

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

% Reserved on : 28th July, 2022
Pronounced on : 5th August, 2022

W.P. (C) 1163/2021

KAPRI INTERNATIONAL PVT. LTD. (IN LIQUIDATION)
THROUGH LIQUIDATOR Petitioner

Represented by: Mr.Rajesh Jain and
Mr.V.Tiwari,
Advocates.

versus

COMMISSIONER OF INCOME TAX - IV, NEW DELHI
.....Respondent

Represented by: Mr.Kunal Sharma,
Sr. Standing Counsel
with Ms.Zehra Khan,
Mr.S.Bhattacharyya,
Advocates

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. By way of this writ petition, the petitioner (a Company in liquidation, represented through the liquidator) assails the rejection dated 5th January, 2021 of Form I and II filed by petitioner on 20th March, 2020 for the assessment years (AY) 1984-85 and 1985-86 under the Direct Tax Vivad Se Vishwas Act, 2020 (the VSV Act)

read with its Rules, 2020, by the Principal Commissioner of Income Tax-IV, Delhi (CIT).

Factual Background:

2. The petitioner is a company incorporated in India in the year 1972 for manufacture and export of readymade garments etc. On 1st May, 1995, a winding up order for the petitioner was passed by this Court in Company Petition No.59/1994. Prior to the winding up order in 1987, the petitioner was assessed for Income Tax AY 1984-85 at Rs.89,53,788/-. Accordingly, in 2006, the Department of Income Tax moved Company Application no.857/2006 under Rule 9 of the Companies (Court) “Rules, 1959 read with Section 178 of the Income Tax Act” before this Court praying for directions to attach rent received/receivable for adjusting towards the payment of Income Tax dues of the petitioner. However, this application was dismissed as not being pressed.

3. On 5th November 2015, the Liquidator requested the respondent-CIT to inform about the status of demand outstanding against the petitioner under Income Tax Act and Wealth Tax Act. On 27th November, 2015, ITO Ward-14(I) informed that the total demand for AYs 1984-85 to 1999-2000 amounted to Rs.19,06,496/- and the Wealth Tax to Rs.8,88,652/-, totalling as Rs.27,95,148/-. On 17th December, 2015, this Court directed the liquidator to release this amount in favour of the Department and granted liberty to the Liquidator to seek waiver of interest and penalty.

4. While the CIT accorded waiver of penalties on 28th March, 2016 under Section 273 (A) (4), as regards the waiver of interest, the petitioner filed an application under Section 220 (2A) before the CIT for the AY 1984-85 and 1985-86 in March 2017. This application for waiver of interest was rejected by the CIT on 26th February 2018. The petitioner then filed an application being Co. Appl. 577/2019 disputing this rejection under Section 220 (2A) on which this Court issued notice on 28th May, 2019. However, the matter is pending adjudication. In the meantime, on 17th March, 2020, the VSV Act was notified by the Union of India to provide for '*resolution of disputed tax and for matters connected therewith or incidental thereto*'. The Rules to be framed under the VSV Act were also notified immediately thereafter.

5. The petitioner chose to apply under the VSV Act providing details of the amount payable under the VSV Act viz. Rs.10,47,891/- for AY 1984-85 (against the disputed interest of Rs. 41,91,567/-) and Rs.27,795/- for AY 1985-86 (against the disputed interest of Rs.1,11,180/-).

6. It is the case of the petitioner that on filing of the above declarations in prescribed forms in terms of Section 4 (1) of the VSV Act, the designated authority was required to issue certificate under Section 5 (1) intimating the particulars of tax arrears and the amount payable after such determination. Thereafter, the declarant would be required to withdraw the petition in the concerned court of law and intimate the payment to the designated authority under Section 5 (2) of the VSV Act.

7. However, the petitioner did not receive any response ever since filing on 20th March, 2020 and it was only on 5th January, 2021 that a message flashed on the portal of the department indicating that the declarations so furnished by the petitioner have been rejected. Since there was no reason indicated on portal for such rejection, the petitioner moved an application before the CIT for inspection of the files with a request to take out certified copies. This request was reiterated through an email dated 12th January, 2021 but no response was received. Yet another reminder was given by the petitioner on 18th January, 2021, however having received no response, the petitioner filed this writ petition praying for setting aside the rejection dated 5th January, 2021 communicated by the respondent on the portal and directing the respondent to issue certificate in respect of the Forms filed by the petitioner under the VSV Act.

8. The respondent-CIT filed a counter affidavit stating *inter alia* that the Co. Appl. 577/2019 filed by the petitioner against the order of rejection of waiver application, was primarily a petition under the Companies Act and not an ‘appeal’ within the meaning of VSV Act. It was further pointed out in the counter affidavit that the reasons for rejecting were available in e-filing database and stated as under:

“FAQ-13 does not treat waiver applications as appeals, therefore writ against that are also not appeals for VSV purpose.”

