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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5831/2021

KAAJAL REAL ESTATE AND CONSULTANTS PRIVATE LIMITED THROUGH ITS DIRECTOR KAAJAL AIJAZ ILMI ..... Petitioner

Through: Mr. Ankit Agarwal, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX 4 NEW DELHI & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, JSC & Ms. Nupur Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **16.02.2024**

1. The writ petitioner impugns the action of the respondents who have proceeded to reject the declarations and applications made in Forms-1 and 2 dated 10 March 2021 and 23 March 2021 filed by the petitioner under the **Direct Tax Vivad Se Vishwas Act, 2020**[1]**.** As is manifest from the rejection of those declarations, the respondents have taken the position that since the petitioner had preferred a revision under Section 264 of the **Income Tax Act, 1961**[2] after the *"specified date"*, namely, 31 January 2020, it would not be eligible under the VSV Act. Admittedly, the revision under Section 264 came to be instituted on 01 March 2021. The respondents have essentially taken the position that only in cases where revisions may have been pending

[1] VSV Act
[2] Act

on the specified date would the VSV Act be applicable. It is the correctness of this stand which is assailed before us.

2. When the writ petition was originally entertained, we had on 04 June 2021 passed a detailed order in the following terms:-

> "3. Mr. Ankit Aggarwal, who appears on behalf of the petitioner, has, broadly, taken us through the record.
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> 3.1. It appears that the petitioner had filed Forms 1 and 2, under the Direct Tax *Vivad se Vishwas Act,* 2020 (in short "2020 Act") twice, i.e., on 10.03.2021 and 23.03.2021, however, both times, it was rejected. The first time, it was rejected was on 23.03.2021. The petitioner refiled Forms 1 and 2 on the same date, i.e., 23.03.2021, which stood rejected on 05.04.2021.
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> 3.2. It appears that the principal reason given for the rejection of the aforementioned forms is that the petitioner's revision application filed under Section 264 of the Income Tax Act, 1961 (in short "1961 Act") was not pending as on the specified date, i.e., 31.01.2020.
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> 3.3. It is Mr. Aggarwal's contention that the aforesaid reasoning given in the impugned orders of rejection is flawed. It is his contention that against the re-assessment order, passed under Section 144 read with Section 147 of the 1961 Act for the assessment year (in short "AY") 2012-13 dated 13.11.2019 [which was received on 24.01.2020], a revision application was filed by the petitioner under Section 264 of the 1961 Act on 06.03.2021.
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> 3.4. It is contended by the petitioner, that the limitation for filing a revision application stood extended by the Central Board of Direct Taxes ("CBDT") Circular till 31.03.2021. *Inter alia,* for this purpose, Mr. Aggarwal relies upon not only the CBDT Circular and instructions but also on Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (2 of 2020) (in short "Ordinance"). In particular, emphasis is laid on Section 3(1)(b) of the Ordinance. In addition, thereto, reliance is also placed on the CBDT notification issued under the said Ordinance dated 24.06.2020, which*, inter alia,* indicated that the end date for filings, under Section 3(1) of the Ordinance, would be 31.03.2021 (See clause (ii) of the said notification)
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> 3.5 Besides this, reliance is also placed on the order passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020. (See Annexure P-4, which is appended on page 55 to 57 of the paper book.) According to Mr. Aggarwal, the period spanning between 15.03.2020 and 14.03.2021 stood excluded for the purposes of limitation, on account of these orders.

> 4. To our minds, the matter requires examination.
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> 5. Accordingly, issue notice. Mr. Abhishek Maratha accepts service on behalf of respondent/revenue.
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> 5.1. Counter-affidavit will be filed within the next four weeks. Rejoinder thereto, if any, will be filed before the next date of hearing.
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> 6. Given the aforesaid facts and circumstances, the respondent/revenue will accept Forms 1 & 2 filed by the petitioner, on 23.03.2021, along with 100% of the disputed tax. Mr. Aggarwal says that, according to the petitioner, Rs.16,81,546/- is payable towards "100% of the disputed tax". (See page 126 of the paper book.)
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> 6.1 The respondent, therefore, pending the adjudication of the petition, without prejudice to its rights and contentions, will accept Forms 1 & 2 with 100% of the disputed tax. In case, according to the respondent/revenue, 100% of the disputed tax figure, is at variance with the aforementioned amount, the same will be indicated to the petitioner and necessary corrective action will be taken by the petitioner.
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> 6.2 The respondent/revenue will also take next steps in the matter which will be, as indicated above, subject to the final outcome of the writ petition.
> 6.3. The respondent/revenue will bear in mind, while taking next steps in the matter, the deadline, which presently, we are told, expires on 30.06.2021.
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> 7. Given the aforesaid directions that have been issued in the matter, Mr. Aggarwal says, he does not wish to press the interim application any further. CM No. 18281/2021 is, thus, closed.
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> 8. List this matter on 22.09.2021."

