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

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Date of Decision :25.11.2024

+ W.P.(C) 10733/2021

PRAYAS BUILDWELL PRIVATE LIMITED

.....Petitioner

Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal and Mr. Dushyant Agarwal,
Advocates.

versus

PR.COMMISSIONER OF INCOME TAX-7 & ANRRespondents

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant
Mann, JSC and Mr. Abhishek Anand,
Advts.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 18.12.2020 (hereafter *the impugned communication*) rejecting the petitioner's application (Form 1) filed under Direct Tax Vivad Se Vishwas Act, 2020 (hereafter the *VSV Act*) on the ground that there was no disputed income/penalty/interest relevant to assessment year (AY) 2009-10. The petitioner desirous of availing the benefit of the said Scheme had filed a declaration and undertaking in Form 1 and 2 of the VSV Act in respect of AY 2009-10 on 18.12.2020.



2. The petitioner is aggrieved by the rejection of the said application and denial by the concerned authority to accept the said declaration. According to the petitioner, the conclusion that there is no dispute is contrary to the plain language of the Scheme, and therefore, the impugned communication is liable to be set aside. The petitioner also claims the consequential direction holding that the petitioner is entitled to settlement of the disputed income and disputed tax in terms of the VSV Act.

FACTUAL CONTEXT

3. The petitioner had filed its return of income for AY 2009-10, on 30.09.2009, declaring 'Nil' income, both under the normal provisions of the tax as well as under Minimum Alternative Tax Provisions (hereafter *MAT Provisions*). The petitioner claims that it had earned income from the sale of rural agricultural land amounting to ₹18,50,79,348/-. However, since the same was exempt from the charge of tax, the petitioner had declared its income in respect of AY 2009-10 as 'Nil'.

4. The petitioner's return was selected for scrutiny and for assessment under Section 143(3) of the Income Tax Act, 1961 (hereafter *the Act*). The Assessing Officer (AO) had issued a notice dated 27.09.2010 under Section 143(2) of the Act raising certain queries for the purposes of determining of petitioner's total income for AY 2009-10. At that stage, on 15.02.2011, the petitioner filed a revised return of income computing an amount of ₹2,09,69,491/- on the book profit of ₹18,50,79,348/- as minimum alternative tax. Whilst in its original return, the petitioner proceeded on the basis that the income from sale of rural agricultural land is exempt both under the



normal provisions of the tax as well as for computing the minimum alternative tax under Section 115JB of the Act. However, on reflecting its return further, the petitioner was of the view that although the income from the sale of the agricultural land is exempt under the normal provisions, it was required to be accounted as book profits, which were chargeable to tax under Section 115JB of the Act.

5. The petitioner's revised return of income was accepted, and the AO passed an assessment order dated 26.12.2011. In the meanwhile, the AO also issued a notice under Section 221(1) of the Act calling upon the petitioner to show cause why a penalty of ₹1,94,38,290/- not be recovered.

6. The petitioner states that thereafter he had deposited the demand in instalments during the period from 29.10.2010 to 18.08.2014.

7. On 30.01.2012, the AO once again issued a notice under Section 221(1) of the Act for recovering penalty quantified at ₹ 1,60,09,263/-. Whilst the said proceedings were pending, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*] under Section 246A of the Act.

8. Concededly, the said appeal was highly belated as it was filed on 12.09.2018 and sought to impugn the assessment order made on 26.12.2011. The petitioner also filed an application dated 08.07.2019 seeking condonation of delay in filing the said appeal. However, the petitioner's appeal was not entertained and by an order dated 05.08.2019, the learned *CIT(A)* dismissed the petitioner's appeal.

9. The petitioner assailed the said order before the Income Tax Appellate Tribunal (hereafter *ITAT*) by filing an appeal (ITA No.7390/Del/2019) on



09.09.2019. While the said proceedings were pending, the Parliament enacted the VSV Act [Direct Tax Vivad se Vishwas Act, 2020 (Act no. 3 of 2020)], which came into force on 17.03.2020. At the material time, the petitioner's appeal before the learned ITAT (ITA No.7390/Del/2019) was pending. In order to secure a closure of the issue, the petitioner filed a declaration and undertaking in Form 1 and 2 on 18.12.2020, which was rejected on the same day.

