HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19333-2021 (O&M)
Date of decision: 13.09.2023

Rajesh Kumar Jain **....Petitioner**

V/s.

Union of India and others **.....Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Goyal, Advocate
for the petitioner(s).

Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel
for the respondents.

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Ritu Bahri, J.

1. This order shall dispose of four writ petitions i.e. CWP-19333-2021, CWP-19335-2021, CWP-19338-2021 and CWP-2180-2023 having identical issue. For the sake of convenience, facts are being extracted from CWP-19333-2021.

2. The petitioner is seeking quashing of orders (Annexures P-6 and P-12) passed by the Designated Authority (respondent No. 3) whereby his petition under the Direct Tax Vivas se Vishwas Act, 2020 (hereinafter referred to as 'VSV') has been rejected on the ground that appeal was not filed within the time and the same was not maintainable.

3. The brief facts of the case are that the petitioner filed its Income Tax Return declaring gross income of Rs.12,61,762/- on 22.03.2013 and the return was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

4. Thereafter, the case of the petitioner was taken under Section

148 and proceedings were initiated. Respondent No. 2 i.e. Deputy Commissioner of Income Tax, Circle Hisar passed order under Section 143(3)/147 of the Act and vide order dated 19.12.2019 (Annexure P-1) addition of Rs.75,82,980/- was made. The copy of said order was served upon the petitioner on 21.12.2019 alongwith notice reflecting demand of Rs.43,71,450/-.

5. Feeling aggrieved with the order dated 19.12.2019, the petitioner preferred appeal before the 1st Appellate Authority on 15.02.2020 alongwith application for condonation of delay (Annexure P-2).

6. During the pendency of appeal, the Central Govt. introduced scheme namely "The Direct Tax Vivad Se Vishwas Act, 2020" vide notification dated 17.03.2020 (Annexure P-3) to reduce litigations and to help the taxpayers to end their tax disputes. An application under the scheme was to be filed till 31.03.2020 but due to COVID-19 pandemic, the date was extended to make application and payment upto 30.09.2021.

7. The petitioner filed an application under scheme on 21.12.2020 in Form -1 and Form-2 (Annexure P-5) which was rejected vide order (Annexure P-6) on the ground that as per the record, the assessee was not eligible under the scheme.

8. Subsequently, another Circular No. 21/2020 dated 04.12.2020 was issued by the Department of Revenue, Central Board of Direct Taxes (Annexure P-7) clarifying the provisions of the Direct Tax Vivad se Vishwas Act, 2020 in which it has been clarified that if the time limit for filing appeal expired during the period from 01.04.2019 to 31.01.2020 (both dates included) and the application for condonation is filed before the date of issue of this circular and appeal is admitted by the appellate authority before the date of filing of the declaration such appeal will be deemed to be pending as

on 31st Jan, 2020 (question No. 59 at page No. 62 of the paper-book).

9. Learned counsel for the petitioner stated that the said clarification has been examined by the Delhi High Court in ***Medeor Hospital Limited vs. Principal Commissioner of Income Tax-04 and others, W.P.(C) 12116/2021, decided on 28.10.2022*** wherein it is held that the FAQ No. 59 of Circular No. 21/2020 dated 04.12.2020 issued by CBDT to the extent that it contemplated admission of appeal before filing of declaration as a condition precedent in order for the appeal to be treated as pending and to be eligible for settlement under the VSV Act is contrary to law and thus the said circular is adverse to the assessee.

10. Hence, keeping in view the above said judgment, any application filed under the VSV cannot be rejected on the ground that no appeal was pending as on 31.01.2020. Moreover, in the present case when notice of motion was issued on 24.09.2021, learned counsel for the petitioner(s) stated that the last date for making payment was 30.09.2021 and the petitioner(s) was ready to deposit payment as per the calculations in the form of Fixed Deposit Receipt (FDR) before the Registrar General of this Court, and subsequently his applications for extension of time were allowed vide order dated 10.11.2021 and the petitioner(s) was permitted to deposit FDRs before the Registrar General of this Court. Vide order dated 10.12.2021, Registry was directed to accept FDRs and got them renewed from time to time alongwith the interest component, till the decision of the case.

11. In the present case, the petitioner has preferred an appeal on 15.02.2020 alongwith an application for condonation of delay and since the condition of Circular No. 21/2020 dated 04.12.2020 issued by CBDT, that the appeal has to be admitted before the date of filing of the declaration and

the application for condonation of delay is filed before the date of issue of the circular, such appeal would be deemed to be pending as on 31.01.2020, has been set aside by the Delhi High Court in ***Medeor Hospital Limited's case (supra),*** the present writ petition is allowed and orders dated (Annexure P-6 and P-12) are set aside. The matter is remanded back to the respondent No. 3-the Commissioner of Income Tax, Rohtak, Designated Authority to pass a speaking order on the application dated 26.02.2021 (Annnexure P-9) under the Direct Tax Vivas se Vishwas Act, 2020, in accordance with law.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

13.09.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No