IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3025 OF 2025

Khandelwal Construction Company .. Petitioner

Versus

Principal Commissioner of Income Tax-17,
Mumbai and Ors. .. Respondents

Mr.Dharan V. Gandhi a/w Aanchal Vyas, Advocates for the Petitioner.

Ms.Sushma Nagaraj (through V.C.) a/w Krithika Anand, Advocates for Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : AUGUST 25, 2025

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The Present petition is filed seeking the following substantive relief:

> *"(a) issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction under Article 226 of the Constitution of India,*

directing the Respondent No. 1 or his employees, subordinates, agents and successors in office to treat the payment of tax of Rs. 8,17,339/- to have been made on 30.09.2021 and the application filed by the Petitioner under the Direct Tax Vivad Se Vishwas Act, 2020 in Form No. 1 and 2 dated 31.12.2020 should be accepted and the Respondent No. 1 should be directed to issue Form No. 5."

3. For the AY 2014-15, assessment of the Petitioner was completed vide order u/s 143(3) of the Act dated 29.12.2016 making certain variations to the returned income. Against the said order, the Petitioner had filed an appeal before the Ld. CIT(A) -4, Mumbai on 30.01.2017.

4. In the meantime, the Vivad Se Vishwas Act ('VSV Act') was notified on 17.03.2020 for settlement of the pending appeals. The Petitioner, in order to seek closure of its appeal, filed an application under the VSV Act in Form No. 1 and 2 online on 31.12.2020. Respondent No. 1 issued Form No. 3 on 26.02.2021, wherein the application of the Petitioner in Form No. 1 and 2 was accepted and the total tax payable was shown to be Rs. 8,17,339/-.

5. The Petitioner submitted that the date for making payment under the VSV Act was extended due to the COVID pandemic. The last day for making the payment without any extra amount was notified to be 30.09.2021 vide Notification No. 94/2021 dated 31.08.2021.

6. The Petitioner submitted that it had paid the tax of Rs.8,17,339/- vide Challan dated 30.09.2021. However, it is the case of the Petitioner that the system of the bank i.e., State Bank of India, was not working properly due to quarterly closing of the bank, and the said challan was returned by the bank on the next working day. As a result, the deposit was considered by the bank to have been made on 01.10.2021. On 19.11.2021, the Petitioner filed Form No. 4 giving details of the tax paid. In the said form, it was stated that the date of deposit of the balance amount is 01.10.2021. However, the Petitioner did not receive Form No.5 acknowledging the application made under the VSV Act of the Petitioner, and neither has the Petitioner received any communication rejecting the application.

7. In the meanwhile, the appeal of the petitioner was pending and the Petitioner was receiving notices of hearing from the CIT(A).

8. Subsequently, according to the Petitioner, on approaching Respondent No. 1, it was orally conveyed that since, payment of

Rs.8,17,339/- was made after 30.09.2021, therefore, an additional amount had to be paid which came to Rs.1,83,038/-. Since, such amount was not paid upto 31.10.2021, therefore, the application made under VSV Act was not processed.

9. The issue in dispute in the present case is whether the payment of Rs. 8,17,339/- which is reflected as paid on 01.10.2021, should be considered as paid on 30.09.2021 and as a result, should the Petitioner be entitled to benefits of the VSV Act.

10. Mr. Gandhi, the learned Counsel of the Petitioner, submitted that payment of Rs.8,17,339/- was duly made on 30.09.2021 with the challan. However, it was due to a system issue on the side of State Bank of India, that the payment is shown as made on 01.10.2021. He submitted that to this effect, a letter dated 04.10.2021 has been issued by the State Bank of India, Malad East Branch, which is annexed at Exhibit G to the Petition. In the said letter, the Bank has clarified that the manual challan was not processed due to system error on 30.09.2021 and that such challan was returned to the customer on the next day due to quarterly closing. Thus, he submitted that since, the payment was made on 30.09.2021 and it was only due to the system issue at the end of the Bank that such payment was reflected as being made on 01.10.2021, such payment should be considered as being made on 30.09.2021 and that Respondent No. 1 should be directed to issue Form 5. In support of his contention, he relied upon the following decisions:

a. **Kartik Pravinchandra Mehta vs. Principal Commissioner of Income Tax reported in 293 Taxman 81 (Bom);**

b. **Shekhar Resorts Limited vs. Union of India reported in 2023 (68) GSTL 225 (SC);**

c. **Vardhman Chemicals vs. Commissioner, Central Excise & Customs reported in (2003) 263 ITR 460 (Bom).**

11. On the other hand, Ms.Nagaraj, the learned counsel for the Respondent, submitted that under the VSV Act, there is no provision for condonation of delay in making payment of the disputed tax by the Assessee. Ms.Nagaraj, after considering the Scheme and as an officer of the Court left the issue to the discretion of the Court.