10. However, subsequently, the learned ITAT passed an order dated 09.02.2023, whereby the petitioner's appeal (ITA No.7390/Del/2019) captioned *Prayas Buildwell Private Limited v. ITA* was allowed. The learned ITAT, set aside the order dated 05.08.2019 passed by the learned CIT(A), whereby the petitioner's appeal was set aside and the matter was remanded to the learned CIT(A) to consider the same on merits.

REASONS AND CONCLUSION

11. In the aforesaid context, the only question to be examined is whether the petitioner was entitled to apply under the VSV Scheme on the ground that a dispute was pending on the date when it filed its application.

12. The expression 'disputed penalty' and 'disputed tax' are defined under Section 2(1)(i) & (j) of the VSV Act. The said clauses are set out below:

"2. (1) In this Act, unless the context otherwise requires.-

(i) disputed penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where-

(i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;

(ii) an appeal has been filed by the appellant in respect of such



penalty;

(j) "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 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.”

13. Section 3 of the VSV Act sets out the computation of the amount payable in cases where a declaration is made to the designated authority in accordance with the provisions of Section 4 of the VSV Act in respect of ‘tax arrears’.

14. Section 3 of the VSV Act is set out below:

“3. Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, 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 shall be as under, namely:--

SI. NO	Nature of tax arrear	Amount payable under this Act on or before the 31 st day of March, 2020	Amount payable under this Act on or after the 1 st day of April, 2020 but on or before the last date
(a)	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	amount of the disputed tax.	the aggregate of the amount of disputed tax and ten per cent. of disputed tax: provided that where the ten per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such



			disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act .
(b)	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.	the aggregate of the amount of disputed tax and twenty-five per cent. of the disputed tax: provided that where the twenty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.	the aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax: provided that where the thirty- five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.
(c)	where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	twenty-five per cent. of disputed interest or disputed penalty or disputed fee.	thirty per cent. of disputed interest or disputed penalty or disputed fee:

Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the



appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.”

15. It is also relevant to refer to Sub-section (1) & (2) of Section 4 of the VSV Act, which are reproduced below:

“4. (1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.”

16. As noted above, Section 3 of the VSV Act refers to the benefit that would be available to an assessee, who makes a declaration in accordance with Section 4 of the VSV Act in respect of ‘tax arrear’. The expression ‘tax arrear’ is defined under Section 2(1)(o) of the VSV Act, which reads as under:

“(o) "tax arrear" 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. As is apparent from a plain reading of Sub-section (2) of Section 4 of the VSV Act, the same also specifies that on a declaration being made, any appeal which is pending before the Income Tax Appellate Tribunal or Commissioner (Appeals) in respect of the ‘disputed income’ or ‘disputed interest’ or ‘disputed penalty’ or ‘disputed fee’ and ‘tax arrear’, shall be deemed to have been withdrawn from the date on which a certificate under Section 5(1) of the VSV Act is issued.

18. In view of the above, the fact that an appeal was pending before the learned ITAT on the date when the petitioner made a declaration under the VSV Act, clearly indicates that on such date there was an issue of ‘disputed tax’.

19. The Revenue’s contention that there was no disputed income, penalty or interest relevant to AY 2009-10, is premised on the basis that the appeal preferred by the petitioner, was not maintainable. According to the Revenue, the petitioner’s appeal must be considered as *non est* since it could not be considered as a person aggrieved because its return was accepted. Consequently, the appeal filed by the petitioner was not maintainable.

20. The question whether the assessee whose income tax return was accepted, can file an appeal before the learned CIT (A) is a contentious issue.

21. Dr. Gupta, the learned counsel appearing for the petitioner, has referred to the decision of this Court in ***Commissioner of Income Tax vs. Bharat General Reinsurance Co. Ltd.:(1971) 81 ITR 303*** and has drawn attention of this Court to paragraph 11 of the said decision, which reads as under:



“It is true that the assessee itself had included that dividend income in its return for the year in question but there is no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quite apart from it, it is incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. We are, therefore, of the view that the income from dividend was not assessable during the assessment year 1958-59 but it was assessable in the assessment year 1953-54. It cannot, therefore, be taxed in the assessment year 1958-59.”

