IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.19329, 19331 & 19335 of 2021
and
W.M.P.Nos.20631, 20632, 20635 to 20637 & 20639 of 2021

Tvl.Sanmac Mootor Finance Ltd.,
Represented by its Managing Director,
T.Arunchalam ... Petitioner in all W.Ps.

vs.

1. The Central Board of Income Tax,
   Represented by its Chairperson,
   Department of Revenue – Ministry of Finance,
   Government of India,
   New Delhi.

2. The Principal Commissioner of Income Tax,
   Ayakar Bhavan, 121, MG Road,
   Nungambakkam,
   Chennai 600 034.

3. The Assistant Commissioner of Income Tax,
   Company Circle VI (1),
   121, MG Road, Nungambakkam,
   Chennai 600 034.

4. The Chief Commissioner of Income Tax,

Ayakar Bhavan, 121, MG Road,
Nungambakkam,
Chennai 600 003. .. Respondents in all W.Ps.

Prayer in W.P.No.19329 of 2021 : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in PAN.No.AABCS0219H and quash the rejection order in Receipt No.231266800290121 dated 03.02.2021 passed under Direct Tax Vivad Se Vishwas Ac, 2020 for the Assessment year 1995-1996 by the 2nd respondent as illegal and consequently direct the 2nd respondent to accept the petitioner's application in Form-1 and 2 filed as valid application and issue Form No.3 as per the Direct Tax Vivad Se Vishwas Act, 2020 in accordance with law.

Prayer in W.P.No.19331 of 2021 : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in PAN.No.AABCS0219H and quash the rejection order in Receipt No.231350180290121 dated 03.02.2021 passed under Direct Tax Vivad Se Vishwas Ac, 2020 for the Assessment year 1996-1997 by the 2nd respondent as illegal and consequently direct the 2nd respondent to accept the petitioner's application in Form-1 and 2 filed as valid application and issue Form No.3 as per the Direct Tax Vivad Se Vishwas Act, 2020 in accordance with law.

Prayer in W.P.No.19335 of 2021 : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in PAN.No.AABCS0219H and quash the rejection order in Receipt No.231766210290121 dated 03.02.2021 passed under Direct Tax Vivad Se Vishwas Ac, 2020 for the Assessment year 1996-1997 by the 2nd respondent as illegal and consequently direct the 2nd respondent to accept the petitioner's application in Form-1 and 2 filed as valid application and issue Form No.3 as per the Direct Tax Vivad Se Vishwas Act, 2020 in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.Premalatha
Junior Standing Counsel.

COMMON ORDER

In these writ petitions, the petitioner has challenged the impugned rejection order dated 03.02.2021 of the second respondent who officiated as the designated Authority under the provisions of Direct Taxes Vivad Se Vishwas Act, 2020.

2. The petitioner had suffered assessment orders dated 16.03.1998,

25.03.1999 and 31.03.1999 for the assessment years 1995-1996, 1996-97, 1997-98 respectively. The petitioner was also imposed with interest under Section 234A, 234B and 234C of the Income Tax Act, 1961.

3. During the interregnum, the petitioner was also proceeded to wind up its affairs under the provisions of the Companies Act 1956. In fact, the company was also ordered to be wound up by the Court which was later set aside, details of which is captured in W.P.No.12500 of 2010 passed by this Court.

4. After paying the disputed tax, the petitioner approached the fourth respondent for waiver of interest imposed under Section 234A, 234B and 234 C of the Income Tax Act, 1961 in terms of Circular No.400/29/2002-IT(B) dated 26.06.2006. The fourth respondent herein (first respondent in W.P.No.12500 of 2010) however rejected the same vide order dated 16.03.2010 bearing reference C.No.CCII/B(14)2006-07. Thus, W.P.No.12500 of 2010 filed by the petitioner was eventually partly allowed on 10.02.2020 by quashing the aforesaid impugned order dated 16.03.2010 with the following observations:-

"35. Under these circumstances, I am of the view that there should be a waiver of interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961 for the period between 18.06.2001 and 27.10.2006 alone.

