

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 3560/2022, CM APPL. 10522/2022 & CM APPL. 10523/2022

I A HOUSING SOLUTION PRIVATE
LIMITED

..... Petitioner

Through: Mr Salil Kapoor, Mr Sumit
Lalchandani, Mr Vibhu Jain,
Ms. Ananya Kapoor, Advocates.

versus

PRINCIPAL COMMISSIONER OF
INCOME TAX-4

..... Respondent

Through: Mr Abhishek Maratha, Sr. St.
Counsel Income Tax Dept.

+

W.P.(C) 3561/2022

SRISHTII INFRA HOUSING PVT. LTD.

..... Petitioner

Through: Mr Salil Kapoor, Mr Sumit
Lalchandani, Mr Vibhu Jain,
Ms. Ananya Kapoor, Advocates.

versus

PRINCIPAL COMMISSIONER OF
INCOME TAX-7

..... Respondent

Through: Mr Sunil Agarwal, Sr. St. Counsel
with Mr Tushar Gupta, Jr. St.
Counsel and Mr Utkarsh Tiwari,
Appearing for the respondent
(Income Tax Dept.)

%

Reserved On : 19th September, 2022
Date of Decision: 02nd November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

1. By way of the present writ petitions, Petitioners seek a direction to the Respondents to accept the declaration/application (Form 1 and Form 2) dated 04th March, 2021 filed by the Petitioners as valid declarations and to accept balance disputed amount as stipulated by Respondents in Forms 3 dated 07th May, 2021 and 22nd June, 2021 issued under Direct Tax Vivad Se Vishwas Act, 2020 ('VSV Act').

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned Counsel for the Petitioners stated that Petitioners had filed Form 1 as well as Form 2 within the time stipulated as per the provisions of VSV Act on 04th March, 2021 and Form No. 3 was issued to Petitioners on 07th May, 2021 and 22nd June, 2021. He stated that the Petitioner Companies were unable to pay the disputed amount as determined by Respondents in Form 3 prior to the last date, namely, 31st October, 2021 due to death of a Director of the companies, who was looking after the taxation and other affairs on 20th July, 2021.

3. Learned Counsel for the Petitioners stated that the delay in payment was not intentional and the Petitioners always intended to settle the dispute with the Income tax department and avail the benefit of VSV Act. He contended that not

condoning the delay in payment would be against the very object and purpose of the Scheme as the object of the scheme is to reduce litigation and collect revenue.

4. Learned Counsel for Petitioners submitted that the Rajasthan High Court in similar facts in ***Agroha Electronics Through its Proprietor Vs. Union of India Through Secretary, Ministry of Finance (Department of Revenue) and Anr., S.B.Civil Writ Petition No.10571/2020 dated 25th March, 2021*** had directed the Respondents to accept the amount as specified in SVLDRS-3 and give benefit of Sabka Vishwas Scheme to the Petitioners upon payment of interest at the rate of 9% per annum till the date the amount was paid. The relevant portion of the said Judgment relied upon by learned counsel for Petitioners is reproduced hereinbelow:-

“After hearing learned counsel for the parties and perusing the material available on record, this Court deems it fit that in the given facts and circumstances that the petitioner is a bona fide businessman and is prepared to pay the amount in question in accordance with the scheme along with interest for the period which he has defaulted in scheme and looking into the extreme pandemic conditions of COVID and the death of the petitioner’s father, this is a fit case for invocation of the powers under Article 226 of the Constitution of India.

In view of the above, the present writ petition is allowed and the respondents are directed to accept the amount as specified in SVLDRS-3 Form No.L280120SV301549 dated 28.01.2020 and give the petitioner benefit of Sabka Vishwas Scheme. The amount stipulated to be paid on or before 30.06.2022 shall be accompanied by interest at the rate of 9% per annum till the date the amount is paid. The compliance of this order shall be made by the petitioner within a period of three weeks from today.”

