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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 3891/2021****M/S MANOJ FINVEST PVT. LTD**

..... Petitioner

Through : Ms.Ananya Kapoor, Advocate for  
Mr.Salil Kapoor and Mr.Sumit  
Lalchandani, Advocates.

versus

**PRINCIPAL COMMISSIONER OF  
INCOME-TAX-4 & ORS.**

..... Respondents

Through : Mr. Abhishek Maratha, Senior  
Standing Counsel for Revenue.

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Date of Decision: 28<sup>th</sup> September, 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 (Oral):**

1. Present Writ Petition has been filed by the Petitioner challenging the rejection of Form 1 and Form 2 by the respondents under Direct Tax Vivad Se Vishwas Act, 2020 ('VSV Act').
2. The relevant facts of the present case are that the petitioner filed its original return of income for the Assessment Year ('AY') 2018-19 on 29<sup>th</sup> October, 2018. The return of income of the Petitioner was processed under Section 143(1) of the Income Tax Act, 1961 ('the Act'). Vide intimation order dated 16<sup>th</sup> September, 2019, the respondents added back some amount and computed tax as per Section 115JB of the Act. The petitioner preferred



an application under Section 154 of the Act stating that there are mistakes apparent from the record. The respondents issued revised intimation order under Section 143(1) of the Act whereby plea of the petitioner was rejected. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] on 14<sup>th</sup> January, 2020. The petitioner, with an intention to put an end to the dispute once and for all, filed the requisite forms being Form 1 and Form 2 on 2<sup>nd</sup> September, 2020, as per the provisions of the VSV Act read with VSV Rule. It was declared in the Forms filed that the amount payable on or before 31<sup>st</sup> December, 2020 i.e. the extended due date of payment, as it was then, at normal rate shall be Rs.1,47,09,423/- (Rs. 201,906/- is already paid so balance payable is Rs.1,45,07,517/-). However, the Form 3 has been rejected by the respondent by placing reliance on FAQ 71 of Circular No.21/2020 dated 4<sup>th</sup> December, 2020. It is the case of the petitioner that the said rejection is illegal and the petitioner's entitlement under the VSV Act cannot be rejected and FAQ 71 of Circular No.21/2020 dated 4<sup>th</sup> December, 2020 is illegal and ultra vires in nature.

3. Learned counsel for the petitioner submits that the issue raised in the present writ petition is no longer *res integra* as the Bombay High Court in ***Chandrakant Narayan Patkar Charitable Trust through its Trustees v. Union of India in Writ Petition (L). No. 5956/2021*** has quashed the FAQ No. 71 of Circular No.21/2020 dated 4<sup>th</sup> December, 2020. She also states that the Special Leave Petition preferred by the Revenue has been dismissed by way of a speaking order dated 15<sup>th</sup> July, 2022.



4. Learned counsel for the petitioner states that in accordance with the interim order, the petitioner has already deposited the balance amount of Rs.1,45,07,517/- on 27<sup>th</sup> August, 2021.
5. Learned counsel for respondents states that he has received the following instruction from the Assessing Officer by way of an e-mail dated 27<sup>th</sup> September, 2022.

*“M/s. Manoj Finvest Private Limited having PAN AAACM6582C has filed its ITR for A.Y. 2018-19 on 29.10.2018 vide Acknowledgement No.353451621291018 declaring at a loss of Rs.47,03,369/-. The ITR was processed u/s 143(1) of the Act vide order dated 16.09.2019 determining therewith deemed income of Rs.7,21,44,422/- u/s 115JB of the Act. CPC has computed Income From Business as Rs.7,33,36,975/- and after considering the current year loss net Income is Rs.7,21,44,422/-. Subsequently, the assessee filed rectification application to rectify order dated 16.09.2019. Accordingly rectification order u/s 154/143(1) of the Act was passed on 18.12.2019 by the CPC at total income of Rs.NIL under Normal Provisions and book profit of Rs.7,21,44,422/-. The assessee filed appeal before the CIT(A) against the order u/s 154/143(1) of the Act.*

*The assessee has filed declaration under DTVSV Act, 2020 on 02.09.2020 to settle dispute pending before the CIT(A). The same was rejected by the Designated Authority with the following remarks:*

*“As per FAQ-71, the case is not eligible under DTVSVS Act, 2020. Adjustment in Book Profit u/s 115JB for LTCG is not disallowance of expenditure which alone is covered in claim 143(1)a(iv). The nature of adjustment is not covered under FAQ-71. Moreover, proviso to section 10(38) is unambiguous on this issue”*

*Subsequently, the assessee filed revised Form-1&2 on 29.01.2021 with the same details which was also rejected with the same reason of rejection as narrated above.*



*FAQ No.71 issued by the CBDT Circular No.21/2020 dated 04.12.2020 is produced as under:*

*Q.No.71: Vivad s Vishwas form do not contain a specific option to settle appeal filed against intimation under section 143(1) of the Act. Accordingly, please clarify how to settle such appeal, which is pending as on 31<sup>st</sup> Jan, 2020 (or time to file appeal has not expired on 31<sup>st</sup> Jan, 2020).*

*Answer: Appeal filed against intimation u/s 143(1) of the Act is eligible under Vivad se Vishwas if adjustment has been made under sub-clauses (iii) to (vi) of clauses (a) of section 143(1) of the Act.*

*The assessee has contended in the instant writ petition that CBDT FAQ cannot limit the applicability of VSV Act. It is submitted by the assessee that Hon'ble High Court of Bombay vide Order dated 22.06.2021 passed in WP(C) No.5956/2021 in the case of Chandrakant Narayan Patkar that reply to FAQ-71 issued vide Circular No.21/2020 has been quashed. In this connection, it was submitted that the aforesaid law position had not been established by the jurisdictional High Court earlier, hence was made not applicable.*

*Now assessee submitted before the Hon'ble High Court that order of the High Court of Bombay dated 22.06.2021 is to be followed in the case of assessee as the SLP (11399/2022) filed by the Department of Revenue in the Hon'ble Supreme Court against the said order of Bombay High Court has been dismissed by the Hon'ble Apex Court vide order dated 15.07.2022.*

*Perusal of the order of the Hon'ble Bombay High Court and the Hon'ble Apex Court revealed that adjustment made as per provision u/s 143(1)(a)(ii) of the Act is covered under provisions of VsVS Scheme. Accordingly, Form 1 & 2 of the VsVS Scheme as submitted by the assessee is taken for*



consideration as per the Scheme. Suitable order regarding the issue is being passed.”

(emphasis supplied)

6. Keeping in view the aforesaid instructions, the respondents are directed to process the petitioners Form 1 and Form 2 of the VSV Scheme within four weeks in accordance with law.

7. With the aforesaid direction, the present writ petition stands disposed of.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 28, 2022**

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नित्यमेव जयते