36. I therefore remit the case back to the 2nd respondent to compute the interest payable by the petitioner from the due date upto 18.06.2001 and for the period riod comr commencing from 27.10.2006 upto the actual date of payment under the aforesaid provision of the Income Tax Act, 1961. While computing the interest payable by the petitioner, the 2nd respondent shall exclude the period between 18.06.2001 and 27.10.2006.

37. The 2nd respondent shall compute the interest and communicate to the petitioner for the aforesaid period within a period of 30 days from date of receipt of a copy of this order. Petitioner shall pay the amount determined by the 2nd respondent within 15 days thereafter. In case, there is a failure on the part of the petitioner to pay an amount within the aforesaid period, the relief granted to the petitioner herein shall come to an end sine die and the impugned order shall stand revived.

38. The present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed".

5. Meanwhile, the Direct Tax Vivad Se Vishwas Act was introduced in the Parliament as a Bill on 05.02.2020 and received the presidential assent on 17.03.2020. The petitioner thus offered to settle the dispute under the aforesaid scheme by filing Form-1 and 2 on

29.01.2021. Pursuant to the directions of this Court dated 10.02.2020 in W.P.No.12500 of 2010 the third respondent herein passed a detailed order on 20.11.2020 which is referred to paragraph 9 of the counter affidavit filed by the respondent. Para 9 of the counter affidavit reads as under :-

> 9. I submit that giving effect to the order of this Court, re-computation was done for all three years and net interest portion payable by assessee was arrived at Rs.9,25,804/-, Rs.23,12,943/- and Rs.51,96,403/- for AY 1995-96, 1996-97 and 1997-98 respectively. The order was passed on 20.11.2020 directing the assessee to pay these demand within 15 years as per court orders."

6. The impugned order/communication dated 03.02.2021 which rejects the declaration filed by the petitioner under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 is primarily challenged on the ground that it is contrary to the provisions of the said Act.

7. In this connection, the learned counsel for the petitioner drawn attention to the decision of the Division bench of the Bombay High Court

and that of the Delhi High Court in the following two cases:-

i) **Mrs.Premalatha Mohan Agarwal vs. Principal Commissioner of Income Tax, Pune,** (2022) 134 taxmann.com19 (Bombay);

(ii) **Kapri International (P.) Ltd. vs. Commissioner of Income Tax -IV**, (2022) 144 taxmann.com37 (Delhi)

8. On the other hand, the learned counsel for the respondent would submit that the petitioner has filed waiver application before the competent authority which was pending on the "specified date" as defined in Section 2(1)(n) of the said Act on 30.01.2020, the petitioner was not entitled to file an application for settling the dispute under Section 3 of the aforesaid scheme .

9. The learned counsel for the respondent would also refer to the clarification issued by the Central Board of Direct Taxes, Ministry of Finance, Department of Revenue in Circular No.9 of 2020 dated 22.04.2020 bearing reference (F.No.IT(A)/1/2020-TPL. A specific reference is made to answer to question No.13 wherein it has been answered as follows:-

Question :- "With respect to interest under Section 234A, 234Bor 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31 January 2020? Will such cases be covered under Vivad se Vishwas?"

Answer :- No, such cases are not covered. Waiver applications are not appeal within the meaning of Vivad Se Vishwas.

10. It is also submitted that the aforesaid clarification vide Circular No.400/29/2002-IT(B) dated 26.06.2006 is to be construed as the *contemporanea Expositio* of law and therefore binding on the respondent. Therefore, these writ petitions deserves to be allowed.

11. It is submitted that no appeal was pending on the "specified date" as defined in Section 2(1)(n) of the said Act and therefore the application filed by the petitioner on 29.01.2021 was not maintainable. Hence, it has been an auto rejected by the system.