22. The learned counsel appearing for the Revenue has contested the said proposition. He submits that once a return filed by the assessee is accepted, there was no question of the assessee being aggrieved by the assessment order. He also relies on the decision of the Uttarakhand High Court in ***Deep Kukreti & Another v. Commissioner of Income-Tax and Another: (2015) 371 ITR 257*** in support of his contention and has drawn the attention of this Court to paragraph 8 of the said decision, which reads as under:

“8. Section 246A of the Income-tax Act, undoubtedly, provides for a right to appeal against an order of the nature, which we are dealing with. But, section 246A provides a right of appeal only to a person, who is aggrieved. We may also advert to section 96 of the Code of Civil Procedure. In section 96 of the Code of Civil Procedure, appeal is provided against the decrees as provided therein. Section 96 also provides, however, that no appeal will lie against a consent decree. But, it is well settled that, under section 96, an appeal can be maintained by any aggrieved party with the leave of the court. In section 246A, right of appeal is carved out only in favour of a person, who is aggrieved. We are of the view that these words are placed in the section with a definite purpose to



rule out appeals in cases, where the parties are really not aggrieved.”

23. In our view, it is not necessary for this court to decide the question that whether an assessee’s appeal was competent before the learned CIT(A), in this petition. Suffice it to note that the question whether the petitioner’s appeal before the learned CIT(A) was maintainable is a contentious issue, which was required to be adjudicated by the learned CIT(A), perhaps at a threshold stage. However, that does not detract from the fact that as on the date when the petitioner made its declaration under the VSV Act, the petitioner’s appeal against the assessment order on the basis of which demand of penalty had been raised, was pending. The proceedings to recover the said demand had been initiated. A plain reading of the provisions of the VSV Act indicate that no distinction is drawn as to the nature of the dispute that is pending. The eligibility to apply under the VSV Act, is not contingent on the merits of the maintainability of the appeal. Thus, if an appeal in respect of any disputed tax is pending before the learned ITAT or the learned CIT(A), the assessee would be entitled to file a declaration under Section 4 (1) of the VSV Act.

24. It is material to note that the petitioner had succeeded before the learned ITAT in its appeal and the order of the learned CIT(A) rejecting the petitioner’s appeal on the ground of limitation was set aside. The learned ITAT has issued specific directions for the learned CIT(A) to decide the dispute on merits. It is also material to note that the Revenue has not challenged the order dated 09.02.2023 passed by the learned ITAT. However, sensu stricto this may not be relevant at this stage. All that was necessary to be considered is whether on the date when the petitioner had



made declaration under Section 4 of the VSV Act, an appeal before the learned CIT(A) or the learned ITAT was pending. Undisputedly, the petitioner's appeal before the learned ITAT was pending on the said date.

25. We may also refer to the decision of the Bombay High Court in ***Govindrajulu Naidu v. Principal Commissioner of Income Tax, (Central-1), Mumbai: (2021) 127 taxmann.com 154 (Bombay)***. In the said case, the Court had, in the context of the VSV Act, referred to the definition of 'disputed tax' and held as under:

“18. The term "disputed tax" has been assigned specific definition in the Direct Tax Vivad Se Vishwas Act and would have to be appreciated in the context of Direct Tax Vivad Se Vishwas Act. It specifically provides, the disputed tax in relation to the assessment year or financial year means "Income-tax", wherein the appeal is pending before appellate forum as on the specified date, the amount of tax payable by the appellant, if such appeal were to be decided against him. Plainly reading, it would emerge that the disputed tax means income tax payable by the assessee under the provisions of the Income-tax Act, on the income assessed by the authority and where any appeal is pending before the appellate forum on the specified date, against any order relating to tax payable under the Income-tax Act. It does not presumably seem to ascribe any qualification to the matter/ appeal, save, that it should concern Income-tax Act. It would not be construed limiting and restricting it as is sought to be submitted on behalf of the respondents. It does not appear that the merits of the appeal/matter would be consideration to qualify for "disputed tax" under the Direct Tax Vivad Se Vishwas Act.

