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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 3312 OF 2021
ALONGWITH
WRIT PETITION NO. 3332 OF 2021
ALONGWITH
WRIT PETITION NO. 3299 OF 2021
ALONGWITH
WRIT PETITION NO. 3365 OF 2021
ALONGWITH
WRIT PETITION NO. 2358 OF 2021
ALONGWITH
WRIT PETITION NO. 2360 OF 2021
ALONGWITH
WRIT PETITION NO. 3270 OF 2021
ALONGWITH
WRIT PETITION NO. 3174 OF 2021**

Jayantilal K. Bhagat

....Petitioner

V/s.

Asstt. Commissioner of Income
Tax Circle -22(1) and Ors.

...Respondents

Mr. P.S. Jetly, Senior Advocate a/w Mr. Sameer G. Dalal i/b Ms. Monika
Dokhale Walve for Petitioner.

Mr. Akhileshwar Sharma for Respondents-Revenue.

**CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 15th DECEMBER 2021**

PC. :

1. This is a group of eight petitions impugning the decision of the authority in rejecting the declaration filed by petitioner under the Direct Tax Vivad Se Vishwas Act, 2020 (the DTVSV Act) for the A.Y. 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90 and 2006-07.

2. Petitioner claims to be the son and legal heir of one Kalyanji Bhagat (deceased) who expired in the year 1993. Kalyanji Bhagat at the time of his death, left behind five legal heirs namely, his widow, three sons Suresh Bhagat, Jayantilal Bhagat (who is also petitioner) and Vinod Bhagat, and a married daughter Mrs. Shah. The five legal heirs decided amongst themselves that one of them should be authorised by way of Power of Attorney to handle all the tax affairs of Kalyanji Bhagat as there has been search operation conducted against Kalyanji Bhagat under Section 132 of the Income Tax Act, 1961 (the Act). There were other proceedings also pending.

3. Suresh Bhagat who was solely handling the tax affairs of late Kalyanji Bhagat expired in the year 2008. It is stated that thereafter nobody was really looking into the affairs. When the DTVSV Act came into force, the family of Kalyanji Bhagat decided to take advantage of the scheme under the DTVSV Act.

4. Petitioner took charge of the affairs and after obtaining certified copy of the orders passed for the assessment years mentioned in paragraph no.1 above against late Kalyanji Bhagat, filed appeals before the Income Tax Appellate Tribunal (ITAT).

5. Mr. Jetly submitted that petitioner filed declaration in Form 1 under the DTVSV Act for each assessment year separately. Respondent did not issue him Form 3 but instead addressed an E-mail dated 9th April, 2021 giving year wise reasons for rejection of petitioner's applications. A copy of the said E-mail is annexed to the petitions and is impugned in all these petitions.

6. We have considered the said E-mail with the assistance of Mr. Jetly and the rejection has been on two counts, (a) that there is no clarity of Legal Heir status till date as per the record available in the office and hence there is no locus standi; and (b) the appeal is stated to have been filed on 23rd December, 2020 after a gap of nine years which is beyond the time.

7. Mr. Sharma vehemently opposed the objections, but after some time, in fairness concurred that the Legal Heir Status could not be a valid reason for rejecting the declarations. If Revenue accept the declarations, in our view, it would not amount to certifying the entitlement of petitioner to the estate of deceased. Petitioner, who claims to be the legal heir of deceased Kalyanji Bhagat, only wants to put end to all the appeals which are pending relating to the assessment of late Kalyanji Bhagat. Mr. Sharma also agreed that Revenue accepting the declarations filed by petitioner also cannot be useful to petitioner to claim entitlement to the estate of late

Kalyanji Bhagat. Therefore, the rejection on this ground is not correct. That leaves the second ground to be considered.

8. First of all, the authority who reviews or considers the declarations under the DTVSV Act is not empowered to decide the appeals which have been filed before the ITAT on behalf of deceased Kalyanji Bhagat. The said officer cannot adjudicate on the maintainability of the appeals and state that the appeals have been filed beyond time. It is petitioner's case in these appeals that it is filed within time and at the relevant time the ITAT may decide it as it deems fit.

9. Mr. Jetly submitted that petitioner's case for the declaration filed under the DTVSV Act would be covered under Section 2(1)(a)(ii) of the DTVSV Act which reads as under :

2. (1) *In this Act, unless the context otherwise requires,—*
(a) *“appellant” means—*
(i) *xxxxxx*
(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 Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date.*

10. Mr. Jetly submitted that the twin requirements as applicable to Petitioner under this provision are (a) an order has been passed by the Commissioner (Appeals) on or before the specified date and (b) the time

for filing any appeal against such order by that person has not expired on that date.