12. It is however admitted that W.P.No.12500 of 2010 against the order dated 16.03.2010 was pending before this Court on the "specified

date" It is therefore submitted that the application which has been rejected vide impugned communication dated 03.02.2021 does not merit any interference.

13. I have considered the arguments advanced by the learned counsel for the petitioner and learned counsel for the respondent and I have also referred to the decisions of various High Courts.

14. In **Mrs.Premalatha Mohan Agarwal vs. Principal Commissioner of Income Tax, Pune,** (2022) 134 taxmann.com19 (Bombay), it was held that there is no provision to exclude interest charged under Sections 234A, 234B or 234C of the Income Tax Act, 1961, from the purview of the Direct Tax Vivad Se Vishwas Act. 2020. Relevant paragraph reads as under :-

> *"**6.**The Direct Tax Vivad Se Vishwas Act was enacted to provide for resolution of disputed tax and for matters connected therewith and incidental thereto. In the Direct Tax Vivad Se Vishwas Act, there is no provision to exclude interest charged under sections 234A, 234B or 234C of the Act as stated in the order impugned. Moreover, under section 3 of the Direct Tax*

Vivad Se Vishwas Act, it is provided that where a declarant files under the provisions of this Act a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act, where tax arrear relates to disputed interest amount payable under the Act, on or before March 31, 2020 will be 25 per cent. of disputed interest and if paid after April 1, 2020 but before the last date, 30 per cent. of disputed interest. The tax arrear is defined under section 2(1)(o) to mean ".. . disputed interest. . .". The disputed interest is defined under clause (h)(ii) of sub-section (1) of section 2 to mean "the interest determined in any case under the provisions of the Income-tax Act, 1961 where an appeal has been filed by the appellant in respect of such interest". ***Appellant means under clause (a)(i) of sub-section (1) of section 2 "a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the Income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date".*** *Therefore, the petitioner was eligible to file this declaration under the Direct Tax Vivad Se Vishwas Act for the disputed interest that was charged under sections 234A or section 234B or section 234C. The concerned authority was, therefore, not correct in rejecting the declaration of the petitioner for reasons quoted above."*

15. Similarly, the Delhi High Court in the case of **Kapri International (P.) Ltd. vs. Commissioner of Income Tax -IV,** 2022

SCC OnLine Del 2466 clarified the legal position as under :-

> ***14.****Gravamen of the petitioner's case is that the declaration under forms I and II requesting for settlement of their tax arrears relating to disputed interest ought to have been resolved under the Vivad Se Vishwas Act, since they fell within the scope of section 3 read with section 2(1)(h) and 2(1)(o). The Commissioner of Income-tax however was also relying on definitional sections to contend that while tax arrears included disputed interest but the disputed interest was only in a case where "an appeal" has been filed and rejection of the waiver application prior in time by the Department could not be considered an appeal and the petitioner would not be an "appellant".*
>
> ***15.****In the opinion of this court this contention of the respondent is inherently flawed on various grounds.*
>
> ***Firstly, there is no definition of "appeal" in the Vivad Se Vishwas Act, for the Commissioner of Income-tax to take support of any straitjacketed definition.***
>
> ***Secondly, what is instead defined was "dispute", not in the Vivad Se Vishwas Act, but in the Vivad Se Vishwas Rules at clause 2(b) and includes an appeal, writ, special leave petition, arbitration, conciliation and mediation.*** *This very expansive provision would necessarily be interpreted for its correct intent, i. e., capturing various nature of disputes before the*

court as well as those not before the court but in adjudication to fall within the scope of this scheme. The definition of dispute in Rules does not deviate or is ultra vires the scope and intent of the Vivad Se Vishwas Act, itself since the preamble to the Vivad Se Vishwas Act, itself provides for resolution of disputed tax and most importantly for "matters connected therewith and incidental thereto". It is therefore obvious that the intent of the Vivad Se Vishwas Act, was to provide resolution of all nature of disputes relating to tax, penalty, interest, fee as determined under provisions of the Vivad Se Vishwas Act. The restrictive scope that the Commissioner of Income-tax is providing for definition of "dispute" or even of an "appeal" is not in synchronicity with the letter and spirit of the Vivad Se Vishwas Act, that propounds an ameliorative scheme for resolution.

