

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4119 OF 2022

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TALEKAR

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Sunil Wamanrao Sakore]
Age : 54, Occupation : Business,]
Plot No.19, Swaraj Bunglow,]
Raghvendra Naagar,]
Kharadi, Pune-411 014.]... Petitioner

Versus

1. Union of India,]
through the Ministry of Finance,]
Department of Revenue,]
Room No.46, North Block,]
New Delhi - 110 001.]
]
2. The Commissioner of Income-tax-4,]
'PMT' Commercial Building,]
'B' Wing, 3rd Floor, Shankarseth Road,]
Swargate, Pune - 411 037.]
]
3. Income Tax Officer, Ward 7(3), Pune]
Aaykar Sadan 548/24,]
Salisbury Park, Gultekdi,]...Respondents
Pune - 411 037.

* * * * *

Mr.Sanket Bora a/w. Ms.Vidhi Punmiya i/b SPCM Legal, Advocate
for petitioner.

Mr.Suresh Kumar, Advocate for respondents.

**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, J.J.**

RESERVED ON : 27th MARCH, 2023.

PRONOUNCED ON : 4th MAY, 2023.

PER DHIRAJ SINGH THAKUR, J. :

1. The petitioner prays for issuance of a writ of mandamus to respondent No.2 to revise the impugned Form-3 dated 27th September 2021 issued under the provisions of Direct Tax Vivad Se Vishwas Act, 2020 ('DTVSV Act') by giving credit and taking into consideration the amounts already paid under the Income Declaration Scheme, 2016.

2. Briefly stated the material facts are as under :

An Income Declaration Scheme, 2016 ('IDS') was introduced by Chapter IX of the Finance Act, 2016 which envisaged granting an opportunity to persons to come forward and declare their undisclosed income and pay the applicable tax, surcharge and penalty on the income so disclosed. The Scheme also provided to such a declarant, among others, immunity from prosecution. The petitioner, with a view to seek benefit under the IDS filled up Form-1, dated 30th September 2016 for the relevant year and disclosed an undisclosed income of Rs.15,50,000/-.

The revenue then issued an acknowledgment in Form-2 dated 4th October 2016 requiring the petitioner to pay an amount of

Rs.6,97,500/-. The petitioner, however, deposited an amount of Rs.3,48,752/- by way of two challans but could not deposit the rest on account of an alleged personal difficulty.

The case of the petitioner was then opened for reassessment under section 147 of the Income Tax Act, 1961 ('the Act'). A notice dated 30th March 2018 under section 148 of the Act for the assessment year 2016-17 was issued pursuant to which the petitioner filed his return declaring an income of Rs.22,72,910/-.

3. An order of assessment came to be passed on 30th November 2018, whereby the total income of the petitioner was assessed at Rs.38,22,910/-. Penalty proceedings against the petitioner also resulted in levying a penalty of Rs.6,97,500/- upon the petitioner. Both these orders came to be challenged before the Appellate Forum.

4. On 17th March 2020, Direct Tax Vivad se Vishwas Act, 2020 was enacted by the Parliament with a view to provide for resolution of disputed tax and for matters connected therewith or incidental thereto as is clear from the preamble of the said Act. The purpose and spirit of such an enactment can be noticed from the Bill that

was introduced in the parliament, the statements and objects and reasons whereof read as under :

“24. Let us now read the statement of objects and reasons of the Vivad se Vishwas Bill when introduced in the Parliament which later on became the Vivad se Vishwas Act. The statement of objects and reasons reads as under:-

" Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.

3. It is, therefore, proposed to introduce the Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely:--

(a) the provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which

are pending with the Commissioner (Appeals), Income-tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

(c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President

and declaration may be made thereafter up to the date to be notified by the Government."

It is thus clear that the spirit of the enactment was to unlock the amounts held up in disputes on account of pendency of various appeals filed by not only the tax payers but also the Government. The amount of disputed tax arrears as reflected in the Bill was an enormous amount of Rs.9.32 lakh crores, which reflected approximately one year's direct tax collection.