9. It was contended by the CIT that Section 2 (1) (a) of the VSV Act defines ‘appellant’ and Section 2 (1) (h) defines the ‘disputed interest’ and that neither was the petitioner an appellant nor its case was of disputed interest for the purposes of VSV Act. For this purpose, the CIT quotes the Central Board of Direct Taxes (CBDT) Circular No.9/2020 issued under the VSV Act clarifying that only the disputes relating to Income Tax Act are covered under the VSV Act and that interest waiver applications are not “appeals” under the VSV Act. The CIT further clarified that at the time of rejection of petitioner’s application, the reasons for rejection were not visible in the e-filing account but that was only a technical issue as reasons were in fact entered by the designated authority in the portal and the technical issue was resolved.

10. In the rejoinder, the petitioner contended that the word ‘appeal’ has not been defined in the VSV Act. Essentially, under the VSV Act, a declaration has to be filed under Section 4 in respect of ‘tax arrears’, and the amount payable is calculated under section 3. The expression ‘appeal’ was considered by the Hon’ble Supreme Court in ‘*State of Gujarat vs Salimbhai Abdulgaffar Shaikh & Ors.*’ (2003) 8 SCC 50 wherein the Supreme Court held that appeal is a proceeding taken to rectify a proceeding for reconsideration of a decision of a lower court for review / possible reversal or for a retrial and therefore, is a rehearing of a case by a superior court on both law and facts.

11. The petitioner contended that since this Court had given liberty to approach authorities seeking waiver of interest and penalties and while the penalty was waived under Section 273 (A)

(4) of the VSV Act, Section 220 (2A) being almost similar, interest ought to have been waived as well. All these issues were therefore disputed in the application before this Court. In relation to the CIT's contention that as per FAQ-13 waiver applications were not considered as 'appeal' within the VSV Act rubric, the petitioner contended that FAQ-13 dealt with a situation of a waiver application being pending in itself and not an appeal / proceeding decision on the waiver application. For the sake of convenient reference, FAQ-13 is reproduced hereunder:

“Question No.13- With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee had filed waiver application before the competent authority which is pending as on 31.1.2020? Will such cases be covered under Vivad Se Vishwas?”

Answer: No, such cases are not covered. Waiver applications are not appeal within the meaning of Vivad Se Vishwas.”

12. The petitioner further contended that interest had been computed under Section 220 (2) of the VSV Act which could not have been charged contrary to Rule 156 of the Companies Court Rules and accordingly, there was a dismissal of the waiver application leading to filing of Co. Appl. 577/2019 before this Court. This, according to the petitioner, was as good as an appeal and therefore, comes within the purview of 'disputed interest' as defined in Section 2 (1) (h) of VSV Act.

The relevant provisions:

13. Since the dispute between the parties relates to the scope and applicability of certain provisions of VSV Act and the Income Tax Act, it would be useful to extract those relevant provisions for convenient reference:

Income Tax Act, 1961

- *Section 220 (2): If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent. for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid:*
- *Section 220 (2A): Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said subsection if, he is satisfied that—*
 - (i) payment of such amount has caused or would cause genuine hardship to the assessee;*
 - (ii) default in the payment of the amount on which interest has been paid or was payable under the said subsection was due to circumstances beyond the control of the assessee; and*
 - (iii) the assessee has cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him*

Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received;

Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard...

The Direct Tax Vivad Se Vishwas Act, 2020

- 2 (h) "*disputed interest*" means the interest determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961), where--
 - (i) such interest is not charged or chargeable on disputed tax;
 - (ii) an appeal has been filed by the appellant in respect of such interest;

- 2 (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. [Explanation.-For the removal of doubts, it is hereby clarified that the expression tax arrear 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.]

- Section 3. Amount payable by declarant

Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the 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.....

- Section 4. Filing of declaration and particulars to be furnished

(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.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking

shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,--

(a) any material particular furnished in the declaration is found to be false at any stage;

(b) the declarant violates any of the conditions referred to in this Act;

(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

Direct Tax Vivad se Vishwas Rules, 2020

Rule 2 (b) *"dispute" means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, or application filed under section 264 of the Income-tax Act;*

Rule 2 (g) *the words and expressions used in these rules and not defined but defined in the Act or Income-tax Act, 1961 shall have the same meanings respectively as assigned to them in those Acts.*

Companies (Court) Rules, 1959

156. Interest

On any debt or certain sum, payable at a certain time or otherwise whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding four per cent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment.

Analysis:

14. Gravamen of the petitioner's case is that the declaration under Form I & II requesting for settlement of their tax arrears relating to disputed interest ought to have been resolved under the VSV Act since they fell within the scope of Section 3 read with Section 2(1) (h) and 2 (1) (o). The CIT however was also relying on definitional sections to contend that while tax arrears included disputed interest but the disputed interest was only in a case where "an appeal" has been filed and rejection of the waiver application prior in time by the department could not be considered an appeal and petitioner would not be an 'appellant'.

15. In the opinion of this court this contention of respondent is inherently flawed on various grounds.

Firstly, there is no definition of ‘appeal’ in the VSV Act for CIT to take support of any straitjacketed definition.