Thirdly, section 2(1)(o) which defines tax arrears includes distinct categories which are in the alternative and not cumulative, viz., disputed tax, disputed interest, disputed fee, disputed penalty. *Therefore, for the Commissioner of Income-tax to contend that section 2(1)(h) relates to a disputed interest on a disputed tax only and therefore the petitioner was non- suited since there was no disputed tax but only disputed interest, is not tenable. Provisions have to read purposively and in harmony with the scheme of the Vivad Se Vishwas Act, and its intent. It is a well settled principle of law that a statute should be given a purposive construction in order to give effect to* *its legislative purpose. This, not being a taxing statute but one which propounds a dispute resolution scheme for tax disputes would be amenable to a purposive construction.*

The hon'ble Supreme Court in Tanna and Modi v. CIT [2007] 292 ITR 209 (SC) ; (2007) 7 SCC 434, held forth on this principle and which is instructive in this context as under (page 220 of 292 ITR) :

"In Francis Bennion's Statutory Interpretation, purposive construction has been described in the following manner :

'A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive and literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction). (Reference is also made to Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group (2006) 3 SCC 434 and National Insurance Co. Ltd. v. Laxmi Narain Dhut (2007) 4 SCALE 36 ; (2007) 3 SCC 700)'."

Fourthly, even as per the Statement of Objects and Reasons to the Vivad Se Vishwas Bill, (page 28 of 421 ITR (St.)) which is extracted below for convenience, the intent was to include all sorts of disputes even if pending before the Commissioner

of Income-tax or the courts. *The intent of the Legislature was clearly to have an expansive inclusion rather than a restrictive exclusion. In fact section 9 of the Vivad Se Vishwas Act, which provides what is specifically excluded from the Vivad Se Vishwas Act, [as also the Explanation to section 2(1)(o)], does not include anything which relates to the case of the petitioner.*

"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."

16.Reliance by the Commissioner of Income-tax on FAQ-13 is not tenable since as rightly argued by the learned counsel for the petitioner FAQ-13 relates to a pending waiver application before the Department and not a proceeding emanating out of a decision by the Department on a waiver application, which Company Application 577 of 2019 was. This is also obvious since if the Department itself is seized of a demand by the assessee and has not passed a decision on it, then there is no "dispute" as yet which has fructified. *It may be noted that the definition of "dispute" under the Vivad Se Vishwas Act/Rules is in the nature of adjudicating proceedings arising out of Departmental decisions but not a proceeding pending before the Department.* ***In essence, any proceeding challenging a decision by the Department in respect of tax, interest, penalty, fee etc. would come within the purview of a "dispute" which would enable a party to approach the Department for a resolution under***

> ***the Vivad Se Vishwas Act.*** *It may be useful to refer to a decision by the Hon'ble High Court of Bombay in* ***Sadruddin Tejani v. ITO [2021] 434 ITR 474 (Bom) ; [2021] SCC Online Bombay 567*** *wherein it was held that "the Vivad Se Vishwas Act, is a beneficial legislation for both the Revenue and the taxpayer".*
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> *Fifthly, even this court in* ***Shyam Sunder Sethi v. Pr. CIT [2021] 17 ITR-OL 525 (Delhi) ; 2021 SCC OnLine Del 3113*** *has set aside a similar order of rejection based upon an frequently asked question (FAQ) under the Vivad Se Vishwas Act, as bad in law.*

16. The reasoning in the above two cases *prima facie* apply to the facts of the case, as the petitioner was in "arrears of tax" as defined in Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020. The expression "arrears of tax" includes disputed interest as determined under the provisions of the Income tax Act. Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under :-

> 2(1)(o) **" tax arrears"** means -
> (i) the aggregate amount of **disputed tax, interest chargeable** or charged on such **disputed tax**

and penalty leviable or levied on such disputed tax; or
(ii) **disputed interest** ; or
(iii) disputed penalty; or
(iv) disputed fee,

as determined under the provisions of the Income tax Act.

