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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 17050/2022** *Date of Decision: 15.12.2022*

VIDHI GARMENTS PVT. LTD. ..... Petitioner

Through: Ms Prem Lata Bansal, Sr. Adv. with Mr Divyanshu Agarwal, Adv.

versus

CENTRAL BOARD OF DIRECT TAXES & ANR..... Respondents

Through: Mr Sunil Agarwal, Sr. Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. Issue notice.

1.1. Mr Sunil Agarwal, accepts notice on behalf of the respondents/revenue.

2. Mr Agarwal says that no formal counter-affidavit is required to be filed and he will rely on the record which is presently available with the court. Having regard to the fact that no counter-affidavit is required to be filed, the writ petition is taken up for final disposal at this stage itself.

3. The substantive prayer made in the writ petition reads as follows:

> *"a) a writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the impugned order-dated 25.08.2022 passed by Respondent No.1 u/s 119(2)(b) of the Act,*
> *b) a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the respondents to allow the petitioner to deposit the tax in pursuance to Form No.3 issued under DTVsV Act 2020..."*

4. For the purpose of disposal of the writ petition, the following broad facts are required to be noted:

4.1. The petitioner had filed a return for the Assessment Year (AY) in issue i.e., AY 2006-07 in and about 06.01.2007. In the return, the petitioner had declared its income as 'nil'.

4.2. The assessing officer *via* order dated 26.12.2008 framed an assessment order whereby an addition of Rs 30 lakh was made, which included Rs 15 lakh on account of unsecured loans and the remaining Rs 15 lakh towards undisclosed investments.

4.3. Being aggrieved, the petitioner carried the matter in appeal to the Commissioner of Income Tax (Appeal) [in short, "CIT(A)]. The petitioner's appeal was, however, dismissed by CIT(A) on 04.08.2010 due to non-prosecution.

4.4. *Via* order dated 27.03.2012, the assessing officer imposed the penalty amounting to Rs 10,09,800/- in exercise of powers under Section 271(1)(c) of the Income Tax Act, 1961 [in short, "Act"].

4.5. The petitioner carried the matter in appeal to the Income Tax Appellate Tribunal [in short, "Tribunal"] both with regard to the imposition of tax as well as penalty. The Tribunal via order dated 24.01.2013 remanded the matter to the CIT(A).

4.6. In the interregnum, the Direct Tax Vivad Se Vishvas Act 2020 [in short "DVSV Act"] was brought into force. The petitioner, thus, decided to take benefit of the provisions of DVSV Act. Accordingly, as required under the DVSV Act, the petitioner filed its declarations, as mandated, in Form 1 & 2 on 29.12.2020.

4.7. The petitioner avers that even before filing the declarations in Form 1 and 2, it had paid tax amounting to Rs 9 lakh. According to the petitioner, it has now to deposit only the balance amount i.e., Rs 1,09,800/-; which it would upon receiving intimation in the Form No. 3 from the respondents.

4.8. It appears that on 11.03.2022, the petitioner received a notice from the office of CIT(A) indicating the date of hearing in the appeal.

4.9. Furthermore, it is around this time that the petitioner had made inquiries with his Chartered Accountant with regard to the outcome of the proceedings undertaken by the petitioner under the DVSV Act.

4.10. According to the petitioner, since the Chartered Accountant was following up the matter on its behalf, it was unaware that respondent had issued Form No. 3 requiring the balance amount i.e. Rs 1,09,800/- to be deposited by 31.03.2021. It is claimed that because the petitioner did not receive the Form 3 intimation for quite some time and it secured the Login ID and Password from the Chartered Accountant, which brought to light the fact that the respondent had already issued Form No. 3, calling upon it to deposit the balance amount i.e. Rs 1,09,800/- by 31.03.2021.

4.11, What is not in dispute is that respondent no.1/Central Board of Direct Taxes [in short, "CBDT"], on account of the spread of corona virus, had extended the date for deposit of tax, *inter alia*, under the DVSV Act till 30.09.2021 and granted a further leeway to deposit the tax with interest by 31.10.2021.

4.12. We may also note that the Supreme Court had passed orders in Civil Writ Petition No. 3/2020, whereby the general time for compliance under various statutes was extended till 28.02.2022.

4.13. The petitioner, thereafter, embarked, according to us, on a fruitless journey, which is, approaching the CBDT i.e. respondent no. 1. An application was, thus, preferred with the CBDT/respondent no. 1 on 25.03.2022, seeking extension of time for allowing the petitioner to deposit the balance tax as quantified in Form No. 3 i.e., Rs 1,09,800/-.

4.14. Since the petitioner did not receive response from the CBDT/respondent no. 1, a reminder was sent on 04.11.2022. According to the petitioner, CBDT/respondent no. 1 *via* email dated 22.11.2022 sent the petitioner the impugned communication dated 25.08.2022, indicating that the timeline prescribed under the DVSV Act having expired, it was not possible to grant any extension. Furthermore, CBDT/respondent no. 1, once again, in our opinion, rightly, concluded that the provision of Section 119(2)(b) of the Act was not applicable in the instant case.