5. The petitioner, considering himself eligible, applied under the said DTVSV Act and submitted Forms 1 and 2 on 22nd March 2020 declaring a disputed income of Rs.15,50,500/-.

Form No.3 was issued by the designated authority under the Act which required the petitioner to pay a sum of Rs.6,97,500/- on or before 31st March 2021 and if the said amount was not paid by that date, an amount of Rs.7,67,250/- after 31st March 2021.

6. The petitioner states that while the liability of the petitioner was correctly worked out at Rs.6,97,500/-, yet credit was not given for the taxes paid vide various challans, which were mentioned in detail in the communication dated 22nd February 2021, which was addressed to the Principal Commissioner of Income Tax, Pune with

a request for rectification in Form -3.

7. By virtue of another communication dated 2nd November 2021, the petitioner also apprised respondent No.2 about the fact that the petitioner had paid two installments vide two challans, both for an amount of Rs.1,74,376/-, each, and urged yet again for issuance of revised Form-3, after giving credit of the payment already made.

8. The petitioner states that the request of the petitioner failed to elicit any response from the respondents and hence the present petition.

9. The stand of the revenue as is reflected from the reply affidavit and as was urged by Mr.Suresh Kumar, during the course of hearing was that the petitioner, while submitting these Forms 1 and 2 had not specifically claimed the credit with regard to the amount paid under the IDS, and that consequently there was no obligation on the part of the revenue to give to the petitioner such a benefit. In addition to this, the stand of the revenue is that the DTVSV Act nowhere envisages that an amount which was lying with the department be taken into consideration while determining

tax payable under DTVSV Act, even if the assessee had not claimed the same while submitting Forms 1 and 2. The stand taken is that while the amount paid under the IDS could be refunded with interest, it cannot be taken into consideration under the DTVSV Act.

CONCLUSION :

10. It is not denied that the petitioner had deposited an amount of Rs.3,48,752/- under the IDS but had not deposited the entire amount which was otherwise calculated in terms of the said Scheme. The amount of Rs.3,48,752/- also appears to have neither been refunded nor adjusted against any outstanding demand in the case of the petitioner for any other assessment year. The issue that arises for consideration is whether the said amount of Rs.3,48,752/- could be adjusted against the amount which was otherwise payable by the petitioner under the DTVSV Act or not. But before we proceed to deal with this issue, it would be beneficial to refer to the provisions of the IDS and, in particular, the following sections :

Declaration of undisclosed income :

183. (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect

of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017—

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(2)

(3)

(4)

Time for payment of tax.

187. (1) The tax and surcharge payable under section 184 and penalty payable under section 185 in respect of the undisclosed income, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

[Provided that where the amount of tax, surcharge and penalty, has not been paid within the due date notified under this sub-section, the Central Government may, by notification in the Official Gazette, specify the class of persons, who may, make the payment of such amount on or before such date as may be notified by the Central Government, along with the interest on such amount, at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date and ending on the date of such payment.]

(2) The declarant shall file the proof of payment of tax, surcharge and penalty on or before the date notified under subsection (1), with the Principal

Commissioner or the Commissioner, as the case may be, before whom the declaration under section 183 was made.

(3) If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the date specified under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Scheme.

.....

Tax in respect of voluntarily disclosed income not refundable.

191. Any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable.

[Provided that the Central Government may, by notification in the Official Gazette, specify the class of persons to whom the amount of tax, surcharge and penalty, paid in excess of the amount payable under this Scheme shall be refundable]

(emphasis supplied)

11. On a reading of the aforementioned provisions of the Scheme, it would become clear that failure on the part of the petitioner to pay the tax in its entirety in respect of the declaration made under section 183 would be deemed to have never been made under the IDS. The issue as to whether the partial amount that was deposited by a declarant would get forfeited in almost similar circumstances came up for consideration before the Apex Court in ***Hemalatha Gargya Vs. Commissioner of Income Tax, A.P. & Anr.***¹. The Apex Court considered the provisions of sections 67 and 70 of the

¹ (2003) 9 SCC 510

Voluntary Disclosure of Income Scheme 1997 (VDIS) which envisaged as under :

“Interest payable by declarant :--

67. (1) Notwithstanding anything contained in Section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file, the proof of such payment within the said period of three months.