17. The expressions **"disputed tax"** and **"disputed interest"** have been employed in Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020. They are defined in Section 2(1)(j) and and 2(1)(h) of Direct Tax Vivad Se Vishwas Act, 2020 They are reproduced below :-

Section 2(1)(j) : Disputed Tax	***Section 2((1)h):Disputed Interest***
"disputed tax", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:— (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him; (B) in a case where an order in an appeal or in writ petition has been passed by the	**"disputed interest"** means the interest determined in any case under the provisions of the Income-tax Act, 1961, where— (i) such interest is not charged or chargeable on disputed tax; (ii) an appeal has been filed by the **appellant** in respect of such interest;

appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed; (C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order; (D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order; (E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof; (F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted: Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under	

section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued: Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.	

18. A reading of the definition of "**appellant"** in Section 2(1)(a), "**declarant"** in Section 2(1)(c), **'tax arrears"** in Section 2(1)(o), "**disputed tax"** in Section 2(1)(j), "**disputed interest**" in Section 2(1)(h) of the Direct Tax Vivad Se Vishwas Act, 2020 indicates that the petitioner was indeed entitled entitled to file a declaration under Section 3 of Direct Tax Vivad Se Vishwas Act, 2020 to settle the case under the Direct Tax Vivad Se Vishwas Act, 2020 in respect of its/his or her or their "**tax arrears"**, as the expression "**tax arrears"** in Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020 includes "**disputed interest"** as defined in Section 2(1)(h) of the Direct Tax Vivad Se Vishwas Act,

2020. The expression "**tax arrears"** in Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020 also includes "**interest charged**" on such "**disputed tax"** under Section 2(l)(n) of the Direct Tax Vivad Se Vishwas Act, 2020.

19. In this case, the petitioner had filed W.P.No.12500 of 2010. The said Writ Petition was pending before this Court on the "**specified date**" as defined in Section 2(1)(n) of the Direct Tax Vivad Se Vishwas Act, 2020 on **31.01.2020**.

20. The expression "**disputed interest"** as defined in Section 2(1)(h) of the Direct Tax Vivad Se Vishwas Act, 2020 includes a situation where an appeal has been filed by the appellant in respect of such interest.

21. In this case, admittedly the petitioner has requested the Chief Commissioner of Income for waiver of interest in terms of **Circular No. 400/29/2002-IT(B)** dated **26.06.2006** which was denied vide order dated **16.03.2010.**

22. Thus, the petitioner challenged the impugned order dated **16.03.2010** of the Chief Commissioner of Income in **W.P.No.12500 of 2010** before this Court**. W.P.No.12500 of 2010** was pending on the "**specified date**" as defined in Section 2(1)(n) of the Direct Tax Vivad Se Vishwas Scheme Act, 2020.

23. **W.P.No.12500 of 2010** field by the petitioner came to be disposed on **10.02.2020.** Thus, **W.P.No.12500 of 2010** filed by the petitioner was disposed before the Direct Tax Vivad Se Vishwas Act, 2020 came to be passed by the Respective Houses of the Parliament on **05.02.2020** and received the Presidential assent on **17.03.2020.**

24. To avail the benefit of the Direct Tax Vivad Se Vishwas Act, 2020, a "**tax dispute"** as defined in Section 2(1) (j) of the said Act in respect of "**arrears tax**" as defined in Section 2(1) (o) of the said Act should be pending on the "**specified date**" within the meaning of Section 2(1)(n) of the Direct Tax Vivad Se Vishwas Act, 2020 i.e., on **31.01.2020**.