5. It is in this backdrop that the petitioner has filed the present writ petition under Article 226 of the Constitution.

6. The facts and events, as noted hereinabove, have not been controverted by the contesting respondents i.e., respondent no. 1 and 2.

7. Mr Agarwal contends that once the timeline, as extended by CBDT/respondent no.1, has expired, the relief sought for in the petition cannot be granted.

7.1. Therefore, it is Mr Agarwal's submission that the impugned communication dated 25.08.2022 emanating from CBDT/respondent no. 1 ought not to be interdicted.

8. Ms Prem Lata Bansal, learned counsel who appears on behalf of the petitioner, says that the petitioner's interests were, in a sense, compromised on account of the fact that the Chartered Accountant, who had control of the Login ID and Password, did not furnish the information to the petitioner at the appropriate time.

8.1. It is Ms Bansal's contention that, having already deposited a substantial part of the tax i.e., Rs 9 lakh, even before filing declarations in

Form Nos.1 and 2, it would hardly stand to reason that the petitioner would not have paid the balance amount, which was as small as Rs 1,09,800/-.

8.2. Ms Bansal, in support of her plea, relies upon the judgment of the coordinate bench dated 02.11.2022, passed in a batch of petitions the lead petition being W.P(C) No.3560/2022, titled ***IA Housing Solution Pvt. Ltd. v. Prinicipal Commissioner of Income Tax-4.***

9. We have heard the learned counsel for the parties and perused the record. The facts, as alluded to above, are not in dispute.

9.1. The facts and circumstances detailed out above by us, disclose that the petitioner became aware of the intimation given by the respondent no. 2 *via* Form No. 3, requiring it to deposit Rs 1,09,800/- by 31.03.2021, only on 11.03.2022.

10. As submitted by Ms Bansal, the mistake, if any, was made by the Chartered Accountant who was not vigilant in accessing the information which was available on the petitioner's portal *albeit*, via his Login ID and Password.

11. We find some justification in the submission espoused on behalf of the petitioner. The petitioner having paid a substantial part of the tax i.e., Rs 9 lakh, there was no good reason why the balance amount would not have been paid by it.

12. It is also not in dispute that CBDT/respondent no. 1 did extend the timeline for making deposits *inter alia*, under the DVSV Act, till 30.09.2021 and gave a further leeway to deposit the tax with interest till 31.10.2021.

13. Furthermore, what is not in dispute is that the Supreme Court did pass orders in CWP No. 03/2022, whereby timelines under various statutes were extended till 28.02.2022.

14. The record also shows that the petitioner did file an application with the respondent no.1/CBDT on 25.03.2022, followed by a reminder on 04.11.2022.

15. The impugned order came to be passed on 25.08.2022, which was communicated to the petitioner only on 22.11.2022 *via* email sent by CBDT/respondent no.1.

16. Therefore, had the CBDT/respondent no.1 immediately responded to the petitioner's application dated 25.03.2022 for extension of time, the intervening delay between March 2022 and today would not have occurred.

17. If we were to take into account this aspect of the matter, one would have acknowledge that in certain circumstances, coordinate benches of this court have exercised powers under Article 226 of the Constitution and granted relief to those assessees who wanted to avail the beneficial provisions of DVSV Act.

18. The overall conduct of the petitioner in this case, in the very least, shows that it had made substantial compliance, inasmuch as a major portion of the tax i.e., Rs 9 lakh was deposited even before the declarations were filed via Form Nos. 1 and 2.

19. Thus, having regard to the overall facts and circumstances of the case, we are inclined to set aside the impugned order dated 25.08.2022 passed by CBDT/respondent no. 1, not on the ground that they were wrong in concluding that powers for extension of time cannot be exercised under Section 119(2)(b) of the Act, but for the reason that this court under Article 226 of the Constitution, as in the other cases, is inclined to exercise its powers to enable the petitioner to pay the balance tax.

19.1. Therefore, paragraph 2 of the impugned order dated 25.08.2022 is set aside.

20. This impediment having been removed, the consequential direction that needs to be passed is to direct the respondents to accept the balance amount payable by the petitioner, *albeit*, with interest at the rate of 9% on the amount shown in Form No.3 which is Rs 2,10,780/-, that is, the amount which was payable by the petitioner after 31.03.2021.

20.1. It is ordered accordingly.

21. This leeway will be available to the petitioner/assessee for four weeks from the date of receipt of a copy of the judgment.

22. We are told that the designated portal is closed. The petitioner will pay Rs.2,10,780/-, along with interest at the rate of 9%, commencing from 01.04.2021 till the date of deposit.

23. The respondents will accept the amount so deposited, if it is tendered within the timeframe given hereinabove.

24. The writ petition is disposed of in the aforesaid terms.

25. The parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 15, 2022/r

Click here to check corrigendum, if any