ARGUMENTS ON BEHALF OF THE RESPONDENTS

5. *Per contra*, learned counsel for the Respondents submitted that payment had to be mandatorily made within fifteen days of determination of the demand. He stated that there was no provision permitting the Respondents to extend the time for payment. He submitted that the VSV Act was mandatory in nature as it provided for consequences on account of non-compliance. He specifically relied upon Sections 4(6)(b) and 5(1)&(2) of the VSV Act which are reproduced hereinbelow:-

“4.

xxx

xxx

xxx

xxx

(6) The declaration under sub-section (1) shall be presumed never to have been made if,-

xxx

xxx

xxx

xxx

(b) the declarant violates any of the conditions referred to in this Act:

xxx

xxx

xxx

xxx

5(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.”

6. He submitted that the Supreme Court in ***Hemalatha Gargya Vs. Commissioner of Income Tax, A.P. and Anr., (2003) 9 SCC 510*** while dealing with a *pari materia* provision, namely, Section 67(2) of Voluntary Disclosure of Income Scheme, 1997 ('VDI Scheme'), has held as under:-

“9. The use of the word “shall” in a statute, ordinarily speaking, means that the statutory provision is mandatory. It is construed as such unless there is something in the context in which the word is used which would justify a departure from this meaning. There is nothing in the language of the provisions of the Scheme which would justify such a departure. On the other hand the provisions of Section 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the Scheme. In other words the consequences of non-compliance with the provisions of Section 67(1) relating to the payment have been provided. It is well settled that when consequences of the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory (See: Maqbul Ahmad v. Onkar Pratap Narain Singh [AIR 1935 PC 85 : 62 IA 80] AIR at p. 88).”

7. Consequently, according to him, the time to make payment under the VSV Act has to be strictly construed and the same cannot be extended by the respondents.

REJOINDER ARGUMENTS

8. In rejoinder, learned counsel for the Petitioners stated that the limitation to make payment stood extended in light of Supreme Court's orders in *Suo*

Moto Writ Petition (Civil) No.3/2020 dated 23rd March, 2020, 23rd September, 2021 and 10th February, 2022 wherein the Court extended the time limitation till 28th February, 2022 and ordered/directed that the period of limitation in all petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State) proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not, shall stand extended.

9. He submitted that Section 10(2) of the VSV Act authorised CBDT to issue special orders setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to the Act if the Board deemed it is necessary in the public interest to do. He contended that there was no similar provision in the VDI Scheme. He emphasised that the Supreme Court in ***Hemalatha Gargya*** (supra) specifically observed that *“In any event, it is doubtful whether the Board could have empowered the Commissioner to extend the time fixed by Sections 66 and 67 of the Scheme under Section 119(2)(b) of the Income Tax Act, 1961 given the wording of the Scheme and the fact that the Scheme does not form part of the Income Tax Act, 1961 at all”*.

10. He lastly submitted that in an ordinary situation, the provisions of law are to be mandatorily applied and relief on equitable consideration cannot be granted. However, in extraordinary and exceptional situation like death and Covid, the non-grant of relief on equitable consideration would be irrational.

COURT'S REASONING

IN RECOGNITION OF INTERMITTENT LOCKDOWN ON ACCOUNT OF THE COVID-19 PANDEMIC THE SCHEME WAS AMENDED SEVERAL TIMES TO EXTEND THE DEADLINE FOR PAYMENT. MOREOVER, DEATH OF THE MANAGING DIRECTOR OF THE COMPANIES WAS AN EXTRAORDINARY AND EXCEPTIONAL EVENT.

11. Having heard learned counsel for the parties, this Court is of the view that the timeline to pay under the VSV was not mandatory as the last date stipulated under the VSV Act (3 of 2020) was extended by virtue of Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020. A tabular chart showing the extension of the deadlines to pay under the VSV Scheme is reproduced hereinbelow:-

“CHART FOR VIVAD SE VISHWAS SCHEME EXTENSIONS

<u>S.No.</u>	<u>Notification No.</u>	<u>Due date on or before which declaration is to be filed</u>	<u>Date on or before which amount shall be payable as per third column of Table to section 3</u>	<u>Date on or before which amount shall be payable as per fourth column of Table to section 3</u>
1.	Notification No.35/2020/F.No. 370142/23/2020-TPL	31/12/20	-	-
2.	Notification No.84/2020/F.No. IT(A)/1/2020-TPL	31/12/20	31/03/21	01/04/21