3. Pursuant to the above, the petitioner has already deposited 100% of the disputed tax liability and a Form-5 dated 13 December 2021 has also come to be issued, albeit subject to the outcome of the present writ petition. The solitary question which therefore merits consideration is whether the filing of the revision after the specified date but within the period of limitation as available rendered the petitioners ineligible from availing the beneficial coverage of the VSV Act.

4. The dispute itself pertains to Assessment Year 2012-13 when an

assessment under Section 147 came to be completed on 13 November 2019. The petitioner contends that the aforesaid assessment came to be concluded without a notice under Section 143(2) of the Act having been issued. In the meanwhile and by virtue of the Finance Bill, 2020, the **Vivad se Vishwas Scheme**[3] came to be promulgated aimed at reducing and resolving disputes pertaining to all pending litigation as on 01 February 2020. The Finance Bill was accorded assent on 17 March 2020 and whereafter the Act came into effect.

5. The **Central Board of Direct Taxes**[4] on 04 March 2020 provided various clarifications with respect to the VSV Act. Insofar as the present case is concerned, we deem it apposite to extract the following from that circular:-

> "**Question No. 1.** **Which appeals are covered under the Vivad se Vishwas?**
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> **Answer:** Appeals pending before the appellate forum [Commissioner (Appeals), Income Tax Appellate Tribunal (ITAT), High Court or Supreme Court], and writ petitions pending before High Court (HC) or Supreme Court (SC) or special leave petitions (SLPs) pending before SC as on the 31st day of January, 2020 (specified date) are covered. <u>Cases where the order has been passed but the time limit for filing appeal under the Income-tax Act, 1961 (the Act) against the order has not expired as on the specified date are also covered. Similarly, cases where objections filed by the assessee against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given the directions but the Assessing Officer (AO) has not yet passed the final order on or before the specified date are also covered. Cases where revision application under section 264 of</u>

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[3] Scheme
[4] CBDT

> <u>the Act is pending before the Principal Commissioner or Commissioner are covered as well.</u> Further, where a declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation as referred to in clause 4 of the Bill is also covered."

6. As is evident from the above, the CBDT while clarifying various circumstances in which assessees' could claim benefit under the Scheme, explained that even those cases where appeals were pending as on 31 January 2020 would be covered. It further went on to significantly clarify that the Scheme would also be applicable in respect of those cases where even though orders may have been passed but the time limit for filing an appeal had not expired on the specified date. This in essence extended coverage of the Scheme even to those cases where though an order adverse to an assessee may have been passed prior to 31 January 2020, it had not lost the right to challenge in accordance with the Act as on the specified date.

7. While dealing with revisions specifically, the Board clarified that those petitions which were pending on the specified date would be covered as well. The respondents read this part of the Board directive as intended to mean that only those revisions which had either been instituted or were pending on 31 January 2020 would be covered.

8. Insofar as the petitioner is concerned, it discloses that it preferred a revision on 01 March 2021 taking the benefit of the extension of limitation which came to be notified by the respondents consequent to the outbreak of the COVID 19 pandemic. It has referred to the provisions made in Section 3 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and in terms of which the last date for filing of appeals, replies, or applications

came to be extended up to 31 March 2021. The petitioner also refers to the orders passed by the Supreme Court on Suo Moto 3/2020 wherein the Supreme Court had extended limitation for filing petitions/ applications/ suits/ appeals/ all other proceedings in light of the challenges faced by persons throughout the country on account of the nation-wide lockdown and the virus outbreak. It is pursuant to the above that the revision came to be instituted by the petitioner within the extended period of limitation.

9. As is manifest from the aforesaid discussion, the CBDT had clearly provided that the provisions of the VSV Act would also extend to those disputes which emanated from orders passed under the Act and which could be appealed against and the limitation for preferment of those appeals having not come to an end prior to the specified date.

10. Undisputedly, the period of limitation for the preferment of a revision could not be said to have come to an end on 31 January 2020 bearing in mind the provisions of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and the orders passed on Suo Moto 3/2020. The limitation for filing a revision in terms of the aforesaid thus travelled beyond the specified date of 31 January 2020.

