



2024:DHC:9020-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 18 September 2024

Judgment pronounced on: 22 November 2024

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W.P.(C) 3537/2021

NRA IRON AND STEEL PVT LTD

.....Petitioner

Through: Mr. Akhil Sibal, Sr.
Advocate with Ms.
Ranjana Roy Gawai, Ms.
Vasudha Sen, Mr. Vineet
Wadhwa, Ms. Deboshree
Mukherjee and Mr.
Krishnesh Bapat, Advs.

versus

INCOME TAX DEPARTMENT & ORS.

.....Respondents

Through: Mr. Indruj Singh Rai, SSC
with Mr. Sanjeev Menon,
JSC, Mr. Rahul Singh,
JSC and Mr. Anmol Jagga,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed by the writ petitioner- assessee, challenging the order dated 28.01.2021, passed by respondent No. 1, dismissing the revised application filed by the petitioner on the internet portal of respondent No. 1 seeking to avail the benefit of Direct Tax Vivad Se Vishwas Act, 2020 [“DTVSV Act”] for the Assessment Year [“AY”] 2009-10.

2. As per the facts succinctly captured in our order dated 19.03.2021, Petitioner-assessee fought the Revenue upto the Supreme



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Court in respect of the assessment made qua AY 2009-10. He had succeeded before the Commissioner of Income Tax (Appeals) [“CIT(A)”]. The Income Tax Appellate Tribunal [“ITAT”] vide judgment dated 16.10.2017 upheld the order of CIT(A).

3. The order of the Tribunal was upheld by this Court vide judgment rendered on 26.02.2018. However, the Special Leave Petition against the High Court order was allowed by the Supreme Court vide order dated 05.03.2019. The application preferred by the petitioner for recall of the said order was also rejected by the Supreme Court vide order dated 25.10.2019.

4. It is thereafter that petitioner-assessee preferred a review petition. The review petition was filed on 18.11.2019, which was dismissed in limine on 04.02.2020 i.e. after the specified date, which is 31.01.2020.

5. The DTVSV Act was notified by the Government of India on 18.03.2020. Consequently, on 26.12.2020, petitioner, in order to avail the amnesty scheme of the Government of India, filed a declaration/application under the DTVSV Act on the e-portal of respondent No. 1, but his application was rejected by respondent No. 1.

6. Petitioner filed a revised declaration/application under the DTVSV Act on 28.01.2021, but the same was also rejected vide the impugned order stating that “no appeal of the Department was pending in the Hon’ble Supreme Court on the specified date. It was decided much before that date. The review petition is not liable to be treated as an appeal under DTVSV Act. Moreover, review petition was filed by the assessee and not Department as claimed.



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7. Mr. Sibal, learned counsel for the petitioner has submitted that respondent has failed to appreciate not only the legislative intent and purpose of DTVSV Act but also the scope and ambit of a review petition being an extension of the appeal. It is submitted that review is statutorily different from an appeal and the jurisdiction of the Court includes the power to modify, review or recall its own order. It has been submitted that an Order-in-Appeal or in the SLP does not attain finality if the review petition is pending. As such, an Order-in-Appeal can always be reviewed and a different conclusion reached on the basis of the review.

8. It has been further argued that the petitioner was within his right to file a review against the order passed in the SLP, if the grounds mentioned under Order XLVII Rule 1 CPC are satisfied. Learned counsel has further submitted that as per the principles of purposive construction and the object of DTVSV Act, review petition should also be included within the definition of a pending appeal and under the definition of “appellant” under Section 2(1)(a)(i) and the petitioner should be held eligible to apply and avail benefits under the DTVSV Act. It has also been submitted that DTVSV Act came into force on 18.03.2020, while the review petition was filed on 18.11.2019 by the petitioner, and therefore, the present review application cannot, in any manner, be taken to be a colourable device on the part of the petitioner to avail the benefit of the scheme. It is stated that the review petition filed by the petitioner was bona fide and was pending as on 31.01.2020 i.e. the specified date under the DTVSV Act. The review petition being an extension of the appeal, the impugned order cannot be sustained,



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being contrary to the objective of DTVSV Act.

9. Per contra, learned counsel for the respondent has argued that no Appeal, Writ Petition or Special Leave Petition was pending as on the specified date i.e. on 31.01.2020 as the SLP had already been disposed of on 05.03.2019. Hence, upon a literal interpretation of Section 2(1)(a) and Section 2(1)(j), the petitioner is not an appellant under the DTVSV Act and therefore not eligible for seeking the benefit of the same. It is also submitted that a review petition is not an appeal, inasmuch as, the scope of review is different from that of an appeal. It is thus argued that the writ petition is devoid of merits and is liable to be dismissed.

10. Before adverting to the respective contentions urged by the learned counsel, it is necessary to note the intent and purpose for which the Act of 2020 was enacted by the Parliament. The Statement of Objects and Reasons appended to the Act of 2020 would throw light on this aspect, which reads as under:-

“Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs. 11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2. Tax disputes consume copious amount of time energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.