Secondly, what is instead defined was ‘dispute’, not in the VSV Act but in the Rules at Clause 2 (b) and includes an appeal, writ, special leave petition, arbitration, conciliation and mediation. This very expansive provision would necessarily be interpreted for its correct intent i.e. capturing various nature of disputes before the Court as well as those not before the Court but in adjudication to fall within the scope of this scheme. The definition of dispute in Rules does not deviate or is *ultra vires* the scope and intent of the VSV Act itself since the preamble to the VSV Act itself provides for resolution of disputed tax and most importantly for “*matters connected therewith and incidental thereto*”. It is therefore obvious that the intent of the VSV Act was to provide resolution of all nature of disputes relating to tax, penalty, interest, fee as determined under provisions of the VSV Act. The restrictive scope that the CIT is providing for definition of ‘dispute’ or even of an ‘appeal’ is not in synchronicity with the letter and spirit of the VSV Act that propounds an ameliorative scheme for resolution.

Thirdly, Section 2 (1) (o) which defines tax arrears includes distinct categories which are in the alternative and not cumulative viz., disputed tax, disputed interest, disputed fee, disputed penalty. Therefore, for the CIT to contend that Section 2 (1) (h) relates to a disputed interest on a disputed tax only and therefore the petitioner was non-suited since there was no disputed tax but only disputed interest, is not tenable. Provisions have to read purposively and in harmony with the scheme of the VSV Act and its intent. It is a well

settled principle of law that a statute should be given a purposive construction in order to give effect to its legislative purpose. This, not being a taxing statute but one which propounds a dispute resolution scheme for tax disputes would be amenable to a purposive construction.

Hon'ble Supreme Court in *Tanna & Modi v. CIT, Mumbai XXV And Ors.*, (2007) 7 SCC 434, held forth on this principle and which is instructive in this context as under:

22. *In Francis Bennion's Statutory Interpretation, purposive construction has been described in the following manner:*

“A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive and literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).”

(Reference is also made to Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group [(2006) 3 SCC 434] and National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700].)”

Fourthly, even as per the Statement of Objects and Reasons to the VSV Act, which is extracted below for convenience, the intent was to include all sorts of disputes even if pending before the Commissioner of Income Tax or the courts. The intent of the legislature was clearly to have an expansive inclusion rather than a restrictive exclusion. In fact section 9 of the VSV Act, which provides what is specifically excluded from the VSV Act [as also

the Explanation to Section 2 (1) (o)], does not include anything which relates to the case of the petitioner.

“2. Tax disputes consume copious amounts 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, 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.”

16. Reliance by the CIT on FAQ-13 is not tenable since as rightly argued by the learned counsel for the petitioner FAQ-13 relates to a pending waiver application before the department and not a proceeding emanating out of a decision by the department on a waiver application, which Co. Appl. 577/2019 was. This is also

obvious since if the department itself is seized of a demand by the assessee and has not passed a decision on it, then there is no ‘dispute’ as yet which has fructified. It may be noted that the definition of ‘dispute’ under the VSV Act / Rules is in the nature of adjudicating proceedings arising out of departmental decisions but not a proceeding pending before the department. In essence, any proceeding challenging a decision by the department in respect of tax, interest, penalty, fee etc. would come within the purview of a ‘dispute’ which would enable a party to approach the department for a resolution under the VSV Act. It may be useful to refer to a decision by the Hon’ble High Court of Bombay in *Sadrudin Tejani v. ITO & Anr.* (2021) SCC Online Bombay 567; (2021) 434 ITR 474 wherein it was held that “*the VSV Act is a beneficial legislation for both the Revenue and the tax payer*”.

Fifthly, even this Court in *Shyam Sunder Sethi v. Pr. Commissioner of Income Tax-10 and Others* 2021 SCC OnLine Del 3113 has set aside a similar order of rejection based upon an FAQ under the VSV Act, as bad in law.

17. Accordingly, attempt by the CIT to exclude a genuine disputant of tax liability, like the petitioner, from the possibility of settlement under the VSV Act is extremely hyper-technical. The interest as demanded under Section 220 (2A) which is 1% for every month of the period of delay as opposed to an application of Rule 154 of the Companies Court Rules which provides for an interest ceiling at the rate of 4% interest for companies in liquidation, is a huge statutory benefit given to companies in liquidation. It cannot

be contended that the respondent CIT is not qualified to account for the beneficial provisions for a company in liquidation.

18. In any event, that is not the ground of rejection of petitioner's declaration under the Act. The ground of rejection as stated that the company application filed by the petitioner in this Court was not an 'appeal' and therefore not within the scope of the VSV Act, which in light of above analysis cannot be accepted.

19. Therefore, this writ petition is disposed setting aside the rejection dated 5th January, 2021 of From I and II filed by petitioner on 20th March, 2020 by the Principal Commissioner of Income Tax-IV, Delhi (CIT) with directions to the CIT to re-examine/reassess the declaration filed by the petitioner under the VSV Act and decide on its merits in terms of procedure envisaged under the Act read with its Rules.

20. Writ Petition is accordingly disposed of.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 05, 2022/sm