11. In our considered opinion, once the respondents had taken the principled position that the VSV Act would apply even in those matters where the limitation period for filing of appeals had not expired on the specified date, there can be no valid justification to either countenance or draw a distinction between an appeal and a revision. The acceptance of such a distinction would be wholly illogical quite apart from being manifestly arbitrary and violative of Article 14 of the Constitution. The respondents, having accepted the

directive of the CBDT insofar as appeals are concerned, cannot be permitted to justifiably take the position that the same would not extend to revisions. Once the CBDT had clarified that cases where the limitation for filing of appeals had not expired on 31 January 2020 would also be covered, it would be wholly unfair to hold that the same principle would not apply to a revision.

12. More importantly, the clarificatory directive of the Board must be interpreted and understood in light of the underlying legislative policy of the VSV Act of providing an avenue for settlement of disputes coupled with the insurmountable challenges which were faced by people during the pandemic. If the clarification were to be viewed in that light it becomes apparent that the core theme of the Board directive was to extend the beneficial reach of the VSV Act even to those cases where assessees' still retained the right to question an adverse order or decision on the specified date and where the law itself conferred upon them a right to raise such a challenge. There thus exists no justification to restrict the ambit of the clarification merely to appeals and exclude other avenues of redress which were otherwise available to be pursued on the specified date.

13. In our considered opinion, the Scheme as well as the provisions of the VSV Act constitute beneficial legislation and are liable to be construed and interpreted accordingly. We, in this connection, draw sustenance from the following pertinent observations as rendered in **MUFG Bank Ltd. vs. CIT**[5].

> "**26.** Having heard learned counsel for the parties, this Court is of the view that the primary question that needs to be answered is what is the rule of interpretation that the court must apply while interpreting the Dtvsv Act.

[5] 2022 SCC OnLine Del 4096

27. Every modern legislation is actuated with some policy. While the intent of taxing statutes is to collect taxes, the intent of amnesty acts like Voluntary Disclosure of Income Scheme (for short "VDI Scheme") is to provide an opportunity to the assesses to declare their undisclosed income on fulfilling certain terms and conditions. There are also legislations which are directed to cure some mischief and bring into effect some type of reform by improving the system or by relaxing the rigour of the law or by ameliorating the condition of certain class of persons who according to present day notions may not have been treated fairly in the past. Such welfare, beneficent or social justice oriented legislation are also known as remedial statutes.

28. It is settled law that any ambiguity in a taxing statute enures to the benefit of the assessee, but any ambiguity in the amnesty act or exemption clause in an exemption notification has to be construed in favour of the Revenue and amnesty/exemption has to be given only to those assesses who demonstrate that they satisfy all the conditions precedent for availing the amnesty/exemption. (See: *Commr. of Customs case*[*Commr. of Customs* v. *Dilip Kumar & Co.*, (2018) 9 SCC 1]).

29. For determining whether the Dtvsv Act is a taxing statute or an amnesty act or a beneficial/remedial act, one has to examine what is the objective and intent behind enacting the statute. The relevant portion of the Statement of Objects and Reasons of the Dtvsv Act 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 30-11-2019, the amount of disputed direct tax arrears is Rs 9.32 lakh crores. Considering that the actual direct tax collection in the Financial Year 2018-2019 was Rs 11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.
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> 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….*"

(emphasis supplied)

30. The Finance Minister of the Union of India in her Budget Speech 2020-2021 outlined the objective of the Dtvsv Act as under:

> "… *Under the proposed 'Vivad se Vishwas' scheme*, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31-3-2020. Those who avail this scheme after 31-3-2020 will have to pay some additional amount. The scheme will remain open till 30-6-2020…. *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process*…."

31. <u>From the aforesaid, it is apparent that Dtvsv Act, 2020 is a beneficial/remedial piece of legislation enacted by Parliament to reduce pendency of cases, generate timely Revenue for the Government and provide certainty and savings of resources that would be spent on the long drawn litigation process. It is a statute which provides benefit as it recovers the taxes for the department upfront without having to wait to succeed in the litigation which itself is uncertain. Dtvsv Act also provides a sop to an assessee, as it puts an end to the litigation and the assessee is relieved of payment of interest and penalty if the same were to imposed. The Dtvsv Act also benefits the society as it reduces litigation, acrimony, decongests the courts and relieves the system of unnecessary burden. Consequently, this Court is of the view that Dtvsv Act is neither a taxing statute nor an amnesty act. It is a remedial/beneficial statute</u>."

14. In view of the above, we allow the instant petition and quash the notifications of rejection impugned in the present petition. Since the petitioner has already deposited the entire disputed tax liability as computed in terms of the VSV Act, the Form 5 issued during the pendency of these proceedings is accorded finality.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 16, 2024/neha