3. It is, therefore, proposed to introduce The Direct Tax Vivad Se Vishwas Bill, 2020 for dispute resolution related to direct taxes,



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which, *inter alia*, provides for the following, namely:-

(a) The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

(c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.”

11. A plain reading of Statement of Objects and Reasons clearly indicates that intent and purport behind the introduction of DTVSV Act was to reduce the tax disputes pertaining to Direct Taxes. While taking note of the Statement of Objects and Reasons, we had in the case of **M/s. Fresh Pet Private Limited v. Principal Commissioner of Income Tax, Delhi-1, 2024 SCC Online Del 6521**, observed as under:-

“17. As is manifest from the above, the legislation had taken into consideration the enormous amount of time and resources which were getting consumed on account of tax disputes and thus



clearly acting as a burden not only upon the Government but also the tax payers. It was noted that those disputes were also hindering the timely collection of revenue. The VSV Act thus came to be promulgated in order to address those concerns and to subserve the larger public interest of settling disputes and to free the Union from the burden of pursuing litigation. It thus sought to address and balance the interest of the assessee as well as the Revenue and formulated appropriate measures aimed at a swift resolution of pending tax disputes. In order to subserve those principal objectives and bring a closure to disputes pending at different hierarchical levels, the legislation defined “disputed tax” in Section 2(j) in the following terms:-

“(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(43 of 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 144-C 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



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issued any direction under sub-section (5) of Section 144-C 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 115-JAA or Section 115-D 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.

[*Explanation.*—For the removal of doubts, it is hereby clarified that the expression —disputed tax], in relation to an assessment year or financial year, as the case may be, shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income Tax Act.]”

18. As is apparent from the aforesaid definition of ‘disputed tax’, the VSV Act sought to resolve disputes pending at various levels including those engaging the attention of an appellate forum, a Dispute Resolution Panel or even where a dispute be pending before a Commissioner in revision. The VSV Act defined the expression “tax arrears” to mean the aggregate amount of disputed tax, interest, penalty or fee together with



interest chargeable or charged on the same. Both the concept of “disputed tax” and “tax arrears” as embodied in the legislation are of critical importance as would be evident from the discussion which ensues.

19. In terms of Section 3, an applicant desirous of resolution of a tax dispute stands enabled to submit a declaration before the Designated Authority setting out the nature of the tax arrears as well as the amount payable in connection therewith. In terms of Section 4 the moment an applicant comes to submit a declaration, all appeals pending either before the **Income Tax Appellate Tribunal**⁸ or the Commissioner of Income Tax (Appeals) at its behest are deemed to have been withdrawn from the date when a certificate under Section 5(1) comes to be issued by the Designated Authority. A declarant is also enjoined to withdraw all appeals pending either before any appellate forum as well as any writ petitions pending before the High Court or the Supreme Court in respect of the tax arrears immediately after the issuance of a certification under Section 5(1) and furnish proof of withdrawal thereof along with the intimation of payment spoken of in Section 5(2).

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22. The underlying objective of legislative forays seeking to accord amnesty, provide a closure to disputes and provide an avenue to assesseees’ to bring litigation to an end was lucidly explained by our Court in **MUFG Bank Ltd. vs. Commissioner of Income Tax**⁹ as would be apparent from the following observations appearing therein:-

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

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



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Such welfare, beneficent or social justice oriented legislation are also known as remedial statutes.

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

29. For determining whether the Dtvsv Act is a taxing statute or an amnesty act or a beneficial/remedial act, one has to examine what is the objective and intent behind enacting the statute. The relevant portion of the Statement of Objects and Reasons of the Dtvsv Act reads as under:

“....Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed As a result, a huge amount of disputed tax arrears is locked up in these appeals. As on the 30-11-2019, the amount of disputed direct tax arrears is Rs 9.32 lakh crores. Considering that the actual direct tax collection in the Financial Year 2018-2019 was Rs 11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. *This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities....”*

30. The Finance Minister of the Union of India in her Budget Speech 2020-2021 outlined the objective



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of the Dtvsv Act as under:

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

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

23. It is the aforementioned principles which would thus govern the interpretation that is liable to be accorded to the VSV Act. When tested on the aforesaid precepts, we come to the firm conclusion that the respondents have not only taken an extremely narrow and pedantic view while refusing to accord relief to the petitioner, their action goes against the fundamental grain of the legislation itself.

24. The VSV Act enables an assessee to seek resolution of disputes pending at various stages of the appellate and review tiers created under the Act on the prescribed date. Those proceedings would undoubtedly be concerned with challenges which an assessee may have instituted to an original order of assessment and would be logically confined to parts which would have been adverse to it. Those appeals and challenges would necessarily be in respect of either adverse findings or decisions made by the AO and which would have constrained the assessee to adopt remedial measures.



