IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2022

PRONOUNCED ON : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.19466, 19468, 19470, 19472, 19475 of 2021
and
WMP.Nos.20759, 20760, 20763,
20765, 20766, 20767, 20769, 20770, 20773 of 2021

(Through Video Conferencing)

W.P.No.19466 of 2021
M/s.Cortex Enterprises
Rep.by its Partner Mr.Aamir
No.23, 2nd Street, East Abhirampuram,
Mylapore, Chennai 600 004. .. Petitioner in all W.Ps.

vs.

1.The Principal Commissioner of Income Tax – 1,
121, Mahatma Gandhi Road,
Aayakar Bhavan, Chennai 600 104.

2.The Income Tax Officer,
Non Corporate Ward 1 (5)
No.121, Mahatma Gandhi Road,
Aayakar Bhavan, Chennai 600 034.

3. The Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110 001. .. Respondents in all W.Ps.

Prayer in W.P.No.19466 of 2021: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2011-12 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 provisions of (VSV Act) in PAN AAHFC4636K and quash the same as illegal, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.8 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.

Prayer in W.P.No.19468 of 2021: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2012-13 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.9 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.

Prayer in W.P.No.19470 of 2021: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2013-14 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.7 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.

Prayer in W.P.No.19472 of 2021 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2014-15 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.10 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.

Prayer in W.P.No.19475 of 2021 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in Circular No.21 of 2020 dated 4th December 2020 and quash to the extent restricting the application for condonation of delay in filing the appeal, the time limit for which expired during the period from April 1, 2019 to January 31, 2020, till the date of issue of Circular No.21 dated 04.12.2020 in answer to question No.59 as illegal against the provisions of Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) and consequently direct the 1st respondent to accept the applications/declarations filed under VSV Act by the petitioner for the Assessment years 2011-12, 2012-13, 2013-14 and 2014-15 for which the time for filing the tax case appeal expired between April 1 2019 to January 31 2020.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

In W.P.Nos.19466, 19468, 19470, 19472 of 2021, the petitioner has challenged the impugned communications dated 30.01.2021 rejecting the applications/declarations filed by the petitioner under the Direct Tax Vivad Se Vishwas Act, 2020 and the rules made thereunder. The petitioner had filed applications under Direct Tax Vivad Se Vishwas Act, 2020 on

30.01.2021 for the Assessment Year 2011-2012, 2012-2013, 2013-2014 and 2014-2015.

2. The prayers in these writ petitions are identical. They read as under:-

W.P.No.	Prayer
19466/2021	For issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2011-12 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 provisions of (VSV Act) in PAN AAHFC4636K and quash the same as illegal, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.8 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act
19468 of 2021	For issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2012-13 rejecting the application/declaration in Form 1 and 2 filed under

W.P.No.	Prayer
	Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.9 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.
19470 of 2021	For issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2013-14 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.7 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.
19472 of 2021	For issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent relating to the impugned order dated 30.01.2021 passed for Assessment Year 2014-15 rejecting the application/declaration in Form 1 and 2 filed under Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) in

W.P.No.	Prayer
	PAN AAHFC4636K and quash the same, contrary to provisions of VSV Act and against the principles of natural justice and fairplay and direct the 1st respondent to consider TCA No.10 of 2021 filed against the Tribunal order dated 30.04.2019 and accept the applications/declarations under VSV Act.

3. Operative Portion of the impugned order reads as under:-

> "Not eligible for VSV Scheme no Appellate proceeding is pending on 31.01.2020. The assessee is not covered under any of the exclusion clauses as per Section 9 of the VSV Act 2020."

4. The Prayer in W.P.No.19475 of 2021, reads as under:

> For issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in Circular No.21 of 2020 dated 4th December 2020 and quash to the extent restricting the application for condonation of delay in filing the appeal, the time limit for which expired during the period from April 1, 2019 to January 31, 2020, till the date of issue of Circular No.21 dated 04.12.2020 in answer to question No.59 as illegal against the provisions of Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) and consequently direct the 1st respondent to accept the applications/declarations filed under VSV Act by the petitioner for the Assessment years 2011-12, 2012-13, 2013-14 and 2014-15 for which the time for filing the tax case appeal expired between April 1 2019 to January

31 2020.

