IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13316 OF 2024

Navjeevan Dharmi Associates .. Petitioner

Versus

Principal Commissioner of Income Tax
Pune-2 & Ors. .. Respondents

Mr. Sham V. Walve a/w Mr. Bhavik Chheda a/w Ms. Esha Malik a/w Mr. Swapnil Sangle, *Advocates for the Petitioner.*

Mr. Vikas Khanchandani, *Advocate for Respondents /Revenue*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: NOVEMBER 18, 2025

P. C.

1. The above Writ Petition has been filed challenging the Impugned Order dated 29th March 2024 passed by Respondent No. 1 under Section 264 of the Income Tax Act, 1961 (For short the **"IT Act"**). The Impugned Order can be found at page 345 of the paper book.

2. In this case, for A.Y. 2014-15 and 2015-16, the Petitioner did not file its Return of Income. On 1st June 2016, Respondent No. 5 introduced the *Income Declaration Scheme, 2016* [for short "***IDS, 2016***"] which provided an opportunity to persons to come forward and declare their undisclosed income. Under the IDS, 2016, the Petitioner, on 4th August 2016, applied and filed its Form No. 1 for A.Ys. 2014-15 and 2015-16. Under this scheme, the Petitioner was permitted to pay its tax liability in certain installments. The total tax liability of the Petitioner under the IDS, 2016 was calculated at Rs. 1,87,55,741/- and which was to be paid by 31st January 2020. It is undisputed before us that the Petitioner paid the first installment [under the IDS, 2016] of Rs. 25 Lakhs on 30th December 2017 and the second installment of Rs. 25 Lakhs on 15th February 2018. Though the Petitioner could have made the entire payment latest by 31st January 2020, no further payment was made by the Petitioner. Hence, the Petitioner was not entitled to any benefit under the IDS, 2016.

3. For A.Y. 2017-18 (the Assessment Year under consideration) the Petitioner filed its Return of Income on 15th February 2018. For this Assessment Year, on 31st March 2021, a

Notice under Section 148 of the Act came to be issued. The said Notice *inter alia* stated that the Assessing Officer had reason to believe that income chargeable to tax for A.Y. 2017-18 had escaped assessment within the meaning of Section 147 of the IT Act, 1961. He, therefore, proposed to re-assess the income for the said Assessment Year and called upon the Petitioner to file a return in the prescribed form for the said Assessment Year. The reason given for reopening the assessment [furnished to the Petitioner] was that the Petitioner had declared undisclosed income of Rs. 4,16,79,423/- [for A. Y. 2014-15 and 2015-16] under the IDS, 2016 but had failed to pay the total tax of Rs. 1,87,55,741/- by 31st January 2020. Since the Petitioner failed to pay the total tax liability under the IDS, 2016 by 31st January 2020, the said undisclosed income of Rs.4,16,79,423/- was to be brought to tax in A. Y. 2017-18.

4. After the Notice was issued under Section 148, a hearing was given to the Petitioner and an Assessment Order dated 27th March 2022 was passed by the Assessing Officer. Being aggrieved by the said Assessment Order, on 24th March 2023, the Petitioner preferred a Revision Application under Section 264 before Respondent No.1. In the Revision Application, there were three basic

grounds raised to challenge the Assessment Order. They were : (a) that the income should have been assessed @ 30% as “income from business” instead of 60% as levied by the Assessing Officer by invoking the provisions 69A of the Act; (b) the Petitioner should get credit for the taxes already paid under the IDS, 2016; and (c) the Petitioner should also get credit for all pre-paid taxes such as advance tax, TDS, and self-assessment tax, whilst computing the final liability of the Petitioner.

5. The 1st Respondent, after hearing the Petitioner, on 29th March 2024, rejected the claim of the Petitioner regarding the characterization of the income declared under the IDS, 2016, and also refused to give credit for the taxes paid by the Petitioner under the IDS, 2016. The application of the Petitioner was only allowed to the extent of credit sought for pre-paid taxes, in as much as, the Assessing Officer was directed to carry out a further verification in this regard, after considering the latest judicial precedents. It is aggrieved by this Order of the 1st Respondent that the present Petition is filed.