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This is further fortified by the manner in which the VSV Act defines and introduces the concept of a disputed tax liability and tax arrears. The statute is fundamentally aimed at settling matters and issues on which the assessee and the Revenue may have been litigating on the relevant date as opposed to those on which parties may have been ad idem and which may have never formed part of the ongoing litigation. It was the existing dispute which was sought to be laid to rest under the VSV Act. The statute was never envisaged to be concerned with issues on which there existed no debate or disagreement on the relevant date.”

12. Thus, we may conclude that the scheme was intended to give quietus to the tax legislation and collect the disputed taxes by granting waiver of penalty and interest.

13. The Constitution Bench of the Supreme Court in **Tinsukhia Electric Supply Company Ltd. Vs. State of Assam (1989) 3 SCC 709**, held that:-

“The Courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle of “UT Res Magis Valeat Quam Pereat.”

14. The cutoff date is mentioned as 31st day of January, 2020 by Notification No. 21/2020 dated 04.12.2020 issued by the Board exercising powers conferred under Sections 10 & 11 of the Act of 2020.

15. We have to test whether the case of the petitioner would fall within the four corners of Section 2(1)(j). Admittedly, as on the cutoff date, no Appeal, Writ Petition or Special Leave Petition was pending before the Appellate Forum. Mr. Sibal has drawn our attention to Clarification dated 22.04.2020, issued by the Central Board of Direct Taxes. As per response to Question-1, the proceedings initiated by the declarant by giving any notice for arbitration, conciliation or mediation are covered under the Act. Response to Question-2 clarifies that the



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assessee whose case is pending in arbitration, is eligible to apply for settlement under “Vivad Se Vishwas”, even if no appeal is pending. Reply to Question No. 61 provides that even if the Miscellaneous Application [“MA”] in respect of an appeal which was dismissed in limine was pending on before 31st January 2020, such MA is eligible.

16. It is apparent from the CBDT Circulars that pendency of arbitration proceedings and miscellaneous applications in certain cases, as on cutoff date would meet the requirement of Section 2(1)(j), even though no Appeal, Writ Petition or Special Leave Petition may be pending in any Appellate Forum in terms of Section 2(1)(j).

17. It is well settled law that Department is bound by the circulars/instructions and has to comply with the same. The Hon’ble Supreme Court has held in the case of **Paper Products Ltd. vs. Commissioner of Central Excise (1999) 7 SCC 84** that circulars/instructions issued by CBE&C are binding on the departmental authorities. They cannot take contrary stand and department cannot repudiate a circular on the basis that it was inconsistent with the statutory provision. Thus, the respondent is bound by the circular of CBDT issuing clarification.

18. Even though, the scope of review is limited and statutorily different from an appeal, the jurisdiction of the Court extends to the power to modify, review or recall its own order and that being so, the SLP cannot be said to have attained finality since the review petition was still pending on the cutoff date.

19. Moreover, the department itself has mellowed down the strict interpretation of Section 2(j) by including the pending arbitration



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proceedings and miscellaneous applications under the “Vivad Se Vishwas Scheme”. There is no reason why the pendency of the review petition after the dismissal of the Special Leave Petition should not get covered under “Vivad Se Vishwas Scheme”. The review petition will also partake the character of pending proceedings and therefore the petitioner should not have been non-suited or treated as ineligible for claiming benefit under DTVSV Act.

20. We may not forget that DTVSV Act is a beneficial legislation enacted with a definite purpose for the benefit of both the assessee and the department whereby the legislature has provided a mechanism under which pending income tax litigation is sought to be reduced as also ensuring that the revenue is generated in a timely manner for the Government. The DTVSV Act, in a sense, provides for a deviation from the strict application of tax laws towards achieving this purpose. If the provision in Section 2(j) and the Board Circular is to be construed in a restrictive manner as is contended by learned counsel for the respondent, the same will run contrary to the scheme of the Act of 2020.

21. We are conscious that review petition has since been dismissed by the Supreme Court but we have to consider the right of the petitioner as on the cutoff date, when admittedly, the review petition was still pending. As on the cutoff date, the possibility of reaching a different conclusion could not have been ruled out.

22. We are therefore unable to persuade ourselves to confine the benefit of the scheme to only such cases where an Appeal, Writ Petition or Special Leave Petition were pending. In our view, petition for review



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against the orders passed in the SLP would also be covered in the definition of “Disputed Tax” under Section 2(1)(j), thereby, making them eligible to take benefit of “Vivad Se Vishwas Scheme”.

23. In view of the above, we are of the considered view that the remarks/reasons given by the first respondent in the impugned order thereby rejecting the declaration in Form-1 & 2 filed by the petitioner on 28.01.2021, cannot be sustained, for the said reasons are not in consonance with the scheme of the Act and also do not conform to the intent and purpose of the legislation.

24. Accordingly, the writ petition is allowed and the impugned order dated 13.02.2021 is hereby set aside. The first respondent is directed to accept the revised declaration form filed by the petitioner on 28.01.2021 and process the same in accordance with DTVSV Act, 2020 and pass requisite orders in terms thereof. The pending miscellaneous applications, if any, shall stand closed in the light of this final order.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

November 22, 2024

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