

Neutral Citation No. - 2023:AHC:163751-DB

A.F.R.

Reserved on 18.7.2023

Delivered on 11.8.2023

Court No. - 3

Case :- WRIT TAX No. - 1510 of 2022

Petitioner :- Digvendra Pratap Singh

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Ami Tandon, Abhinav Gaur, Sr. Advocate, Vibhu Rai

Counsel for Respondent :- A.S.G.I., Naveen Chandra Gupta

Hon'ble Siddhartha Varma, J.

Hon'ble Arun Kumar Singh Deshwal, J.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Ami Tandon and Sri Abhinav Gaur, learned counsel for the petitioner and Sri Naveen Chandra Gupta, learned counsel for the respondent Department.

2. By means of the present writ petition, the petitioner has challenged the order dated 25.8.2022 passed by respondent No.3 by which the application of the petitioner for condoning the delay of three days in depositing the balance amount payable by him under the Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter referred to as “Act, 2020”), has been rejected.

3. Contention of learned counsel for the petitioner is that the Parliament enacted the Act 2020 for the resolution of disputed tax. As per the above Act, 2020, the declarant should submit his declaration u/s 4 of the Act, 2020 before the designated authority, and thereafter the designated authority, after receiving the declaration submitted by the declarant, will grant a certificate to the declarant containing particulars of the tax arrears and the amount payable after such determination. It is further contended by learned counsel for the petitioner that in pursuance of the scheme of the above Act 2020, for the resolution of the tax for the Assessment Year 2010-11, the petitioner submitted his declaration on 5.6.2020 as required u/s 4 of the Act, 2020. After submission of the aforesaid declaration certificate of designated authority in Form-III as per Section 5 of the Act, 2020 was also uploaded on the portal on 9.11.2020, which was also downloaded by the petitioner on the same day. As per this certificate, the petitioner was required to pay Rs. 18,67,137/- on or before 31.12.2020. Before the expiry of the last date, the Ministry of Finance issued a notification dated 27.10.2020, by which the last date of submission of the balance amount was extended up to 31.3.2021. Subsequently, the aforesaid notification dated 27.10.2020 was amended by the Central Government by issuing another notification extending the last date of payment of balance tax and lastly, by notification dated 25.6.2021, the last date for payment of balance tax was extended till 31.10.2021. On 31.10.2021, it was Sunday. Therefore, to deposit the balance tax as mentioned in the certificate issued by the designated authority u/s 5 of the Act, 2020, the petitioner dropped a cheque for the amount of Rs. 8,67,137/- (after adjusting Rs. 10 Lakh which was already deposited by him prior to issuance of Form - III) in the drop box of the bank on Sunday itself, but the receipt for the payment (Challan) was issued by the bank on 3.11.2021, on encashment of the above cheque.

4. It was further submitted by the counsel for the petitioner that petitioner also met with an unfortunate accident on 1.11.2021 in which

serious injuries were caused in his right knee and he was advised complete bed rest for a period of three days i.e. from 1.11.2021 to 3.11.2021 and in support of his claim, the petitioner has also annexed the medical certificate issued by the doctor as Annexure-8 to the writ petition. However, despite depositing the money in the account of the Income Tax Department, he was not permitted to submit/file Form-IV so as to entirely avail the benefit of the scheme under the Act 2020 because of the delay of three days in the generation of challan by the bank. Feeling aggrieved by the above action of the Income Tax Department, the petitioner moved an application before the Chairman of the Central Board of Direct Taxes on 15.11.2021 with a prayer that appropriate order be issued for condoning the delay of three days in depositing the balance amount towards his tax liability, but the above application was rejected by the impugned order dated 25.8.2022 on the ground that once last date has been mentioned in the notification to deposit the balance tax liability; therefore, the same cannot be extended.

5. Learned counsel for the petitioner challenged the impugned order dated 25.8.2022 on the ground that there was a delay of three days in depositing the balance amount of tax, firstly for the reason that the last date for depositing the balance tax fell on Sunday. Secondly, because of the injury in his knee he could not approach the bank from 1.11.2021 to 3.11.2021. In support of his contention, learned counsel for the petitioner heavily relied upon the judgement of Delhi High Court passed in ***Writ Petition (C) No. 3560 of 2022 (I.A. Housing Solution Pvt. Ltd. vs. Principal Commissioner of Income Tax-4)*** decided on 2.11.2022 in which the present scheme issued under the Act, 2020 was under consideration regarding extension of date. While allowing this petition, the Delhi High Court condoned the delay in depositing the balance amount of tax and directed the Income Tax Department to accept the balance amount as stipulated in Form-III on the ground that unforeseen and extraneous circumstances which were beyond the control of the

petitioner and resulted in delayed depositing the balance tax can be condoned considering the lockdown period on account of COVID-19 from 25.3.2020.