6. We have heard the learned Counsel for the parties at great length. We have also perused the papers and proceedings in the above Writ Petition. After setting out the facts and the arguments of the parties, we find that the 1st Respondent has given his due consideration to the facts as well as to the contentions raised before him. The discussion by the 1st Respondent can be found from paragraph 5 onwards of the impugned order. As far as the characterization of the income is concerned, the 1st Respondent came to the conclusion that the provisions of Section 69A of the Act get attracted when an Assessee fails to offer a satisfactory explanation about the nature and source of acquisition of money, bullion, jewelry, etc. found to be in the Assessee's ownership and not recorded in its books of account, if maintained by him. The 1st Respondent, after analyzing the facts on record, came to the conclusion that no ITR was filed by the Petitioner for A.Y.2014-15 and 2015-16. Further, no explanation about the sources of the undeclared income for the said Assessment Years was given by the Petitioner. The 1st Respondent also noted that during the re-assessment proceedings minimal compliance to the Notices issued under Section 142(1) was made by the Assessee. It was only at the fag end of the proceedings that an ITR was filed on 8th March 2022. The 1st Respondent noted that in the

said ITR filed, the total income of Rs.4,16,85,136/- was declared by it, but no supporting evidence about the sources of this income were given by the Assessee during the assessment proceedings or even during the revisional proceedings. The 1st Respondent also noted that self-assessment tax of Rs. 54 Lakhs and advance tax of Rs. 2 Lakhs was paid in respect of A.Y. 2014-15 while no amount was paid as tax for A.Y.2015-16.

7. After setting out these facts, the 1st Respondent did not find merit in the contention of the Petitioner regarding the characterization of income as pleaded by it. On this aspect of the matter, we find absolutely nothing wrong with the order passed by the 1st Respondent under Section 264 of the Act. The view taken by the 1st Respondent on this aspect, is certainly a plausible and a possible view which requires no interference by us under Article 226 of the Constitution of India. Consequently, the challenge laid to the Impugned Order on this aspect, is hereby rejected.

8. This now leaves us to deal with the issue as to whether the Petitioner was entitled to the credit of the installments paid by it under the IDS, 2016. The 1st Respondent was of the opinion that the

Petitioner was not entitled to these credits as the same were paid under the IDS, 2016. However, we find that this issue is squarely covered by a decision of a Division Bench of this Court in the case of ***Pinnacle Vastunirman Pvt. Ltd. Vs. Union of India and Ors* [(2021) 438 ITR 27 (Bom) ; (2021) SCC Online Bom 2347].** In this decision, a Division Bench of this Court has clearly held that if part installments are paid under the IDS, 2016, the Revenue has no authority to hold on to those amounts as that would be contrary to Article 265 of the Constitution of India. In the facts of the case in *Pinnacle* (supra), this Court in fact gave credit for the amounts paid under the IDS, 2016 when the Petitioner was availing of another scheme floated by the Government in the year 2020, being the *Direct Tax Vivad Se Vishwas Scheme, 2020*. The relevant portion of the decision in *Pinnacle* (supra) read thus:-

"10. Mr. Walve stated that there was no such notification available but the Government of India issued Circular No. 16 of 2016 dated May 20, 2016 containing Explanatory notes of provisions of the Income Declaration Scheme, 2016 as provided under Chapter IX of the Finance Act, 2016. Mr. Walve relied on paragraph 8 of the circular which reads as under ([2016] 384 ITR (St.) 144, 147) :

"8. In the following situations, a declaration shall be void and shall be deemed never to have been made :

(a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, i. e., November 30, 2016;

> (b) Where the declaration has been made by misrepresentation or suppression of facts or information.
>
> Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.
>
> Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances."

This circular, in effect, only says what is there in the scheme.

11. In the year 1997, the Government of India had announced a Voluntary Disclosure of Income Scheme, 1997 (VDIS) in which section 67(2) and 70 read as under :

> "67. (1). ..
>
> (2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme.. ..
>
> 70. Any amount of tax paid in pursuance of a declaration made under sub-section (1) of section 64 shall not be refundable under any circumstances."

12. The provisions of sub-section (2) of section 67 and section 70 are pari materia to section 187(3) and section 191 of the Income Declaration Scheme. In fact, under section 70 of Voluntary Disclosure of Income Scheme it says "... under any circumstances", which is not found in section 191 of the Income Declaration Scheme. The apex court in *Hemlatha Gargya v. CIT* [2003] 259 ITR 1 (S.C.); (2003) 9 SCC 510 considered the provisions of Voluntary Disclosure of Income Scheme. In that case, the appellants had paid the amount beyond the time limit prescribed and the court held that the time prescribed under Voluntary Disclosure of Income Scheme was mandatory in view of the language of the provision and that it cannot be extended by the court on any equitable considerations, but the court went on to hold that since the payments made beyond the time limit fixed would not entitle the assessee the benefit of the scheme, the Revenue should be directed to refund or adjust in accordance with law the amounts so deposited. Paragraphs 5, 6, 7, 9 and 18 reads as under (page 5 of 259 ITR) :