3.	<i>Notification No.92/2020/F.No. 370142/35/2020-TPL</i>	<i>31/01/21</i>	-	-
4.	<i>Notification No.04/2021/F.No. IT(A)/1/2020-TPL</i>	<i>28/02/21</i>	-	-
5.	<i>Notification No.09/2021/F.No. IT(A)/1/2020-TPL</i>	<i>31/03/21</i>	<i>30/04/21</i>	<i>01/05/21</i>
6.	<i>Notification No.39/2021/F.No. IT(A)/1/2020-TPL</i>	-	<i>30/06/21</i>	<i>01/07/21</i>
7.	<i>Notification No.75/2021/F.No. 370142/23/2020-TPL</i>	-	<i>31/08/21</i>	<i>01/09/21</i>
8.	<i>Notification No.94/2021/F.No. IT(A)/1/2020-TPL</i>	-	<i>30/09/21</i>	<i>01/10/21”</i>

12. This Court is further of the opinion that the delay in payments of the amounts, in the present cases are attributable to unforeseen and extraneous circumstances that were beyond control of the Petitioners. In fact, the country was intermittently in lockdown on account of the COVID-19 pandemic from 25th March, 2020. In recognition of these difficulties as pointed out hereinabove, the Scheme was amended several times to extend the deadline for payment. Moreover, death of the Managing Director of the companies was an extraordinary and exceptional event which would render non-grant of relief on equitable consideration irrational.

RELIANCE BY THE RESPONDENTS ON HEMALATHA GARGYA (SUPRA) IS MISCONCEIVED ON FACTS AND UNTENABLE IN LAW. VSV ACT IS A BENEFICIAL PIECE OF LEGISLATION WHOSE PROVISIONS MUST BE INTERPRETED LIBERALLY.

13. Further, the reliance by the Respondents on the judgment of the Supreme Court in *Hemalatha Gargya* (supra) is misconceived on facts and untenable in law as in the said case, the Supreme Court was concerned with the interpretation of the Voluntary Disclosure of Income Scheme (for short ‘VDI Scheme’) which permitted declarant-assessee:

- a. to disclose income chargeable to tax for which no return of income had been filed by the assessee;
- b. to disclose the income chargeable to tax where the return of income had been filed by the assessee but, that income had not been disclosed in the return;
- c. to disclose the income chargeable to tax where the return of income had been filed without disclosing the full and true material facts necessary for the assessment of that income.

14. Consequently, the VDI Scheme provided a one-time opportunity to the assesseees to declare the undisclosed income which was concealed by the assesseees and at the same time, provided them with immunity from penalty and prosecution under the provisions of the Act for not voluntarily disclosing the income chargeable to tax. Hence, the VDI Scheme was in the nature of an amnesty scheme which provided a window to the assesseees to come clean without any adverse consequences under the provisions of the Act. It was in this context that the Apex Court observed that “...Where the assesseees seek to

claim the benefit under the statutory scheme they are bound to comply with the conditions under which the benefit is granted there is no application of any equitable consideration when the provisions of scheme are stated in such plain language”.

15. In fact, while interpreting a similar scheme “Kar Vivad Samadhan Scheme”, the Supreme Court in ***Commissioner of Income Tax, Rajkot Versus Shatrugsailya Digvijaysingh Jadeja, 2005 (9) TMI 362 SC*** held that the object of the said Scheme was to settle tax arrears locked in litigation at a substantial discount and it provided that any tax arrears could be settled by paying the prescribed amount of tax arrears, and it offered benefits and immunities from penalty and prosecution. The Supreme Court held that the “Kar Vivad Samadhan Scheme” was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier VDI Scheme. It further held that the object of “Kar Vivad Samadhan Scheme” was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT Act/WT Act and the object was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and therefore the rulings on the scope of appeals and revisions under the IT Act or VDI Scheme will not apply.