5. In **W.P.No.19475 of 2021,** the petitioner has challenged the vires of the clarification dated 04.12.2020 issued by the Central Board of Direct Taxes namely, the third respondent therein in its Circular No.21 of 2020. The petitioner is aggrieved by the answer to Question No.59 of the impugned. Answer to Question No.59 which reads as under:

> "**Question No.59**: Whether the taxpayer in whose case the time limit for filing of appeal has expired before January 31, 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 April 1, 2019 to January 31, 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 January 31 2020."

6. The case of the petitioner is that the petitioner had suffered assessment orders for the assessment years 2011-2012 to 2014-2015 against which the petitioner had preferred appeals before the CIT (Appeals). These

appeals were dismissed. Further appeal before the Income Tax Appellate Tribunal were also dismissed by the Income Tax Appellate Tribunal on 30.04.2019. The petitioner however failed to file appeal within the limitation i.e., 120 days from the date of receipt of the order of the Tribunal before the Division Bench of this Court under Section 260A of the Income Tax Act.

7. The learned counsel for the petitioner submits that though the limitation for filing the appeal expired on 28.08.2019, the petitioner revived the rights by filing appeals against the respective orders of the ITAT along with petitions to condone the delay before this High Court on 28.12.2020, to take advantage of the **Direct Tax Vivad Se Vishwas Act, 2020**. The Direct Tax Vivad Se Vishwas Act, 2020 was passed by the Parliament and the assent of the President was received on 17.03.2020. It gave an avenue to the assessees to settle their cases paying the arrears of tax and buy peace.

8. The learned counsel for the petitioner submits that the delay was also condoned by this Court by its order dated 30.12.2020, pursuant to which the respective Appeals in T.C.A.Nos.7 to 10 of 2021 against the order of

Income Tax Appellate Tribunal were numbered. The petitioner thus filed applications under the **Direct Tax Vivad Se Vishwas Act, 2020** on 30.01.2021 to settle the dispute under it. The learned counsel for the petitioner submits that the petitioner thus filed an application for declaration under Section 4 of the aforesaid Act to settle the dispute under it. The petitioner therefore withdrew T.C.A.Nos.7 to 10 of 2021 on 11.01.2021 which was also recorded by a common order of the Court.

9. The learned counsel for the petitioner submits that the impugned communication dated 30th January 2021 rejecting the applications were without jurisdiction in as much as the applications were filed by the petitioner were in accordance with the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 on 30.01.2021. It is submitted that as per the definition under Section 2(n) "specified date" means the 31st day of January 2020.

10. It is submitted that once the delay was condoned on 30.12.2020 by the Court, the petitioner was entitled to file application for settling the case under the aforesaid Act. It is further submitted that as per sub-clause 3 of Section 4 of the aforesaid Act, where the declarant has filed any appeal

before any appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or withdraw such petition with the leave of the court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of Section 5.

11. The learned counsel further submits that the third respondent viz., Central Board of Direct Taxes has issued clarification/circulars in exercise of power conferred under Section 9 and 10 of the aforesaid Act and an earlier clarification was issued on 22.04.2020 which was followed by the impugned clarification which puts an embargo on persons like a petitioner for settling the case under the Direct Tax Vivad Se Vishwas Act, 2020.

12. The learned counsel for the petitioner submits that the answers to Frequently Asked Question Nos.56 and 59 answers the issue, yet it has been stated that the benefit of the above circular will apply only in case the application for condonation of delay is filed before the date of issue of second mentioned circular dated 04.12.2020. It is submitted that the above

requirement is contrary to the provisions of the Act and therefore submits that to that extent, it cannot be countenanced.

13. The learned counsel for the petitioner relied on the decision of the High Court of Telangana in the case of ***Boddu Ramesh v. Principal commissioner of Income-Tax, Hyderabad,*** (2021) 437 ITR 31 which was followed by the High Court of Gujarat in the case of **Maheshbhai Shantilal Patel v. Principal Commissioner of Income-tax, Central, Ahmedabad,** 439 ITR 112.

14. It is submitted that the Income Tax Act and the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 are Central enactment and therefore the decisions rendered by the High Court are binding on the respondents, though this Court can take an independent decision.