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme.
.....

70. Any amount of tax paid in pursuance of a declaration made under sub-section (1) of section 64 shall not be refundable under any circumstances.

12. The Apex Court in the aforementioned case held that the time limits prescribed under the VDIS were mandatory and thus could not be extended on any equitable consideration, it nevertheless directed the refund or adjustment of the amount so deposited under

the Scheme. It was held :

14 As a consequence, in our view, the appeals preferred by the assessee must be and are hereby dismissed whereas the appeals preferred by the Revenue authorities must be and are hereby allowed. However, having held that the assessee are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the Scheme, we direct the Revenue authorities to refund or adjust the amounts already deposited by the assessee in purported compliance with the provisions of the Scheme to the concerned assessee in accordance with law. All the appeals are accordingly disposed of without any order as to costs.

13. The Karnataka High Court also in the case of ***Smt. Atamjit Singh Vs. Commissioner of Income-tax***² while considering the VDIS held thus :

5 Mr. Sawhney submits that section 67 lays down an inflexible rule and according to this provision the deposit has to be made within a period of three months from the date of declaration. Any failure renders the declaration and the deposit *non est*. This contention cannot be accepted. The Government of India has itself issued a circular dated 3-9-1998. By this circular it has been, *inter alia*, provided by the Board that the period for calculating interest will be 90 days from the date of declaration. If the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. Thus, it is clear that section 67 does not embody a totally inflexible rule. When things are beyond the control of a citizen, certain moving space is normally allowed. This is precisely what the petitioner is wanting in the present case.

2 [2001] 247 ITR 356 (Kar.)

14. The Andhra Pradesh High Court in ***Patchala Seetharamaiah Vs. Commissioner of Income-tax and Anr.***³ while considering the provisions of the VDIS held that retention of any amount paid under the Scheme would be impermissible under Article 265 of the Constitution of India, if the amounts paid under the Scheme in terms of the declaration was held to be *non est* as per the Scheme.

It was held :

7 Thus, from a reading of the aforesaid provisions and the scope and ambit of the Scheme as contemplated, it is quite apparent that if one has to avail the benefit under the Scheme, he has to mandatorily comply with the requirements. It contemplates the payment of tax along with the declaration itself, but at the same time, making a provision for payment of tax at a later stage not beyond three months from the date of filing the declaration with interest. Further, sub-section (2) of Section 67 stresses upon the mandatory requirement of payment of tax within the outer limit of time and in the event of any such non-payment of tax, the declaration shall be deemed never to have been made under the Scheme, i.e., it will be non-est. Section 70 of the Scheme contemplates that no amount of tax paid in pursuance of a declaration shall be refundable under any circumstances. Necessarily, it would only mean that the expression "declaration" used in Section 70 should be a declaration as contemplated by Section 66 read with Section 67(1) of the Scheme. When the very Scheme contemplates that a declaration without payment of tax is void and non-est and the declaration filed by the assessee was not acted upon, the question of retention of the tax paid under such declaration will not arise. The Revenue cannot retain any amounts paid under a declaration falling within

3 [2000] 241 ITR 287 (AP)

the mischief of Section 67(2). There is no provision under the Scheme whereby the Revenue can retain the tax so paid in respect of a declaration which is void and non-est. In the absence of any such authority of law, the retention of tax contrary to the very Scheme is in the teeth of Article 265 of the Constitution of India. Therefore, the provision under Section 70 of the Scheme cannot have any application to a situation where the tax is paid beyond the prescribed period and accordingly, the retention of the said tax by the department is illegal and the petitioner is entitled to refund of the same.