> "We are concerned with sections 66 and 67 and the language used therein, since the answer to the question framed at the outset would depend on the interpretation of the provisions of these sections. These sections provide :
>
> > '66. The tax payable under this scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax.
> >
> > 67. Interest payable by declarant.—(1) Notwithstanding anything contained in section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within the three months from the date of filing of the declaration with simple interest at the rate of two per cent. for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.
> >
> > (2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this scheme.'
>
> In the several appeals which have been filed before us, some of the appellants are the assessees. In each of their cases it is not in dispute that they had not paid the tax within the time prescribed either under section 66 or within the extended time under section 67(1). The period of default is varied and the explanations given in each of the assessees' cases are also different. All of them, however, have contended that the reason for non-payment was beyond their control. The assessees have relied upon those decisions referred to earlier which held that the period mentioned in section 67(1) was extendable. According to the assessees, the

purpose of the scheme was to unearth black money which was in circulation. The time fixed under section 67(1) is not rigid according to the assessees, not only because there was express provision for making payment of interest in case of delayed payment but also because the Revenue would be benefited by disclosure of undisclosed income, quick recovery of the same with payment of interest by March 31, 1998 (since the scheme was operative till that date), thus fulfilling the object of the Scheme. It is further submitted that because the Scheme was operative until March 31, 1998, therefore, it was open to a person to file a declaration on the last date, namely, December 31, 1997, and make payment by March 31, 1998, under section 67(1). It would be discriminatory and entirely arbitrary if the persons who had submitted their declarations voluntarily earlier were penalised for doing so by insisting on payment on an earlier date. The next submission of the assessees is that even if the provisions of section 67(1) were mandatory, nevertheless, the court could under certain circumstances dilute the severity of its operation, provided the assessees were acting bona fide. Reference has been made to the decision of this court in Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26 (S.C.) in this context. The assessees have also argued that the first decision in the field was the decision of the Punjab and Haryana High Court in Smt. Laxmi Mittal v. CIT [1999] 238 ITR 97 (P & H), where the High Court had held that the period fixed under section 67(1) was not immutable and that for sufficient reason the time could be extended. The Department had not chosen to challenge that decision and had accepted that interpretation. It is contended on the basis of the decisions of this court in Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 219 (S.C.) and Union of India v. Satish Panalal Shah [2001] 249 ITR 221 (S.C.) that the Revenue cannot pick and choose cases in which they would challenge a similar decision unless there was just cause. According to the assessees, there was no cause shown justifying the Department's decision to challenge the principle enumerated in Smt. Laxmi Mittal's case [1999] 238 ITR 97 (P & H), only in the case of a few assessees. It was submitted that in any case this court should not interfere under article 136 in those matters decided in favour of the assessees by the High Court. The final submission of the assessees is that the Revenue authorities could not be permitted to retain the payments made by the assessees under the scheme and contend at the same time that the assessees were not entitled to the benefit of the scheme. The Revenue could either accept the payment as having been made under the Scheme, and if not, refund the same to the assessees.

In some of the appeals, the appellants are the Revenue authorities. They have contended that the scheme did not form part of the Income-tax Act, 1961, but formed a self-contained code in which there was no provision whatsoever for extension of time in the event the period under section 67(1) lapsed. According to learned counsel appearing on behalf of the Revenue, the provisions of the scheme make it clear that the scheme envisaged the payment to be made first whereafter the declaration was to be filed with proof of such payment. It is only with a view to dilute the rigidity of this requirement that section 67 allowed the assessee to make payment subsequent to the making of the declaration but subject to making payment of interest at the rate of two per cent. per month up to a period of three months and not further. Apart from the reasoning adopted by the various High Courts in the decisions in favour of the Revenue, it has been contended that the language used in section 67(2) makes it amply clear that the period specified was mandatory. Even if there were any doubt, according to settled principles of interpretation no extension could be granted beyond the period of three months as specified under section 67(1). It has further been submitted that since there were conflicting decisions of the different High Courts there was sufficient cause for the Department to agitate the issue before this court. ***Finally, it is submitted that as far as the payments made by the assessees were concerned if any payment had been made but not in terms of the Scheme, clearly the Department could not retain such payment and would either have to refund it or set it off in accordance with the prescribed***

procedures available under the Income-tax Act, 1961

(emphasis supplied).