25. This Court vide its vide Order dated **10.02.2020** in **W.P.No.12500 of 2010** had directed the Chief Commissioner of Income Tax to relook at the claim of the petitioner for waiver of interest under Circular No.400/29/2002-IT(B) dated **26.06.2006** afresh**.** One of the condition for availing the benefit of the Direct Tax Vivad Se Vishwas Act, 2020 is that an assessee should be in **arrears of tax** including interest. The expression "**tax arrears"** in Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020 also includes "**interest charged**" on such "**disputed tax"** under Section 2(l)(n) of the Direct Tax Vivad Se Vishwas Act, 2020.

26. The expression "**appeal"** has not been defined under the Direct Tax Vivad Se Vishwas Act, 2020. The Hon'ble Supreme Court in **State of Gujarat v. Salimbhai Abdulgaffar Shaikh** (2003)8SCC50 held that broadly speaking, an appeal is a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court.

27. Similarly, in **James Joseph v. State of Kerala,** (2010) 9

SCC 642: (2010) 3 SCC (Civ) 894, the Hon'ble Supreme Court while giving its ruling in the context of Kerala Forest Act, 1961, observed that the word "appeal" is not defined either under the Kerala Forest Act, 1961 or under CPC.

28. The Hon'ble Supreme Court further held that an appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

29. The expression appeal is defined in the Oxford Dictionary, Vol. 1, p. 398, as the transference of a case from an inferior to a higher court or tribunal in the hope of reversing or modifying the decision of the former. In the Law Dictionary by Sweet, the term "appeal" is defined as a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court or Court of Appeal. Thus, under peculiar circumstances, a writ proceeding before a Writ Court may partake the character of an appeal in its revisional jurisdiction under Article 226 of the Indian Constitution.

30. Therefore, though the expression "**appeal**" has not been defined in Direct Tax Vivad Se Vishwas Act, 2020, it has to be construed that W.P.No.12500 of 2010 was in the nature of an "**appeal**" as the writ petitioner had questioned the order dated 16.03.2010 of the Chief Commissioner of Income Tax in the said writ petition as the petitioner had taken a stand that the petitioner was eligible for waiver of interest under Circular No. 400/29/2002-IT(B) dated 26.06.2006.

31. Therefore, the petitioner was eligible to settle the dispute under Vivad Se Vishwas Act, 2020. As stated elsewhere there is no embargo in Section 3 and Section 4 of the said Act for the petitioner to file a declaration.

32. Even otherwise, the answer to the Question No.13 of the FAQ is not relevant to facts of the present case. In any event, such clarifications are not binding on the Court. The definition of "**appellant**" under clause (a)(i) of sub-section (1) of Section 2 expressly includes, *inter alia*, filing of a writ petition. Therefore, the Court is in agreement

with the views of the Bombay High Court in **Mrs. Premalatha Mohan Agarwal** *(supra)* and of the Delhi High Court in **Kapri International (P.) Ltd** *(supra)* on these aspects.

33. That apart, the Direct Tax Vivad Se Vishwas Act, 2020 was intended to allow person(s) like the petitioner also to settle the dispute under it. The speech of the Finance Minister during the presentation of the Budget also gives an indication that the intention of the Parliament was to provide an amnesty to the assessee(s) to settle the dispute in respect of "**tax arrears**". The statement of the objects and reasons to the Act also seem to indicate the above position.

34. In view of the above, these writ petitions deserve to be allowed. Consequently, the respondents are directed to process the application of the petitioner filed on **29.01.2021** in accordance with law as per Sections 3 and 5 of the Direct Tax Vivad Se Vishwas Act, 2020, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order and close the file against the petitioner.

35. These writ petitions stand allowed with consequential relief to the petitioner with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
Neutral Citation : Yes/No
kkd

To

1. The Chairperson,
   Central Board of Income Tax,
   Department of Revenue – Ministry of Finance,
   Government of India,
   New Delhi.

2. The Principal Commissioner of Income Tax,
   Ayakar Bhavan, 121, MG Road,
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C.SARAVANAN, J.

kkd

W.P.Nos.19329, 19331 & 19335 of 2021

26.09.2024