15. Following the aforementioned decisions, this Court in *Pinnacle Vastunirman Pvt. Ltd. Vs. Union of India & Others.*⁴ ordered that the petitioner be given credit of the amount deposited by the said petitioner under the IDS as against the amount that was payable under the DTVSV Act read with DTVSV Rules. It was held :

17 In the absence of any such authority of law, a retention of tax contrary to the very Scheme cannot be permitted. Therefore, the provision of Section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid and accordingly the retention of the tax by respondent no.1 is illegal. At the time of the argument, counsel for petitioner stated that petitioner will be happy if rectified Form No. 3 is issued by respondent no. 3 after giving credit to this amount of Rs.82,33,874/-. Petitioner is entitled to an adjustment by giving credit to the amount of Rs.82,33,874/- paid under IDS. Respondent no. 3 is directed to rectify Form No. 3 issued under the DTVSV Act read with DTVSV Rules, to give credit to this amount of Rs. 82,33,874/- and issue fresh Form No. 3, within two weeks from the day, an authenticated copy of this order is served upon respondent No. 3 by petitioner. Petitioner to make payment of disputed tax in

4 {2021} 438 ITR 27 (Bom.)

accordance with revised / rectified Form-3 within a period of two weeks from the issuance of revised Form-3.

16. In the present case, it can be seen that based upon the declaration given by the petitioner, Form-3 was issued on 1st February 2021 which required the petitioner to pay an amount of Rs.6,97,500/- before 31st March 2021 and Rs.7,67,250/- after 31st March 2021. However, various extensions were granted on account of Covid-19 Pandemic, extending the dates aforementioned and the last extension granted was vide Notification No.94/2021/F-No.IT(A)/01/2020-TPL, which granted extension up-till 30th September 2021 and 1st October 2021 in regard to the time periods earlier fixed as 31st March 2020 and 1st April 2020.

17. As per the averments made in the petition, the petitioner had objected to the issuance of Form-3 as it did not take into consideration an amount Rs.5,07,480/- which was paid by virtue of various challans, details whereof are provided in the petition. The matter appears to have been verified by the specified authority and a revised Form-3 was issued on 27th September 2021, which this time required the petitioner to deposit an amount of Rs.1,90,000/- before 30th September 2021 and Rs.2,59,750/- after 30th September 2021. The amount so specified in Form-3 also took into

consideration an amount of Rs.2,09,400/- deposited by the petitioner on 30th October 2021. The petitioner states that another Rs.51,000/- was deposited in the month of November 2021.

18. Be that as it may, it appears that as on the last date specified, i.e., 30th October 2021, the petitioner had admittedly not paid the entire amount in terms of revised Form-3, dated 27th September 2021. However, the entire case of the petitioner is that if an amount of Rs.3,48,752/- which was deposited and was lying with the respondents in terms of the IDS, were to be adjusted against the revised Form-3 under the Scheme of the DTVSV Act, then the petitioner's claim under the said Scheme could not be rejected.

19. We agree with the contention of learned counsel for the petitioner supported and buttressed by the views expressed by the Apex Court in *Hemalatha Gargya* (Supra) and the judgments referred to hereinabove. The amount deposited by the petitioner under the IDS could not have been forfeited and have neither been refunded nor adjusted. This is not a case where one would say that the petitioner had failed to make the payment within the time prescribed under the DTVSV Act which would result in denying the benefit of the said Scheme to the petitioner but in our opinion, this

is a simple case where the money which was lying in the corpus of the revenue had simply to be adjusted by way of a mathematical exercise and benefit accorded to the petitioner under the DTVSV Act. Not only this, after adjusting the amount earlier deposited, the petitioner would be also entitled to some refund which would accordingly be considered for payment. This, in our opinion, would be strictly in accordance with the purpose, intent and the spirit of the Act aimed at eliminating and resolving the disputes between the assessee and revenue.

20. Be that as it may, we allow this petition and direct the respondents to issue a fresh Form-3, after giving to the petitioner credit of the amount paid under the IDS and the balance amount, if any, be refunded. Needful be done within a period of four weeks.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]