IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 954 OF 2023

Kartik Pravinchandra Mehta ... Petitioner

Versus

Principal Commissioner of Income Tax – 1, Thane & Ors. ... Respondents

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Mr. Dharan V. Gandhi, Advocate for the Petitioner.

Mr. Ajeet Manwani a/w Ms Samiksha Kanani, for the Respondents.

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CORAM : DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.

DATE : 24th FEBRUARY, 2023.

PER DHIRAJ SINGH THAKUR, J.: (ORAL)

. The Petitioner considering himself eligible for settlement of disputes under the Direct Tax, Vivad Se Vishwas Act, 2020 (“the Act”) submitted Forms - 1 and 2 with Respondent No. 1 i.e. the Principal Commissioner of Income Tax, Thane. According to the scheme of the Act, Respondent No. 1 issued Form - 3 reflecting therein an amount of Rs.8,39,676/-, as the balance amount payable after taking into account and adjusting the amounts of refund etc. for the relevant assessment year 2013-14. This amount had to be paid on or before 31st March, 2021. After 31st March, 2021, the amount payable would be Rs.9,67,194/-.

2. The Petitioner Responded to the Form - 3 and deposited an amount of Rs.8,39,376/- on 21st January, 2021. A Form - 4 was filled up and submitted with Respondent No. 1 as evidence of the payment having been made in terms of Form - 3. Admittedly, the amount paid and reflected in Form - 4 was short by approximately Rs.300/-, as against the amount that was required to be paid in terms of Form – 3. This the learned Counsel for the Petitioner states was entirely due to inadvertence. According to the scheme of the Act, upon a declaration having been filed in terms of Section 3 of the Act in Forms - 1 and 2, and upon the amount which is payable by an applicant having been determined in terms of Form – 3, under Section – 5(1), the appeal filed by the Petitioner would be deemed to have been withdrawn in terms of Section 4(2) of the Act with effect from the date on which a certificate under Section 5(1) i.e. Form - 3 was issued.

3. It is stated that the Petitioner informed the Appellate Authority i.e. the CIT(A) before whom the appeal was pending about the issuance of Form - 3 in favour of the Petitioner and, therefore,

expected the Appellate Authority to pass formal orders in regard thereto. However, it is stated that the Petitioner was surprised when penalty proceedings were initiated against the Petitioner and upon verification it transpired that in fact Respondent No. 1 had not issued the Form -5, on account of short payment of the balance tax payable as had been determined in terms of Form - 3.

4. Learned Counsel for the Petitioner states that repeated requests were made to Respondent No. 4 with regard to permitting the Petitioner to deposit the balance amount of Rs.300/- with a view to settle the disputes permanently and also emphasized the fact that the omission was in fact neither deliberate nor intentional, yet no response could be elicited based upon such applications.

It is in this background that the present petition has been filed seeking a mandamus to Respondent No. 1 for purposes of allowing the Petitioner to pay the balance tax of Rs.300/- and further that the application filed by the Petitioner under the Act be accepted and a Form - 5 issued in that regard. A prayer is also made for purposes of condoning the delay in the payment of the said amount.

Objections have been filed, in which the stand taken is that the

Petitioner having failed to deposit the entire amount within the prescribed period, the time cannot be extended beyond what was prescribed by the Act and the extensions granted subsequently vide various notifications. It is thus stated that the application filed by the Petitioner requires no consideration and the case cannot be permitted to be settled in terms of the Act.

5. We have heard learned Counsel for the parties and perused the record.

6. The 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:-
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> > " 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.
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> 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.

7. In the present case it can be seen that the Petitioner being eligible did apply for settlement of these disputes in terms of the Act. The Petitioner's eligibility therefore is not in dispute. It is true that the Petitioner did not deposit the entire amount which was determined as payable by Respondent No. 1 and which ought to have been paid before the specified date. The specified date earlier fixed as per the Act was 31st March, 2020. The Petitioner was required to pay an amount of Rs.8,39,676/- before the said date,

however in case the payment was made after 01st April, 2020, the amount payable was Rs.967194/-

8. Learned Counsel for the parties agreed that various extensions had been granted on account of Covid, extending the dates and the last extension granted was vide Notification No. 94/2021/F.No.IT(A)/01/2020-TPL granting extension up-till 30th September, 2021 and 01st October, 2021, in regard to the time periods earlier fixed as 31st March, 2020 and 01st April, 2020, respectively.

9. The Petitioner had therefore admittedly not approached the authorities for depositing the balance amount within even the extended period up to 01st October, 2021. In our opinion the Petitioner never intended that its dispute with the department be not settled, nor would the Petitioner gain any unfair advantage by not paying the balance amount which was insignificant and small. In fact on the face of it it is clear that the payment which was required to be paid in terms of Form - 3 was short only by Rs.300/-. This clearly appears to us to be an inadvertent error on the part of the Petitioner, which is neither deliberate nor intentional. Considering the purpose and spirit of the act, which was noting but

to unlock the amount of disputed tax before various appellate fora as also put an end to litigation, we feel that issuing a writ of mandamus in the present case, directing the Respondents to accept the balance payment would be nothing but in furtherance of the object for which the Direct Tax, Vivad Se Vishwas Act was enacted.

10. We accordingly allow the present petition. The Respondent No. 1 is directed to accept the balance payment which remained to be paid in terms of Form - 3 alongwith interest at the rate of 10% per annum calculated on the said unpaid amount from the date of issuance of Form - 3. A Form - 5 be issued thereafter in terms of the scheme.

The writ petition is disposed of accordingly.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**