12. We have heard the learned counsel for the parties and have perused the letter dated 04.10.2021 issued by the State Bank of India bearing number BR/SBI/GB/2121-22/47 annexed as Exhibit G to the Petition. It is clear by from the said letter that as the Bank was facing technical challenges, the challan of the Petitioner dated 30.09.2021 for an amount of Rs.8,17,339/- was returned to the Petitioner on 01.10.2021.

13. In these circumstances, in our opinion, payment of Rs.8,17,339/- should be considered to have been made on 30.09.2021 and Respondent No. 1 should be directed to issue Form 5 to the Petitioner. For the aforesaid direction, we derive support from the decision of this Court in *Vardhman Chemicals (supra)*. In the said case, this Court was dealing with a case under Kar Vivad Samadham Scheme, 1988, wherein though the cheque was tendered within the due date, but the same got cleared beyond the due date, and therefore, the Department refused to settle the appeal as the payment was not made within the due date prescribed. Findings of the Court in para 6 are relevant and are reproduced hereunder:

> *"6. A cheque is a bill of exchange drawn on a banker and payable on demand and a common way of paying a debt. It is not in dispute that the payment under the "Kar Vivad Samadhan Scheme 1998" could be made by cheque and if this is so, the cheque was delivered to the payee by way of demand on 10-2-1999 which can be seen from the endorsement on the Payee's Bankers i.e. State Bank of India, Chhaoni Branch on TR6 Challan, which shows that it was*

received as such by the Bankers of the respondents and, therefore, it operates as payment and will have to be construed as an extinguishment to that extent of the debt, though this is, no doubt, subject to a condition subsequent that if upon due presentation, the cheque is not paid, the original debt would revive. It is also not disputed that the account of the petitioner with his bankers Parmatma Ek Sevak Nagarik Sahakari Bank Limited, was debited on 12-2-1999 and it came to be credited in the account of the respondents with S.B.I. on 13-2-1999. Therefore, there could be no hesitation to hold that a cheque bearing to have been paid by the bank on which it is drawn has an effect of receipt. We, therefore, find that the assessee did make payment by cheque dated 10-2-1999 within the stipulated time limit prescribed under the 'Kar Vivad Samadhan Scheme 1998' and are entitled for a certificate of discharge."

14. The facts in the present case are similar, inasmuch as though the challan was tendered by the Petitioner on 30.09.2021, however due to system error due to quarterly closing, such challan was returned on the next day and the payment was made on the next day.

15. Moreover, this Court in *Kartik Pravinchandra Mehta (supra),* while dealing with a case of short payment under the VSV Act by Rs.300, held the following in para 9:

"9. The Petitioner had therefore admittedly not approached the authorities for depositing the balance amount within even the extended period up to 01st October, 2021. In our opinion the Petitioner never intended that its dispute with the department be not settled, nor would the Petitioner gain any unfair advantage by not paying the balance amount which was insignificant and small. In fact on the face of it it is clear that the payment which was required to be paid in terms of Form - 3 was short only by Rs. 300/-. This clearly appears to us to be an inadvertent error on the part of the Petitioner, which is neither deliberate nor

> *intentional. Considering the purpose and spirit of the act, which was not(h)ing (Sic) but to unlock the amount of disputed tax before various appellate fora as also put an end to litigation, we feel that issuing a writ of mandamus in the present case, directing the Respondents to accept the balance payment would be nothing but in furtherance of the object for which the Direct Tax, Vivad Se Vishwas Act was enacted."*

16. Thus, even considering the object behind the enactment of the VSV Act, we are of the opinion that delay of one day, and that too for no fault of the Petitioner, should not disentitle the Petitioner from the benefits of the scheme.

17. In light of the above discussion, we allow the petition in terms of prayer clause (a) reproduced earlier. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

18. 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**