19. It would be pertinent also to refer to that "disputed income" has also been defined under clause (g) of section 2(1) to mean the whole or so much of the total income as is relatable to the disputed tax. Further the definition of "dispute" as appearing under rule 2(b) of the Direct Tax Vivad Se Vishwas Rules shows that "dispute" means an appeal/writ petition or special leave petition by the declarant before the appellate forum, etc.



23. In the present matter, the petitioner has categorically contended that the Revenue does not dispute that an appeal has been filed by the petitioner/ declarant before the appellate forum. As such, there exists a dispute as referred to under the Direct Tax Vivad Se Vishwas Act and the Rules. In such a scenario, the submission on behalf of the Revenue, the petitioner had offered the income and as such, the tax on the same cannot be considered as disputed tax, would not align itself with the object and the purpose underlying the bringing in of the Direct Tax Vivad Se Vishwas Act and the Rules thereunder. It would have to be considered that the enactment and the rules have been brought out with a specific purpose, object and intention to expedite realisation of locked up revenue providing certain reliefs to the taxpayers who opt for applying under the Act and such an option is not available to only a few persons. The scheme appears to be an open scheme with specific exclusions as are referred to in section 9 which is as under (page 128 of 422 ITR (St.)):

"9. The provisions of this Act shall not apply—

(a) in respect of tax arrear,—

(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees ;

(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration ;

(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India ;

(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear ;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) on or before the filing of declaration :

Provided that—

(i) such order of detention, being an order to which the



provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board ; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub- section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act ; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act ; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction ;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Prevention of Corruption Act, 1988 (49 of 1988), the Prevention of Money Laundering Act, 2002 (15 of 2003), the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts ;

(d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code (45 of 1860) or for the purpose of enforcement of any civil liability under any law for the time

being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income-tax authority ;

(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992) on or before the filing of declaration."

23. In the present matter, the petitioner has categorically contended that the Revenue does not dispute that an appeal has



been filed by the petitioner/ declarant before the appellate forum. As such, there exists a dispute as referred to under the Direct Tax Vivad Se Vishwas Act and the Rules. In such a scenario, the submission on behalf of the Revenue, the petitioner had offered the income and as such, the tax on the same cannot be considered as disputed tax, would not align itself with the object and the purpose underlying the bringing in of the Direct Tax Vivad Se Vishwas Act and the Rules thereunder. It would have to be considered that the enactment and the rules have been brought out with a specific purpose, object and intention to expedite realisation of locked up revenue providing certain reliefs to the taxpayers who opt for applying under the Act and such an option is not available to only a few persons. The scheme appears to be an open scheme with specific exclusions as are referred to in section 9 which is as under (page 128 of 422 ITR (St.)) :

"9. The provisions of this Act shall not apply—

(a) in respect of tax arrear,—

(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees ;

(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration ;

(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India ;

(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear ;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) on or before the filing of declaration :

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board



under section 8 of the said Act or before the receipt of the report of the Advisory Board ; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub- section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act ; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act ; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction ;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Prevention of Corruption Act, 1988 (49 of 1988), the Prevention of Money Laundering Act, 2002 (15 of 2003), the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts ;

(d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code (45 of 1860) or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income-tax authority ;

(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992) on or before the filing of declaration."

24. It is not the case of the Revenue at all that in the petitioner's case, the provisions of the Direct Tax Vivad Se Vishwas Act would not apply to the petitioner's case, being under the



exclusionary category referred to under section 9. The contention that the petitioner's tax liability cannot be construed as disputed tax, while going by the definition and the scheme of the Direct Tax Vivad Se Vishwas Act, when those do not make any distinction and categorize the appeals. The Act does not purport to go into the grounds of appeal or for that matter, inside the return.”

26. In this case as well, it is not the Revenue’s contention that the petitioner’s case falls in any of the exclusions mentioned in clauses of Section 9 of the VSV Act. As noted above, the only reason why the petitioner’s declaration under Section 4 of the VSV Act has been rejected is that there was no dispute regarding tax. This, as we noticed above, is unsustainable.

27. In view of the above, the impugned communication is set aside. The designated authority is directed to consider the petitioner’s declaration and undertaking in accordance with law as applicable on the date on which the declaration and undertaking was filed.

28. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 25, 2024

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