of Income Tax (Appeals) himself has addressed a letter dated January 20, 2021 asking the petitioner to furnish ground-wise submissions on the grounds of appeal if petitioner was not opting for VSV Scheme, 2020. This itself would mean the delay also has been condoned.

9. In our view, order of rejection dated February 26, 2021 is bad in law and is accordingly set aside. Respondent no.2 is directed to process the forms filed by petitioner under the provisions of VSV Act.

10 In our view, therefore, the order of rejection issued by respondent no.1 is bad in law. Respondent no.1 is directed to process the

declaration cum undertaking filed by petitioner under the provisions of VSV Act and pass orders accordingly.

11 Petition disposed with no order as to costs.

12 If the amount as determined under the revised Form 3 is not paid within one week thereof only in that case, premium of 10% on the interest of the amount payable should be paid by petitioner.

(M.S. KARNIK, J.) **(K.R. SHRIRAM, J.)**