We are of the view that the submissions of the Revenue must be accepted. A plain reading of the provisions of the Scheme would show that the tax payable under the Scheme 'shall be paid' within the time specified is the general rule provided in section 66, namely, payment prior to the making of a declaration. The exception to this general rule has been carved out by section 67(1) which allows a declarant to file a declaration without paying the tax. This exception, however, is subject to two conditions, viz., (1) the payment of tax within three months from the date of the filing of the declaration together with, (2) the payment of simple interest at the rate of two per cent. for every month or part of a month. The period of interest is to commence from the date of filing the declaration and shall end with the date of payment of tax. It may be noted that under section 67(1) not only must these two conditions be fulfilled within the period of three months but proof of such payment must also be filed within the same period.

The use of the word 'shall' in a statute, ordinarily speaking, means that the statutory provision is mandatory. It is construed as such unless there is something in the context in which the word is used which would justify a departure from this meaning. There is nothing in the language of the provisions of the scheme which would justify such a departure. On the other hand, the provisions of section 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the scheme. In other words, the consequences of non-compliance with the provisions of section 67(1) relating to the payment have been provided. It is well- settled that when consequences of the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be

> interpreted as mandatory (see Maqbul Ahmad v. Onkar Pratap Narain Singh, AIR 1935 PC 85, 88).. ..
>
> As a consequence, in our view, the appeals preferred by the assessees must be and are hereby dismissed whereas the appeals preferred by the Revenue authorities must be and are hereby allowed. ***However, having held that the assessees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the Scheme, we direct the Revenue authorities to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the Scheme to the concerned assessees in accordance with law.*** *All the appeals are accordingly disposed of without any order as to costs*."

(emphasis supplied).

13. This court in an unreported judgment dated June 13, 2005 [Sajan Enterprises Vs. CIT in Writ Petition No.4132 of 1999 [2006] 282 ITR 636], following the judgment of the apex court in Hemalatha Gargya (supra), directed the Revenue authority to adjust the amounts already deposited by the assessees.

14. Similarly, in Patchala Seetharamaiah v. CIT [1999] SCC OnLine AP 495; [2000] 241 ITR 287 (AP) dealt with section 67(2) of the Voluntary Disclosure of Income Scheme and directed the Revenue to refund the amounts deposited. Paragraphs 7, 8 and 9 reads as under (page 289 of 241 ITR) :

> "Thus, from a reading of the aforesaid provisions and the scope and ambit of the scheme as contemplated, it is quite apparent that if one has to avail of the benefit under the scheme, he has to mandatorily comply with the requirements. It contemplates the payment of tax along with the declaration itself, but at the same time, making a provision for payment of tax at a later stage not beyond three months from the date of filing the declaration with interest. Further, sub-section (2) of section 67 stresses upon the mandatory requirement of payment of tax within the outer limit of time and in the event of any such non-payment of tax, the declaration

shall be deemed never to have been made under the scheme, i. e., it will be non est. Section 70 of the scheme contemplates that no amount of tax paid in pursuance of a declaration shall be refundable under any circumstances. Necessarily, it would only mean that the expression ‘declaration’ used in section 70 should be a declaration as contemplated by section 66 read with section 67(1) of the scheme. When the very scheme contemplates that a declaration without payment of tax is void and non est and the declaration filed by the assessee was not acted upon, the question of retention of the tax paid under such declaration will not arise. The Revenue cannot retain any amounts paid under a declaration falling within the mischief of section 67(2). There is no provision under the scheme whereby the Revenue can retain the tax so paid in respect of a declaration which is void and non est. In the absence of any such authority of law, the retention of tax contrary to the very scheme is in the teeth of article 265 of the Constitution of India. Therefore, the provision under section 70 of the scheme cannot have any application to a situation where the tax is paid beyond the prescribed period and, accordingly, the retention of the said tax by the Department is illegal and the petitioner is entitled to refund of the same (emphasis supplied).

This court in Shankarlal v. ITO [1998] 230 ITR 536 (AP), while considering the scope and effect of the scheme, has, on a consideration of section 70 and the limitations on the tax refund contemplated thereunder, held that if this is understood as forfeiting the tax paid in cases where the declarations are ineligible under section 64(2), such a forfeiture would be confiscatory and unconstitutional, unless it is properly qualified. It was further held (page 555) :

‘It appears to us that the intention of this section was only to state that there will be no cash refund of the tax paid in pursuance of the declaration made under sub-section (1). It will not, however, stand in the way of adjustment of the amount if the declaration itself is not acceptable as not falling under section 64(1)’. (emphasis1 supplied).