The specified date, Mr. Jetly submitted, under clause (n) of Sub Section (1) of Section (2) of the DTVSV Act was 31st January, 2020 and all the orders were passed in 2011 and therefore the first condition has been met.

As regards the second condition, Mr. Jetly submitted that an appeal against the order of the Commissioner (Appeals) has to be filed within 60 days of the conclusion of the appeal. According to Mr. Jetly the order was communicated to petitioner only on 17th December, 2020 and the time to file the appeals was to expire on or about 15th February, 2021 and the declarations were filed on or about 13th January, 2021. Therefore, second condition has also been met.

11. Mr. Sharma submitted that one Tanuja Bhagat on behalf of deceased Kalyanji Bhagat had applied under the provisions of the Right To Information Act, 2005 for copies of these orders for the assessment years mentioned above and these were provided some time in circa 2017. Therefore, petitioner's contention that time for filing appeal had not expired as on the date of filing the declaration is not correct.

12. Mr. Jetly tendered a copy of order passed by the ITAT in two Wealth Tax Appeals concerning deceased Kalyanji Bhagat. Mr. Jetly

submitted that these Wealth Tax Appeals were also filed on the same date on identical facts regarding date of receipt of order and the ITAT in its order dated 2nd March, 2021 has accepted the explanation of appellant as to why they could not participate in the proceedings earlier and the orders impugned in these appeals have been set aside and the matters have been remanded for *denovo* consideration to the Commissioner of Wealth Tax (Appeals). Mr.Jetly therefore submitted that the contention of respondent that the appeals were filed beyond time is not correct.

13. It is petitioner's case that the legal heirs of the deceased Kalyanji Bhagat, by Power of Attorney dated 10th November, 1993, appointed Suresh Bhagat son of deceased Kalyanji Bhagat as Constituted Attorney and it was Suresh Bhagat who was pursuing all the appeals and proceedings arising from the assessments against the deceased Kalyanji Bhagat. On 13th June, 2008 Suresh Bhagat died and as he was the only person who was conversant with the facts and pending proceedings and as his name was represented as legal representative of deceased Kalyanji Bhagat in all the proceedings, revenue authority did not entertain any other legal heirs of deceased Kalyanji Bhagat because none of the legal heirs received any communication from the revenue. It is also alleged that sudden death of Suresh Bhagat created a vacuum and the other legal heirs of Kalyanji Bhagat were unaware as to the facts of Kalyanji Bhagat's case and status of proceedings pending in different forums.

14. In the year 2018, Revenue Authorities initiated recovery proceedings against estate of deceased Kalyanji Bhagat in the hands of other legal heirs and sought auction of the properties in the hands of the legal heirs. Proceedings of recovery of income tax dues of the deceased Kalyanji Bhagat were also initiated against petitioner as the legal heir of Kalyanji Bhagat and these proceedings were challenged in this court by way of two Writ Petitions. By orders passed on 28th February, 2018 and 13th March, 2018 this court disposed these Writ Petitions with directions to the Principal Commissioner of Income Tax – 20 to hear petitioner's appeal filed under Rule 86 Schedule II of the Act. It is also averred in the petition that during the course of hearing of these appeals Respondent No.2 initiated some actions including reference to valuation cell, constitution of Task Force to determine the correct amount of tax arrears of the deceased assessee etc. Due to change in jurisdiction, these appeals are pending before Respondent No.2 even as on the date of filing of the petition. As the Revenue Authorities were not having complete records including assessment order, notice of demand issued against deceased Kalyanji Bhagat etc., Task Force appointed by Respondent No.2 after co-ordinating with various wards/offices of the Income Tax Department tried to ascertain the correct tax liability of the deceased Kalyanji Bhagat in the course of the proceedings. Petitioner states that while co-ordinating with the Task Force constituted, some time in the year 2019, petitioner, for the first time, learnt that CIT (A) – 29, Mumbai had passed ex parte appellate orders in 2011.

15. In the meanwhile, after two petitions referred above were disposed by this court in February/March, 2018, petitioner requested the department to provide petitioner with the quantum and nature of arrears and breakup of the tax arrears regarding deceased Kalyanji Bhagat. Due to various internal changes in the department where wards and ranges were merged, recast or abolished or officers were transferred petitioner could not get all the details or documents.