15. The learned counsel for the petitioner submits that the issue has been examined in an identical situation and therefore the impugned communication challenged in W.P.No.19466, 19468, 19476 and 19472 of 2021 are liable to be quashed with consequential relief and the impugned

circular dated 04.12.2020 are liable to be declared as inoperative as far as the petitioner is concerned.

16. Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the petitioner had slept over its rights and did not file any appeal against the order of the Income Tax Appellate Tribunal for the respective assessment years in time before the Division Bench of this Court under Section 260A of the Income Tax Act, 1961. It is submitted that mere filing of an appeal with an application for condonation of delay by itself would not mean that the appeal of the petitioner was pending before the High Court for the purpose of Section 4 r/w definitions under Section 2(a) and 2(n) of the Act.

17. The learned Senior Standing Counsel for the respondents further submits that the decision of the High Court of Telangana which was followed by the High Court of Gujarat is not binding on this Court and this Court can independently pass an order by applying the provisions to the facts of the case. It is further submitted that the petitioner having chosen to withdraw the appeal cannot agitate the issue. It is further submitted that the Division Bench

of this Court by its orders dated 11.01.2021 in T.C.A.Nos.7 to 10 of 2021 merely gave liberty to the petitioner for restoration of the appeal in case the ultimate decision regarding the declaration filed by the petitioner were rejected. In this connection reference was made to paragraph 8 of the said decision which reads as follows:

> "8.As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the Division Bench for orders."

18. The learned senior standing counsel for the respondent further submitted that it is open to the petitioner to agitate the issue by reviving the TCA cases which came to be dismissed by the Division Bench of this Court by an order dated 11.01.2021.

19. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the

respondents. I have also perused the Direct Taxes Vivad Se Viswas Act,2020. I have also perused the copy of the impugned Circular No. 21 of 2020 of the third respondent Central Board of Direct Taxes and the two decisions of the Telangana and the Gujarat High Court cited by the learned counsel for the petitioner.

20. The Direct Taxes Vivad Se Viswas Act, 2020 came into force on 17.03.2020 with the object to reduce pending litigation to generate timely revenue for the Government and benefit the Tax Payers. Initially, it was to be in force upto 30.06.2020 and thereafter various extensions were given and thus finally extended upto 30.09.2021 being the last date. The last date for making payment expired on 01.05.2021.

21. The benefit of scheme under the said Act was available to any "declarant" as defined in Section 2(1)(c) of the Act. A "declarant" could take the benefit of the scheme under the Act in respect of "tax arrears" as on the "specified date" as defined in Section 2(n) i.e., 31st day of January 2020, which date was subsequently extended.

22. As per Section 3, on or before the last date, a declaration had to be filed before the Designated Authority in accordance with the provisions of Section 4 of the Act.

23. The amount paid under the scheme of the Act is conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceedings under the Income Tax Act or any other law for the time being enforced or under any agreement whether for protection of investment or otherwise.

24. However, as per the explanation of Section 5, making of a declaration under the Act does not amount to conceding the tax position and it shall not be lawful for the income tax authority or a declarant being the party in appeal or writ petition or special leave petition to contend that the declarant or the Income Tax Authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the issue.

25. As per Section 6 of the said Act , the designated authority also cannot initiate any proceedings in respect of an offence imposed or levy

penalty or charge any interest under the Income Tax in respect of the tax arrear than Courts once declarations are accepted.

26. The amounts to be paid by a "declarant" under Section 3 of the Act are as follows:-

Sl. No.	Nature of tax arrear	Amount payable under this Act on or before the 30th day of September 2020	Amount payable under this Act on or after the 1st day of April, 2020 but on or before the last date.
		Amount payable under this Act on or before the 30th day of September 2021	**Amount payable under this Act on or after the 1st day of October, 2021 but on or before the last date.**
(a)	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	Amount of the **disputed tax**	The aggregate of the amount of disputed tax and ten per cent of disputed tax: Provided that where the ten per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.

(b)	Where the **tax arrear** includes the tax, interest or penalty determined in any assessment on the basis of search under Section 132 or section 132 A of the Income – tax Act.	The aggregate of the amount of disputed tax and twenty-five per cent. of the **disputed tax:** Provided that where the twenty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.	The aggregate of the amount of disputed thirty-five per cent of **disputed tax**: Provided that where the thirty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.
(c)	Where the **tax arrear** relates to disputed interest or disputed penalty or disputed fee	Twenty-five percent of disputed interest or disputed penalty or disputed fee.	Thirty per cent of disputed interest or disputed penalty or disputed fee.

