

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.118 OF 2024

SHAREN NITIN NAIK

... PETITIONER

Versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX, PANAJI AND 2
ORS.

... RESPONDENTS

Mr P. Karpe with Ms Gauri P. Karpe, Advocates *for the Petitioner.*

Ms Susan Linhares, Standing Counsel *for the Respondents.*

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATE: 31st JANUARY 2024

P.C.:

1. Heard Mr P. Karpe for the petitioner and Ms S. Linhares, learned Standing Counsel for the respondents.
2. The petitioner challenges the order/communication dated 17.03.2021 by which his application under the Vivad Se Vishwas (VSV) Act was rejected on the ground that there was no appeal pending.
3. Mr Karpe submits that under the VSV Act, there are no provisions explaining the circumstances when an appeal can be said to be pending. In any case, he submits that in the present case, the petitioner had instituted an appeal on 17.08.2017 and the same is pending to date. He referred us

to the appeal papers at pages 107 to 117, which include electronic acknowledgement of the institution of the appeal.

4. If Mr Karpe's contention, which is prima facie supported by the documents placed by the petitioner on record is correct, then obviously the impugned communication which proceeds to the premise that no appeal was pending might be vulnerable.

5. Accordingly, we direct the concerned respondents to ascertain the position and file an affidavit as to whether the petitioner's appeal was indeed pending on the date when the petitioner's application under the VSV Act was considered. Such an affidavit must be filed within four weeks from today. If no affidavit is filed, this Court will proceed based upon averments in the petition which, as noted above, are prima facie backed by the documents placed by the petitioner on record.

6. This petition will be disposed of finally at the stage of admission.

7. The concerned respondents must file the affidavit latest by 04.03.2024 by giving an advance copy to the learned counsel for the petitioner. If the petitioner wishes to file rejoinder, she may do so by 14.03.2024 by giving an advance copy.

8. Place this petition for final disposal at the admission stage on 18.03.2024.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.