16. As opposed to the VDI Scheme, the VSV Act is a beneficial piece of legislation enacted by Parliament with the avowed object to provide for resolution of disputes whereby the assessee is permitted to settle the dispute pending before any appellate authority, resulting in reduction in litigation and generation of timely revenue for the government. Consequently, being a

beneficial/remedial statute, the provisions of VSV Act must be interpreted in a manner which advances the purpose for which it is enacted as a strict interpretation of the VSV Act will defeat the very purpose for which it was introduced by the legislature.

17. Moreover, the principle of a judgment rendered in a normal circumstance cannot be applied to abnormal and extraordinary circumstances such as Covid wherein the organisation of the Petitioners were affected due to death of a Director and that too when the Petitioners in no manner derived any benefit because of delay.

THOUGH RESPONDENTS HAVE NO POWER TO CONDONE THE DELAY IN PAYMENT, YET THIS COURT IN EXTRAORDINARY WRIT JURISDICTION CAN PASS ANY ORDER NECESSARY TO REMEDY INJUSTICE.

18. Though this Court is in agreement with the submission of learned counsel for the respondents that the power to condone the delay with regard to delay in payment is not vested with the Departmental Authorities, yet this Court under its inherent powers in extraordinary writ jurisdiction under Article 226 of the Constitution of India can pass any order necessary to remedy the injustice. The Supreme Court in ***B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749*** has held “*It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice*”.

19. One of us (Manmohan, J) in ***Siddharth International Public School v. Motor Accident Claim Tribunal, (2016) SCC OnLine Del 4797, para 41*** has held, “*it is settled law that this Court has extremely broad jurisdiction under*

Article 226 of the Constitution and under the said Article it can pass whatever orders are necessary for doing equity and justice. The Supreme Court in N.S. Mirajkar v. State of Maharashtra, 1966 3 SCR 744 has held that “unlike a inferior court, in respect of a High Court, which is also a Court of Record, it is assumed that every action is within its jurisdiction, unless expressly shown otherwise”.

20. Consequently, the power of the High Court under Article 226 of the Constitution of India to grant relief in extraordinary and exceptional circumstances cannot be taken away or curtailed by any legislation.

21. In fact, the Supreme Court in ***Dal Chandra Rastogi v. CBDT (2019) 104 taxmann.com 341 (SC)*** wherein the assessee had filed a declaration of undisclosed income under the Income Declaration Scheme, 2016 and had failed to pay the third installment of the remaining 50 per cent of tax, surcharge and penalty permitted the assessee to make late deposit of tax under Income Declaration Scheme subject to interest at the rate of 12% per annum. It is pertinent to mention that there was no provision for late deposit of tax in the Income Declaration Scheme, 2016. Yet the Supreme Court taking note of the genuine hardship faced by the assessee and short delay in payment, ruled in favour of the taxpayer.

NO PREJUDICE CAUSED TO THE RESPONDENTS BY ACCEPTING THE PRAYER OF THE PETITIONERS. RATHER, SUCH ACTION SHALL HELP ACHIEVE THE OBJECTIVES OF THE VSV ACT.

22. This is also a fit case where no prejudice will be caused to the Respondents by accepting the prayer of the Petitioners. Rather, the Respondents benefit and achieve the purpose of the Scheme, namely, to reduce

pendency of cases, generate timely revenue for the government and provide certainty and savings of resources that would be spent on the long-drawn litigation process.

23. Consequently as the delay in payment in the present cases were unintentional and supported by justifiable reasons, this Court is of the opinion that the cause of substantial justice deserves to be preferred, and this unintentional delay deserves to be condoned. This approach will only further the object and purpose of the VSV Act.

RELIEF

24. Keeping in view the aforesaid, the present writ petitions are allowed and the respondents are directed to accept the declarations/applications (Forms-1 and 2) dated 04th March, 2021 filed by the petitioners as valid declarations/applications within two weeks and accept the balance disputed amounts as stipulated by respondents in Forms-3 dated 07th May, 2021 and 22nd June, 2021 issued under VSV Act along with simple interest @ 9% per annum till the date the amounts are paid within four weeks.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 02, 2022
TS

W.P.(C) Nos. 3560/2022 & 3561/2022

Page 13 of 13