27. As per Notification No.9/2021 dated 26/02/2020 F.No.IT(A)/01/2021-TPL [Notification No.S.O.964(E)], following notes were specified:

Sl.No.	Last Date	Date
1.	For filing declaration	31.03.2021
2.	For payment of amount under Column 3 Section 3	30.04.2021
3.	For payment of amount under Column 4 of Section 3	01.05.2021

28. The last date for payment of amount under the scheme was extended to 31.08.2021 from 31.03.2021 vide Notification No.85/2020, dated the 27th October 2020, S.O. 3874(E), and thereafter to 30.09.2021, vide Notification No.94/2021 - IT dated 31.08.2021 [Notification No.S.O.3536(E)].

29. The expression used in Section 3 is "tax arrear" and "disputed tax". These two expressions have been defined Section 2(1)(o) and Section 2(1)(j) of the Act. They are reproduced below:-

Tax Arrear : Section 2(1)(o)	**Disputed Tax:** Section 2(1)(j)
"**tax arrears**" means :- i. The aggregate amount of **disputed tax**, interest chargeable or charged on such disputed tax, and penalty leviable or levied	"**disputed tax**", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the **appellant** under the provisions of the Income-tax Act, 1961, as

on such disputed tax; or ii. **Disputed interest**; or; iii. Disputed penalty; or; iv. Disputed fee, as determined under the provisions of the Income-tax Act;	computed hereunder:- (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the **specified date**, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him; (B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed; (C) in a case where the order has been passed by the Assessing Officer on or before the **specified date**, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order; (D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the **specified date**, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order; (E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the

	amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof; (F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted: **Provided** that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued: **Provided further** that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed

30. The other expressions used are reproduced below:-

2(1)(f) "**disputed fee**"	Means the fee determined under the provisions of the Income-tax Act, 1961 (43 of 1961) in respect of which appeal has been filed by the appellant;
2(1)(g) "**disputed income**"	In relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;
2(1)(i) "**disputed penalty**"	Means the penalty determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961) where: (i) Such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be; (ii) An appeal has been filed by the appellant in respect of such penalty;

31. The definition of "disputed tax" in Section 2(1)(j)(A) of the Act is attracted where any appeal, writ petition or special leave petition is pending before the appellate forum as on the "**specified date**". In which case, the "dispute tax" is the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against such appellant.

32. The circumstances, specified in Section 2(1)(j)(B) applies to a

situation where an order in appeal or in a writ petition has been passed by the appellate forum on or before the "**specified date**" and the time for filing appeal or special leave petition **against such order has not expired** as on date, in which case the disputed tax is the amount of tax payable after giving effect to the order so passed.

33. Thus, a plain reading of the above definitions makes it clear that the limitation to file an appeal should not have expired before the "**specified date**" for settling the tax arrears and the disputed tax.

34. A declarant who files application under Section 4 has to merely pay the arrear of tax, interest, fee, penal, etc. under Section 3 of the Act determined on or before the "specified date".

35. As per sub-section (3) of Section 4, where a declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Hon'ble Supreme Court against any order in respect of tax arrear, he has to withdraw such appeal or writ petition with the leave of the Court

wherever required after issuance of Certificate in sub-section (1) of Section and furnish proof of such withdrawal along with the intimation of payment to the Designated Authority under sub-section (2) of Section 5.

36. The definitions of "appellant" in Section 2(1)(a), the definition of "disputed fee" in Section 2(1)(f), the definition of "disputed income" in Section 2(1)(g), the "disputed interest" in Section 2(1)(h), the "disputed penalty" in Section 2(1)(i) and the "disputed tax" in Section 2(1)(j) are merely intended for determining at the amount payable by a "declarant" under Section 3 and 5 of the Act. There is an embargo under the Act.

37. They do not permit a declarant to pay the tax, income, penalty, fee as the case may be which was already determined on the "specified date" as defined in Section 2(1)(a) of the Act in respect of which time for filing had expired.

