**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-9469-2022 (O&M)
Date of decision: 06.05.2022**

Amit Gupta .... Petitioner

Versus

Union of India and others .... Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Suman Jain, Advocate
for the petitioner.

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PANKAJ JAIN, J.

By way of present writ petition, the petitioner prays for grant of a writ in the nature of mandamus directing respondents to accept the tax with additional fee and interest as per Vivad Se Vishwas Scheme.

2. As per the averments made in the petition, the petitioner declared returned income of Rs.11,26,84,919/- for the assessment year 2009-10 claiming deduction of Rs.4,83,09,106/- under Section 54 of the Income Tax Act, 1961. The return filed by the petitioner was processed under Section 143(1) of the Act and the petitioner was held not eligible for deduction under Section 54 of the Act and accordingly, the income of the petitioner was computed and penalty proceedings were initiated.

3. Aggrieved by the orders passed by the authorities under Section 143(1) dated 12.10.2012, petitioner preferred appeal which was dismissed on 02.12.2015. In further appeal preferred before the Tribunal, the matter was remanded back to First Appellate Authority by the Tribunal for fresh adjudication. The remand order was challenged by

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the revenue in ITA No.511 of 2017, which was allowed by this Court on 20.08.2019 (Annexure P-1). As per the petitioner, SLP was filed against the aforesaid order passed by this Court in ITA No.511 of 2017, but before the same could be listed, respondents came up with Annexure P-2 Direct Tax Vivad Se Vishwas Scheme Act, 2020 (hereinafter referred to as 'Act'). The petitioner thus, opted to apply under the said scheme and submitted his application under statutory Form-1 and Form-2.

4. Counsel for the petitioner further submits that the offer of the petitioner was accepted and a certificate under Sub-Section (1) of Section 5 of the Act was issued in statutory Form-3, whereby the amounts payable by the petitioner towards full and final settlement of the tax arrear were determined as under:-

INFORMATION RELATED TO PAYMENTS AGAINST TAX ARREAR as per Part E(i) of Form 1					
S. No.	BSR Code	Date of Payment	Serial Number of Challan	Amount	Match/Mismatch
1					
	Refund reduced in assessment as per part E(iv) of Form 1				
	Balance amount payable/refundable after adjusting amount already paid				
	On or before 31.03.2021			10946846	
	After 31.03.2021			12041530	
	Remarks				

5. On 25.06.2021, the last date for payment of the amount under Section 3 of the Act was notified as 31.08.2021, which was further extended and notified as 31.10.2021. On 29.08.2021, a press release was issued which reads as under:-

"Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

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New Delhi, 20th August, 2021

PRESS RELEASE

CBDT extends date under section 3 of the Vivad se Vishwas Act

Under The Direct Tax Vivad se Vishwas Act 2020 (hereinafter referred to as "Vivad se Vishwas Act"), the amount payable by the declarant is stated in the table under section 3 of the Vivad se Vishwas Act.

As per the latest notification dated 25th June 2021, the last date of payment of the amount (without any additional amount) has been notified as 31st August 2021. Further the last date for payment of the amount (with additional amount) under Vivad se Vishwas Act has been notified as 31st October, 2021.

Considering the difficulties being faced in issuing and amending Form no 3, which a prerequisite for making payment by the declarant under Vivad se Vishwas Act, it has been decided to extend the last date of payment of the amount (without any additional amount) to 30th September, 2021. Necessary notification to this effect shall be issued shortly.

It is, however, clarified that there is no proposal to change the last date for payment of the amount (with additional amount) under Vivad se Vishwas Act, which remains as 31st October, 2021.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT"

6. After the petitioner missed both the deadlines, he received an e-mail on 30.03.2022, whereby he was asked to contact his Assessing Officer having failed to furnish Form-4. On the very next day i.e. 31.03.2022, petitioner is stated to have represented respondent No.3 seeking permission to pay the amount due under the Act alongwith additional fee and interest as owing to illness of his mother, he was residing abroad during April, 2021 to October, 2021. The fate of the

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same remains undecided.

7. Counsel for the petitioner submits that since as per Form-3 (Annexure P-4), the offer remained open ended thus, no time limit can be prescribed.

8. We have heard counsel for the petitioner and perused the paper book.

9. Section 3 of the Act provides that subject to the provisions of the Act where a declarant has filed a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrear, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force the amount payable by the declarant shall be as provided in the table in the said Section.

10. The declaration as referred to in Section 3 has to be made before the designated authority in prescribed format as provided in Section 4(1) of the Act. As per sub-section (2) of Section 4 upon filing such declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals) in respect of disputed income or disputed interest or disputed penalty or fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under Section 3 and 4 has been issued by the designated authority.

11. Section 5 of the Act pertains to time and manner of payment. Sub-section (1) of Section 5 provides that the designated authority shall within a period of 15 days from the date of receipt of the declaration by an order determine amount payable by the declarant. As per sub-section (2) of Section 5 the declarant has to pay the amount as determined under sub-section (1) within 15 days of the date of receipt of

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the certificate and intimate the details of such payments to the designated authority.

12. We are unable to agree with the contention of the counsel for the petitioner that as per Annexure P-4, the offer remained unended. The settlement can never be said to be open ended. It has a terminal point. In the present case, either amount of Rs.1,09,46,846/- was to be paid before 31.03.2021 or an amount of Rs.1,20,41,530/- was to be paid till the last date of payment as notified i.e. 31.10.2021.

13. Counsel for the petitioner has not been able to point out any provision which shall entail extension of time as a vested right which can be enforced by way of writ petition under Article 226 of the Constitution of India. Trite it is that enforceable right under law is a *sine qua non* for issuance of a writ in the nature of mandamus. Apex Court in ***Mani Subrat Jain vs. State of Haryana*** reported as ***1977 AIR (Supreme Court) 276*** held that:-

> "It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; ***State of Haryana v. Subash Chander Marwaha & Ors. [1974] 1 SCR 165. Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. [1976] 3 SCR 58*** and Ferris Extraordinary Legal Remedies paragraph 198."

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14. In the absence of there being any right vested in the petitioner to claim extension of the last date or to seek payment of tax with late fee etc., we find no merit in the present writ petition. Consequently, the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

06.05.2022
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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