6. Learned counsel for the petitioner further relied upon the judgement of Apex Court in the case of ***Shekhar Resorts Ltd. vs. Union of India and others***, reported in ***(2023) 3 SCC 220***. In the above judgement, Hon'ble Apex Court, after condoning the delay, permitted the petitioner to deposit the balance outstanding on the ground that the petitioner had already submitted his declaration but he could not make the payment due to legal impediment, therefore, condoning the said delay in depositing the balance amount is not the extension of the scheme, but it is taking a remedial measure.

7. Per contra, learned counsel for the Income Tax Department had submitted that after getting the declaration of the petitioner, certificate u/s 5 of the Act 2020 in Form-III was issued to the petitioner on 9.11.2020, but the petitioner by skipping the dates for depositing balance outstanding, kept on waiting for the extension of date and even could not deposit the balance outstanding of tax till last extended date. In support of his contention, learned counsel heavily relied upon the judgement of Apex Court in ***SLP (C) No. 2116 of 2023 (M/s Ken Computek Pvt. Ltd. vs. Designated Committee (SVLDRS) and others)*** decided on 6.2.2023 in which the Apex Court observed that the last date to deposit the balance of tax, prescribed under the scheme under the Act, 2020, cannot be extended and confirmed the impugned judgement of the High Court and dismissed the writ petition of the petitioner on the ground that last date prescribed under SVLDR Scheme cannot be extended.

8. In reply to the averments of learned Standing Counsel, learned counsel for the petitioner has submitted that judgement relied upon by learned Standing Counsel deserves to be ignored being sub *silentio* as no finding was recorded in the aforesaid judgement regarding the issue

involved in the present petition. In support of his contention, learned counsel for the petitioner has relied upon the judgement of *Municipal Corporation of Delhi vs. Gurnam Kaur* reported in *(1989) 1 SCC 101*, *Arnit Das vs. State of Bihar*, reported in *(2000) 5 SCC 488* as well as the judgement of *Tungabhadra Industries Ltd. vs. Union of India and others*, reported in *(2000) 5 SCC 501*. In the above-cited judgements by learned counsel for the petitioner, the Apex Court observed that when a particular point is not consistently determined by the court, that does not form part of the ratio *decidendi* and is not binding.

9. From the pleadings of the parties and after perusal of the record, it appears that the Ministry of Finance, Government of India, has issued the “Vivad se Vishvash” Scheme in pursuance of the Act 2020. In section 2(l), the last date means such date as may be notified by the Central Government in the official gazette. As per Section 3 of the Act 2020, if the declarant for resolution, for resolution of disputed tax, files a declaration to designated authority in accordance with the provision of Section 4 in respect of tax arrears as mentioned in the chart before the last date, then the designated authority within 15 days from the date of receipt of declaration will determine the amount payable by the declarant and grant certificate to the declarant containing particulars of tax arrears and the amount payable after such declaration as per Form-III then the declarant shall pay the amount determined within 15 days from the date of receipt of certificate. Paragraph Nos. 3 and 5 of the Act 2020 are quoted as below:-

“3. Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before such date as may be notified, 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:—

Sl. No.	Nature of tax arrear.	Amount payable under this Act on or before the	Amount payable under this Act on or after the 1st
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		<i>31st day of December, 2020 or such later date as may be notified</i>	<i>day of January, 2021 or such later date as may be notified but on or before the last date</i>
<i>(a)</i>	<i>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.</i>	<i>amount of the disputed tax.</i>	<i>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.</i>
<i>(b)</i>	<i>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.</i>	<i>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.</i>	<i>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.</i>
<i>(c)</i>	<i>where the tax arrear relates to disputed interest or disputed penalty or</i>	<i>twenty-five per cent. of disputed interest or disputed penalty or disputed fee.</i>	<i>thirty per cent. of disputed interest or disputed penalty or disputed fee:</i>

	<i>disputed fee.</i>		
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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.

5. (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.

(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

Explanation.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant

or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.”

10. In the present case, the petitioner had filed his declaration as required u/s 3 of the Act 2020 before the designated authority before the last date, i.e. 5.6.2020 and on receiving the declaration of the petitioner, the designated authority had also issued a certificate as required u/s 5 of the Act, 2020 on 9.11.2020 after adjusting the tax paid by the petitioner and also informed him the tax payable by him about Rs. 18,67,137/- before 31.12.2020 and it was also mentioned in the above certificate that after 31.12.2020 the petitioner would be liable to pay the arrears of tax of Rs. 20,84,351/-. It further appeared from the record that the last date for depositing the arrears of tax was extended from time to time and lastly by notification dated 25.6.2021 till 31.10.2021. But on the last date i.e. 31.10.2021, it was Sunday; therefore, as per the petitioner's contention, he dropped the cheque in the drop box of the bank of Rs. 8,67,137/-, after adjusting Rs.10 Lakh already deposited by him on 4.2.2019, which was cleared on 3.11.2021 and duly deposited in the account of the Income Tax Department. And the delay of three days occurred because on 1.11.2021, the petitioner met with an accident and suffered a knee injury, and, therefore, he could not approach the bank to clear the cheque or credit the amount on 1.11.2021. For this delay of three days, the Income Tax Department did not accept the amount deposited by the petitioner under the “Vivad is Vishwas” Scheme. Thereafter, the petitioner's application for condonation of delay of three days was also rejected by the Chairman of the Central Board of Direct Tax by order dated 25.8.2022. The fact of dropping of cheque in the drop box as well as the accident of the petitioner was not disputed by the respondent in the counter affidavit. Now the fact remained is whether the delay of three days in depositing the arrears of tax can be condoned, considering the fact of unforeseen circumstances which were beyond the control of the petitioner.