Therefore, in view of the above reasons, it cannot be said that the Revenue can retain the tax paid and the petitioner is not entitled for the refund.”

15. The Karnataka High Court in Smt. Atamjit Singh v. CIT [2001] 247 ITR 356 (Karn); [1999] SCC OnLine Karn 640 also while dealing with section 67 of the Voluntary Disclosure of Income Scheme directed the Revenue to refund the amounts deposited. The court held that due to failure of making the payment when the scheme provides that the declaration itself would be void and non est, the question of retention of tax paid under the declaration will not arise. The Kerala High Court in R. Ranganatha Reddiar v. ITO [2004] SCC Ker 612, also directed the Revenue to refund the amounts paid under the Voluntary Disclosure of Income Scheme in a similar situation.

16. ***Sub-section (3) of section 187 of the Income Declaration Scheme also categorically provides if the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the dates specified in sub-section (1), the declaration filed by him shall be deemed never to have been made under the Scheme. This would mean that the declaration will be non est. When the scheme itself contemplates that a declaration without payment of tax is void and non est and the declaration filed by the assessee would not be acted upon (because section 187(3) says the declaration filed shall be deemed never to have been made under the Scheme), the question of retention of the tax paid under such declaration will not arise. The Revenue cannot retain any amounts paid under a declaration which contemplated under the Scheme is deemed never to have been made. The Scheme does not provide for the Revenue to retain the tax so paid in respect of a declaration which is void and non est. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. This would mean there must be a law, the law must authorise the tax and the tax must be levied and collected according to the law***.

> **17.** ***In the absence of any such authority of law, a retention of tax contrary to the very Scheme cannot be permitted. Therefore, the provisions of section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid and accordingly the retention of the tax by respondent No. 1 is illegal***. At the time of the argument, counsel for the petitioner stated that the petitioner will be happy if rectified form 3 is issued by respondent No. 3 after giving credit to this amount of Rs. 82,33,874. The petitioner is entitled to an adjustment by giving credit to the amount of Rs. 82,33,874 paid under Income Declaration Scheme. Respondent No. 3 is directed to rectify form 3 issued under the Direct Tax Vivad Se Vishwas Act read with Direct Tax Vivad se Vishwas Rules, to give credit to this amount of Rs. 82,33,874 and issue fresh form 3, within two weeks from the day, an authenticated copy of this order is served upon respondent No. 3 by the petitioner. The petitioner to make payment of disputed tax in accordance with revised/rectified form-3 within a period of two weeks from the issuance of revised form 3.

(emphasis supplied)

9. In the light of the aforesaid decision in *Pinnacle*, we are of the view that the Petitioner would be entitled to credit of the tax paid by it under the IDS, 2016. As far as this aspect is concerned, we find that the order of the Commissioner is contrary to the law laid down by this Court and hence it is hereby set aside. As far as the issue of giving credit of advance tax, TDS, and self-assessment tax is concerned, the Assessing Officer has been directed to further verify and take into account the latest Judicial Precedents on this issue. In

other words, what the order directs is that advance tax, TDS, and self-assessment tax, paid by the Assessee, has to be verified by the Assessing Officer and thereafter give credit for the same whilst calculating the tax. These directions are also in line with the decision of this Court in the case of ***Kamla Chandra Singh Kabali Vs. Principal Commissioner of Income Tax*** **[(2022) 137 taxmann.com, 346 (Bom)]**.

10. In view of the aforesaid discussion, we pass the following order :-

:ORDER:

(A) As far as the challenge of the Petitioner to the characterization of income is concerned, we find no merit in the same and hence the order of the Commissioner on this aspect is upheld.

(B) As far as the issue of credit for tax paid under the IDS, 2016 is concerned, the Assessing Officer shall verify the tax paid under the IDS, 2016 and thereafter give credit for the same whilst computing the tax payable by the Petitioner for A.Y. 2017-18.

(C) Similarly, any advance tax, TDS or self-assessment tax paid by the Petitioner shall be verified by the Assessing Officer and thereafter credit of the same shall be given, if any, whilst computing the tax for A.Y. 2017-18.

11. The above Writ Petition is accordingly disposed of in terms of the aforesaid directions. However, in the facts and circumstances of the case there shall be no order as to costs.

12. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] [B. P. COLABAWALLA, J.]

Santosh Chabukswar-Court Steno.