38. A reading of the table attached to Section 3 and Section 4, makes it clear that the amount that has to be paid is on the tax arrear. However, the benefit of scheme under the Act is available only if an appeal was pending on

the “**specified date**”. In the case of the petitioner, the assessment has been completed long back which was also affirmed by the Appellate Commissioner and the Income Tax Appellate Tribunal. However, no appeal was filed by the petitioner before the expiry of limitation prescribed under the Act before this High Court under Section 26A against the order of the Income Tax Appellate Tribunal (ITAT). Sub-section (2) of Section 260A of the Income Tax Act offers 180 days time to file an appeal.

39. A reading of the Act makes it clear that an appeal should be pending on the “specified date” as defined in Section 2(1)(n) of the Act 31st January 2020. In case an appeal was pending in respect of tax arrear, such declarant was required to withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under Sub-Section (1) of Section (5) and furnish a proof of such withdrawal along with the intimation of payment of the amount to the designated authority under Sub-Section (2) of Section 5.

40. The impugned clarification dated 04.12.2020 in Circular No.21 of 2020 vide answer to Question No.59, which distinguishes between the pending cases as and those cases when time for filing an appeal had expired before its issue after is superfluous. It has no bearing on the case of the petitioner.

41. In any event, the clarification though binding on the authority are not binding on the court. The above clarification which makes an artificial distinction between those cases where appeal were filed before the issue of the said circular and those after is at best relevant for the situation contemplated in 2nd proviso to Section 3 of the Act.

42. It cannot be interfered to shut out a person from the scheme if such a person was otherwise eligible for the benefit /amnesty under the Scheme. The Act is intended to benefit those assessees who were in appeal. It benefits only to those declarants who had filed an appeal before the specified date.

43. Though the Hon'ble Telagana High Court in the case of **Boddu**

Ramesh Vs. **Principal Commissioner of Income-Tax, Hyderabad** reported in (2021) 128 taxmann.com 13, has allowed the case of the assesse therein by stating that once an appeal is condoned, the appeal would date back to the date of the appeal and the above view was also followed by the Gujarat High Court in the case of **Maheshbhai Shantilal Patel** Vs. **Principal Commissioner of Incomt-Tax, Central, Ahmedabad** reported in (2021) 131 taxmann.com 1 (Gujarat) referred to *supra*, it would not mean that the appeal was pending on the "**specified date**" in respect of the time for filing appeal had not expired. Further, the amnesty scheme under the Direct Tax Vivad Se Vishwas Act, 2020 was intended for a separate class of assessee whose appeal was pending on the "**specified date**".

44. In this case, on the "specified date" i.e., 31.01.2020, no appeal was pending. The appeals were filed by the petitioner before this Court only on 28.12.2020 against the order of the Income Tax Appellate Tribunal long after the expiry of the specified date.

45. The delay was condoned on 30.12.2020. However, condonation of

the delay *ipso facto* would not mean that the appeal was pending for the purpose of the scheme under the Act on the specified date.

46. Condonation of the appeal merely allowed the petitioner to agitate the issue in an appeal. It did not mean that the appeal was pending on the specified date ie. 31.01.2020 as defined in Section 2(1)(o) of the Act. The appeals were thereafter disposed of as withdrawn on 11.01.2021. Thereafter, the applications under the Act were filed on 30.01.2021.

47. The purpose of the expression specified date as 31st January 2020 in Section 2(1)(n) is to freeze amount of tax, interest, penalty, fee, if any already determined for the purpose of payment under Section 3 of the Act. It is not intended to bring a person who had not filed an appeal before the expiry of limitation. Such a person cannot file an appeal to take advantage of the benefit of the scheme. Under these circumstances, I am inclined to dismiss these Writ Petitions. It is open to the petitioner to revive the appeal that was withdrawn.

48. These Writ Petitions thus stand dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

29.04.2022

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
rgm / jen

To

1.The Principal Commissioner of Income Tax – 1,
121, Mahatma Gandhi Road,
Aayakar Bhavan,
Chennai 600 104.

2.The Income Tax Officer,
Non Corporate Ward 1 (5)
No.121, Mahatma Gandhi Road,
Aayakar Bhavan,
Chennai 600 034.

3. The Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi 110 001.

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29.04.2022