16. On 15th January, 2019 Principal Commissioner – 21, Mumbai who had jurisdiction over the case of deceased Kalyanji Bhagat fixed hearing before him on 25th January, 2019. In the course of hearing it was deemed proper and in the interest of justice to constitute a task force to determine the nature and break up of demands due as the matter was about 30 years old and even the Principal Commissioner of Income Tax had difficulty to determine the correct tax liability of the deceased Kalyanji Bhagat. But before the matter could be decided by the Principal Commissioner of Income Tax, Range – 21 was abolished and thereafter merged with Range – 22 and thereafter the Head of Range – 22 was transferred. In the absence of Range Head at Range – 22 it is stated that petitioner had difficulty in co-ordinating with various offices of the department and petitioner was regularly co-ordinating with Range – 22. It is petitioner's case that lot of time was spent or lost in co-ordinating with the various department of Revenue to procure documents/details including certified copies of the

appellate orders which were required to file the appeals and proceed further after ascertaining the correct liability of the deceased Kalyanji Bhagat. Mr. Jetly submitted that even though in 2017 Tanuja Bhagat, daughter of petitioner had received copies of orders through the Right To Information Act, 2005, the same was not sufficient to file the appeal before the ITAT in the absence of other details, documents and without verifying the same. Mr. Jetly submitted that finally all documents were received only on 17th December, 2020 and 60 days required to file appeal would have expired on 16th February, 2021 and the declaration in Form 1 was filed on 13th January, 2021 and hence the second condition required under Section 2(1)(a)(ii) of the DTVSV Act, i.e., the time for filing the appeal has not expired as on the date of filing the declaration. Mr. Jetly concluded that therefore, the rejection of petitioner's application on the ground of it being time barred is incorrect.

17. Mr. Sharma submitted that nothing prevented petitioner from applying for certified copies of all the documents in 2017 itself and the court therefore should not accept Mr. Jetly's submissions.

18. We have considered the affidavit in reply as well in which the submissions is based primarily in the lines submitted by Mr. Sharma. In the reply, Revenue is not denying the fact that the task force was created on two occasions and notwithstanding the appointment of task force, petitioner's

were not able to get documents on time because of various organisational changes in the department. In the reply it is stated that in the absence of any material or documents in the Writ Petition, no credence could be given to the averment that the Task Force apparently constituted in the course of recovery proceedings appointed by Respondent No.2 could not provide a copy of the order passed by CIT (A) in September, 2011. Certainly, if only the affiant had gone through the files, he would have noted the notings in the file and he could have filed copy of the notings or the order sheets in the file, if according to him petitioner's averment in the petition was not correct. Respondents cannot simply skirt their responsibility by putting onus on petitioner to provide some documents constituting the task force.

19. Therefore, from the facts as narrated above, we find that the time for filing the appeals against the order of CIT (A) had not expired as on the date of filing the declaration.

20. Therefore, in the peculiar facts and circumstances of the case, the rejection of the declaration by petitioner under the DTVSV Act is not correct.

21. We hope the authorities will keep in mind the objective of the DTVSV Act, which is the Act to provide for resolution of disputed tax and for matters concluded there with or incidental thereto. Here is the legal heir

who wants to put an end or wants of closure to all the disputes between the deceased Kalyanji Bhagat who was his father and the tax authorities. We fail to understand why Revenue is rejecting these declarations without properly considering the facts and circumstances of the case.

22. All the petitions therefore has to be allowed, and are hereby allowed, in terms of prayer clause – (a) and (b) which reads as under :

(a) that this Honourable Court be pleased to issue any appropriate Writ, order or direction under Article 226 of the Constitution of India, quash and set aside the order of rejection dated 9th April 2021 (Exhibit “H”) passed by Respondent No.2 on the application filed by the Petitioner before him under the Direct Tax Vivad Se Vishwas Act, 2020;

(b) that this Honourable Court be pleased to issue any appropriate Writ, order or direction under Article 226 of the Constitution of India, directing Respondent Nos.1 & 2 to verify the declaration filed by the Petitioner under section 4 (1) of the Direct Tax Vivad Se Vishwas Act, 2020 dated 13th January 2021 – Form No.1 and 2 (Exhibit “G”) and direct Respondent No.2 to issue Form No.3 determining the tax payable by the Petitioner under section 3 of the Direct Tax Vivad Se Vishwas Act, 2020.

23. We will only note that this order cannot be used by petitioner in any proceedings between petitioner and the legal heirs of late Kalyanji Bhagat to lay claim to any estate of deceased Kalyanji Bhagat if there are any such proceedings/disputes pending or may arise in future.

24. Petitions disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)