IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3335 OF 2021
WITH
WRIT PETITION NO.3271 OF 2021
WITH
WRIT PETITION NO.3272 OF 2021
WITH
WRIT PETITION NO.3337 OF 2021

Dhanraj Malchand Rathi ….Petitioner

V/s.

Union of India Through Ministry of Finance Dept. of Revenue & Anr. …Respondents

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Mr. Sanket S. Bora a/w Mr. Aashit A. Kankariya i/b SPCM Legal for Petitioner
Mr. Sham V. Walve for Respondents

CORAM : K.R. SHRIRAM &
R. N. LADDHA, JJ
DATED : 3rd JANUARY 2022

P.C. :

WRIT PETITION NO.3335 OF 2021

1 Petitioner is impugning an order passed by respondent no.2 on 26th February 2021 rejecting petitioner's declaration under the Direct Tax Vivad se Vishwas Act 2020 (DTVSV Act).

2 Petitioner had filed revised income tax return for A.Y.-2006-2007 on 26th August 2011. The assessment order under Section 153A read with Section 143(3) of the Income Tax Act 1961 (the Act), was passed on 30th October 2012. Penalty order under Section 271(1)(c) was passed on 29th April 2013. On 15th May 2013 Appeal Memo in Form-35 was filed by

petitioner. On 6th November 2015, Commissioner of Income Tax (CIT) (Appeal) passed an order dismissing the appeal based on an application filed by petitioner seeking leave to withdraw the appeal.

3 On 22nd May 2017, petitioner filed an application under Section 264 of the Act before the CIT, Central - Pune. In the application, petitioner has also sought condonation of delay in filing the application under Section 264. We are not considering whether that such delay was condonable or not. What we are looking for is only whether there was an application under Section 264 pending on the specified date as required under the DTVSV Act.

4 Petitioner would qualify as an appellant under Section 2(1)(a)(v) of the DTVSV Act. It says, *in this Act unless the context otherwise requires, appellant means 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*. Specified date under clause (n) of sub Section (1) of Section 2 of DTVSV Act is 31st January 2020.

5 Petitioner filed a declaration / application under the provisions of DTVSV Act before the deadline for filing. Application was rejected on 26th January 2021 and petitioner received an email dated 26th February 2021 informing petitioner about rejection order. In the email, it is stated as under:

> *"The application filed by you under Vivad Se Vishwas Scheme has been rejected on the basis that the revision petition filed by you was out of time. Further, the delay was not condoned and application was not processed. As per the facts of the case, no petition was pending as on 31.01.2020 and since there was no pendency, application under VsV was not eligible and hence rejected."*

6 We have to observe that Income Tax Officer has no authority or power under the DTVSV Act to dispose of the revision application filed by petitioner under Section 264 of the Act. Petitioner had filed the revision application under Section 264 with a request for condonation of delay and that revision application has not been rejected and was still pending on the date petitioner filed the declaration under the DTVSV Act.

7 The DTVSV Act only requires that the application under Section 264 of the Act must be pending on the specified date. Mr. Walve submitted that time limit for disposal of the revision petition expired long before the specified date and that before filing the application under Section 264, petitioner had also withdrawn the appeal that he had filed before the CIT(Appeal) and, therefore, application under Section 264 itself was not maintainable. In our view, that was for the Commissioner before whom the application under Section 264 was pending to decide and pass the order, which has not been done. Whatever may be the merit of the application under Section 264, the fact is that application was still pending on the date the declaration under DTVSV Act was filed. Therefore, in our view, the rejection of petitioner's declaration under DTVSV Act for A.Y.-2006-2007 as contained in the Form-1 filed on 25th December 2020, is incorrect.

Respondents are directed to process the application as contained in Form-1 filed on 25th December 2020 and pass such orders as required in accordance with law.

Mr. Bora states petitioner had already made payments as per Form-1. If that is so, he may tender the same to the concerned authority, who shall examine the documents and give credit for the amount already paid.

8 Petition disposed.

WRIT PETITION NO.3271 OF 2021
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9 Writ Petition No.3271 of 2021 pertains to A.Y.-2007-2008, Writ Petition No.3272 of 2021 pertains to A.Y.-2008-2009 and Writ Petition No.3337 of 2021 pertains to A.Y.-2009-2010. Mr. Walve states that the email dated 26th February 2021 referred to in Writ Petition No.3335 of 2021, also refers to the three assessment years namely 2007-2008, 2008-2009 and 2009-2010. Mr. Walve, therefore, submits, in fairness, that order passed earlier for A.Y.-2005-2007 in Writ Petition No.3335 of 2021 squarely applied to these three petitions as well. Accordingly, these three petitions are also allowed with the same directions as contained in Writ Petition No.3335 of 2021.

10 All petitions disposed.

(R. N. LADDHA, J) **(K.R. SHRIRAM, J.)**