11. In the judgement of the Delhi High Court passed in ***Writ Petition (C) No. 3560 of 2022***, a similar issue was under consideration. Delhi High Court, after considering the aforesaid issue, decided the same by judgement dated 2.11.2022 and observed that the delay in payment of arrears of tax is attributable to unforeseen and extraneous circumstances that were beyond the control of the petitioner; therefore, same is deserved to be condoned and directed the Income Tax Department to accept the declaration of the petitioner. Paragraphs No. 12 and 22 of the aforesaid judgement are being quoted as below:-

“12. This Court is further of the opinion that the delay in payments of the amounts, in the present cases are attributable to unforeseen and extraneous circumstances that were beyond control of the Petitioners. In fact, the country was intermittently in lockdown on account of the COVID-19 pandemic from 25th March, 2020. In recognition of these difficulties as pointed out hereinabove, the scheme was amended several times to extend the deadline for payment. Moreover, death of the Managing Director of the companies was an extraordinary and exceptional event which would render non-grant of relief on equitable consideration irrational.

22 This is also a fit case where no prejudice will be caused to the Respondents by accepting the prayer of the Petitioners. Rather, the Respondents benefit and achieve the purpose of the Scheme, namely, 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.”

12. Similarly, another judgement relied upon by the counsel for the petitioner in ***Shekhar Resorts Ltd. (supra)***, the Apex Court in paragraph 25 of the aforesaid judgement observed that if delay in depositing the arrears of tax in resolution of scheme is caused due to extraordinary circumstance like sickness of the declarant and there was nobody to look after his affairs, then the court cannot close its eyes and will permit the declarant to deposit the same. The Apex Court also observed that while condoning the delay caused due to extraordinary circumstances in depositing the arrears of tax in the resolution scheme, the court will not amount to extending the scheme, but it is a remedial measure, considering

the extraordinary circumstances of the declarant. Paragraphs No. 23, 24 and 25 are quoted below:-

“23. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the appellant cannot be punished for not doing something which was impossible for it to do. There was a legal impediment in the way of the appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC as, during the moratorium, no payment could have been made. In that view of the matter, the appellant cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.

24. Now so far as the observations made by the High Court to the effect that the High Court cannot, in exercise of powers under Article 226 of the Constitution of India extend the period under the scheme, 2019, to some extent the High Court is right. The High Court while exercising the powers under Article 226 of the Constitution of India cannot extend the scheme. However, in the present case it is not a case of extension of the scheme by the High Court; It is a case of taking remedial measures. It is not a case where the appellant did not make any application within the stipulated time under the scheme. This is not a case where the Form No.3 determining the settlement amount was not issued during the validity of the scheme. It is not a case where the appellant deliberately did not deposit the settlement amount and/or there was any negligence on the part of the appellant in not depositing the settlement amount within the stipulated time. As observed hereinabove it is a case where the appellant was unable to make the payment due to the legal impediment and the bar to make the payment during the period of moratorium in view of the provisions of the IBC.

25. In a given case it may happen that a person who has applied under the Scheme and who was supposed to make payment on or before 30.06.2020, became seriously ill on 29.06.2020 and there was nobody to look after his affairs and therefore he could not deposit the amount; such inability was beyond his control and thereafter, immediately on getting out of sickness he tried to deposit the amount and/or approached the Court - can the Court close its eyes and say that though there may be valid reasons and/or causes for that person's inability to make the payment, still no relief can be granted to him? There may be extraordinary cases which are required to be considered on facts of each case. The Courts are meant to do justice and cannot compel a person to do something which was impossible for him to do. ”

13. While in the judgement of M/s Ken Computek Pvt. Ltd. vs. Designated Committee (SVLDRS) and others, passed in SLP (C) No. 2116 of 2023, the Apex Court did not consider the issue of condoning the

delay in extraordinary circumstances but only observed that benefit of scheme cannot be extended from the time prescribed under the scheme.

14. In view of the law mentioned above, as well as considering the pleadings and perusal of record, this Court is of the view that a delay of three days in depositing the arrears of tax of Rs. 8,67,137/- deserves to be condoned, and the amount balance tax deposited by the petitioner be accepted by the respondents treating the same well within time as per the scheme of Act, 2020 and also the impugned order /letter dated 25.8.2022, passed by Central Board of Direct Tax, is hereby quashed.

15. Accordingly, the writ petition is **allowed**.

Order Date :- 11.8.2023

Vandana

(Arun Kumar Singh Deshwal,J.) (Siddhartha Varma,J.)