IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2058 OF 2021

PETITIONER: M/s. Om Shivam Buildcon Private Limited, Plot No.10, Rohan Arcade, Ajni Square, Wardha Road, Nagpur, through its Director, Ravindra S/o Kisanarao Kapse, R/o. Pande Layout, Khamla, Nagpur, Aged about 54 years.

...**VERSUS**...

RESPONDENTS:

1) Union of India, Through it's Revenue Secretary Ministry of Finance, New Delhi.

2) Central Board of Direct Taxes, Through It's Chairman, C.B.D.T., North Block, New Delhi.

3) Designated Authority, i.e. Principal Commissioner of Income Tax (Central), Aayakar Bhawan, Civil Lines, Nagpur.

Mr.R.M.Bhangde, counsel with Mr. Milind Bhusari,
counsel for the petitioners.
Mr. A.J.Bhoot, counsel for respondent No.1.
Mr. S.N.Bhattad, counsel for respondent No.3.

CORAM : SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ.

DATE : 01.12.2021

ORAL JUDGMENT (Per: Anil L. Pansare J.)

Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter referred to as "DTVSV Act, 2020" for the sake of brevity), was enacted on 17.03.2020 with the objective to reduce pending Income Tax litigation, so also to generate timely revenue for the Government and also for the benefit of tax payers. The scheme thereunder, namely Vivad Se Vishwas Scheme ("VSVS, 2020" for the sake of brevity), was launched. This scheme provided for settlement of disputed tax, interest, penalty in connection with an assessment order. The VSVS, 2020 is made applicable to those tax payers whose appeals are pending in various Courts as of 31st January 2020.

4. The Central Board of Direct Taxes ("CBDT" for the sake of brevity) issued a circular no. 21/2020 dated 4th December, 2020, issuing clarifications for the provisions of DTVSV Act, 2020.

The clarifications have been issued in the form of FAQ's. Question no. 59 therein is relevant, it reads as under:

> ***Question No. 59.*** *Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st January, 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 January, 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 January, 2020.*

Thus, what is clarified in the aforesaid circular is that, where the appeal is filed between the period of 1st April 2019 to 31st January 2020, along-with application for condonation of delay, the appeal has to be admitted by the appellate Authority prior to 31st January 2020.

5. The petitioner has come up with a case that on 12th January, 2019, assessment orders for the years 2011-12 to 2015-16 and 2017-18 (for five years) were served on the petitioner. On 7th April, 2019, the petitioner filed belated appeals

against the said orders before the Commissioner of Income Tax (Appeals-III) (“CITA” for the sake of brevity) in Nagpur, along-with application for condonation of delay, as the appeals were late by 84 days. The applications for condonation of delay came to be rejected by the CITA vide orders dated 28th December, 2020. The said orders were challenged by the petitioner before the Income Tax Appellate Tribunal, Bench at Nagpur (“ITAT” for the sake of brevity). The Appellate Tribunal vide order dated 24th February, 2021 has been pleased to condone the delay in filing appeals and thus set aside the orders passed by the Commissioner of Income Tax (Appeals-III).

6. In the meantime, the petitioner has received an intimation dated 29th January, 2020, whereby the respondent No.3-Designated Authority i.e., Principal Commissioner of Income Tax, (Central), Nagpur has rejected the declarations filed by the petitioner under section 4 of the “DTVSV Act, 2020” by referring to CBDT Circular No.21/2020, dated 4th December, 2020. The said communication has been challenged in the present petition.

7. The learned counsel for the petitioner, by referring to VSVS, 2020 envisaged under the DTVSV Act, 2020 pointed out

that under section 2(1)(a) of the DTVSV Act, 2020, the appellant has been defined as "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". The specified date is defined under section 2(1)(n) to mean 31st January, 2020. He further submits that, under the DTVSV Act, 2020, a person like petitioner could file declaration under section 4 thereof before the Designated Authority in the prescribed form i.e., Form-I, which the petitioner has filed.

8. It is accordingly argued that since the appeals that were filed by the petitioner on 7th April, 2019 along with the application for condonation of delay, which ultimately has been allowed by the Appellate Tribunal, having been pending on the **specified date** i.e., on 31st January, 2020, respondent No.3 could not have rejected the declarations filed by the petitioner by taking aid of the Circular No.21/2020, dated 4th December, 2020. The circular itself, according to the petitioner, is illegal and contrary to the VSVS, 2020 for the reason that filing appeal along-with application for condonation of delay is within the control of

petitioner, but its decision is not. In any case, it is argued that since the appeals were pending as on the specified date, the case of the petitioner was covered in terms of section 2(1)(a) of the DTVSV Act, 2020.

9. The learned counsel has placed reliance upon the judgment dated 24th June, 2021 passed by the Coordinate Bench of this Court in *Writ Petition No.1992 of 2021* **(*Karan Ventakeshwara Associates v. Income Tax Officer-ITO Ward 7(3), Pune and others*)**. Similar such question arose in the said petition. The relevant findings appear in paras 4 and 6 of the order, which read as under:

> *"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."*
>
> *"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 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."*

10. This decision commends to us and we hold that once the delay has been condoned in filing appeal, it will have to be treated that the declaration under section 4 of the DTVSV Act, 2020, filed by the petitioner prior to 31st January, 2020, will fall in the category of appeal pending on the specified date.

11. At this stage, the learned counsel for the respondents by relying upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. M/s. Charak Pharmaceuticals (India) Ltd.,*** reported in ***(2003) 11 SCC 689*** contends that to avail benefit under such scheme, the party approaching for benefit must fully comply with the provisions of the scheme and if all the requirements of the scheme are not met then on principles of equity, Courts may not extend the benefit of that scheme.

12. He has also relied upon the judgment of the Coordinate Bench of this Court in ***Writ Petition No.4130 of 2020 (M/s. National Construction Company v. Designated Committee)*** and contended that the petitioner therein applied for benefit under the scheme, which was designed to provide one time window for settlement of disputes and payment of arrears of tax dues. However, the petitioner therein failed to avail benefit viz. to deposit amount within prescribed period. In context with the above facts and by relying upon the judgment of ***M/s. Charak Pharmaceuticals*** (supra), the High Court dismissed the petition on the ground that the Writ Court has no competence to alter the scheme to enable the party which has sought to avail the benefit of the scheme to determine the amount beyond the period as fixed by the respondents.

13. Thus, in both the judgments the beneficiaries therein have not availed the benefits of the scheme within prescribed period and, therefore, the benefits were denied to them. As against in the present case, the petitioner has filed declaration well within the stipulated time and therefore, the judgments cited above will not be of any help to the respondents.

14. What emerges from the above discussion is that; Assessment orders for respective years were served on the petitioner on 12th January 2019. The petitioner on 7th April 2019, filed appeal along-with application for condonation of delay challenging said orders. The delay has been condoned vide order dated 24th February, 2021, meaning thereby that the appeals challenging assessment orders were pending on the specified date i.e.; 31st January 2020 in terms of the judgment of this Court in the case of *Karan Ventakeshwara Associates v. Income Tax Officer* (supra). The respondent No.3, therefore, could not have rejected the declaration filed by the petitioner.

15. The petitioner has also challenged the Circular No.21/2020 on the ground that the right conferred under Section 2(1)(a)(i) cannot be limited by a clarificatory order in the manner it has been done. The clarification cannot add new qualifications beyond the provisions of the DTVSV Act, 2020 and that clarification can only operate within contours specified in the DTVSV Act, 2020. Question No.59 in the said circular deals with the situation where time limit for filing appeal has expired during the period from 1st April, 2019 to 31st January, 2020 and appeal

having been admitted prior to 31st January, 2020. The petitioner has challenged said clarification on the ground that filing appeal with application for condonation of delay is within the control of petitioner but, its decision is not.

16. However, in the present case, the assessment orders were served on petitioner on 12th January 2019. The period of limitation for filing appeal is 30 days, therefore appeal ought to have been filed prior to 11th February, 2019. The said date 11th February, 2019 is prior to the period prescribed under Ques. No.59, being period from 1st April, 2019 to 31st January, 2020. These facts would raise a doubt about applicability of the circular dated 4th December, 2020 to the case of the petitioner. In any case, having found action of rejection of declarations by respondent No.3 being bad-in-law, we do not propose to examine this challenge now. The challenge therefore is kept open for decision in appropriate proceeding.

17. In view of above, it will have to be held that the rejection of declaration filed by the petitioner under section 4 of the DTVSV Act, 2020 is bad-in-law. Similarly, the impugned

communication dated 29th January, 2020 is liable to be quashed and set aside.

18. The petition is thus partly allowed. The action of rejection of the declarations filed by the petitioner under Section 4 of DTVSV Act, 2020 is held to be bad-in-law.

19. The communication dated 29th January, 2021 informing the petitioner of the rejection of declarations filed by the petitioner under Section 4 of the DTVSV Act, 2020 for the assessment years 2011-12, 2012-13, 2013-14, 2015-16 and 2017-18 is hereby quashed and set aside.

20. Respondent No.3 is directed to process the declarations filed under Section 4 of DTVSV Act, 2020 in accordance with law and take appropriate decision in respect of them as expeditiously as possible, preferably within 15 days from the date of receipt of the order.

21. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J) **(SUNIL B. SHUKRE, J)**