



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1)D.B. Civil Writ Petition No. 4178/2021

Rakesh Garg Son Of Shri Kailash Chand Garg, Aged About 44 Years, Having His Address At 2, Pragati Colony, Near St. Stephen School, Madanganj, Kishangarh, Ajmer.

-----Petitioner

Versus

1. Principal Comissioner Of Income Tax, Ajmer, Having Its Office At New Central Revenue Building, Jaipur Road, Civil Lines, Ajmer.

2. Central Board Of Direct Taxes, New Delhi, Having Its Office At North Block, Central Secretariat, New Delhi - 110001 Through Its Chairman.

-----Respondents

Connected with

(2) D.B. Civil Writ Petition No. 4201/2021

Rakesh Garg Son Of Shri Kailash Chand Garg, Aged About 44 Years, Having His Address At 2, Pragati Colony, Near St. Stephen School, Madanganj, Kishangarh, Ajmer.

-----Petitioner

Versus

1. Principal Commissioner Of Income Tax, Ajmer, Having Its Office At New Central Revenue Building, Jaipur Road, Civil Lines, Ajmer.

2. Central Board Of Direct Taxes, New Delhi Having Its Office At North Block, Central Secretariat, New Delhi- 110001 Through Its Chairman.

-----Respondents

(3) D.B. Civil Writ Petition No. 4199/2021

Rakesh Garg Son Of Shri Kailash Chand Garg, Aged About 44 Years, Having His Address At 2, Pragati Colony, Near St. Stephen School, Madanganj, Kishangarh, Ajmer

-----Petitioner

Versus



1. Principal Commissioner Of Income Tax, Ajmer, Having Its Office At New Central Revenue Building, Jaipur Road, Civil Lines, Ajmer.
2. Central Board Of Direct Taxes, New Delhi, Having Its Office At North Block, Central Secretariat, New Delhi - 110001 Through Its Chairman.

-----Respondents

For Petitioner(s) : Mr. Siddharth Ranka
 For Respondent(s) : Ms. Parinitoo Jain through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

17/02/2022

All these petitions arise out of a common background. They have been heard together and would be disposed of by this common judgment. Facts being substantially similar may be recorded from writ petition No.4178/2021. Petitioner is an individual and is engaged in the business of manufacturing and trading of textile articles and also in the business of share and derivative trading. For the assessment year 2014-15 the assessee had filed the return of income on 30.11.2014 declaring total income of Rs.4,22,850/-. This included a short term capital gain of Rs.27,960/-. The revenue authorities were of the opinion that petitioner's speculative and non-speculative transactions were required to be calculated separately and the turn over of the assessee was more than the threshold limit prescribed for compulsory audit under Section 44AB of the Income Tax Act, 1961 (for short 'the Act') still the assessee had not filed the audit report. With respect to the declared income the revenue had no



dispute. However on account of above noted breach, proceedings for penalty under Section 271B under the Act were initiated. This culminated into a penalty order dated 26.06.2018 passed by the assessing officer imposing the penalty of Rs.1,50,000/-. The assessee's appeal was dismissed by the CIT (appeals) on 07.05.2019. Against this order the assessee had filed the appeal before Income Tax Appellate Tribunal on 09.12.2020. Along with the appeal the assessee had also filed an application for condonation of delay. The delay was condoned by the tribunal by an order dated 28.01.2021.

In the meantime the legislature framed the direct tax Vivad se Vishwas Scheme, 2020. It was brought into effect from 17.03.2020. This act contains provisions for settlement of pending direct tax disputes. The term appellant has been defined under Section 2(1)(a) which reads as under:-

“(a) “appellant” means—

- (i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;
- (ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;
- (iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 and the Dispute Resolution Panel has not issued any direction on or before the specified date;
- (iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;



(v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date;”

The term “declarant” has been defined in Section 2(1)(c) of the Act as to mean a person who files declaration under Section 4.

The term “disputed penalty” is defined under Section 2(1)(i) as to mean penalty determined in any case under the provisions of the Income Tax Act, 1961 where—

(i) such penalty is not levied or leviable in respect of disputed income of disputed tax, as the case may be;

and

(ii) an appeal has been filed by the appellant in respect of such penalty.

The specified date means 31st day of January, 2020 as per Section 2(n).

The term “tax arrear” has been defined in Section 2(1)(o) as to mean the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty levied or leviable on such disputed tax or disputed interest or disputed penalty or disputed fee as determined under the provisions of Income Tax Act.

Section 3 of the Act provides that subject to the provisions of the Act where a declarant has filed a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrear, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force the amount payable by the declarant shall be as provided in the table in the said Section.

The declaration as referred to in Section 3 has to be made before the designated authority in prescribed format as provided



in Section 4(1) of the Act. As per sub-section (2) of Section 4 upon filing such declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals) in respect of disputed income or disputed interest or disputed penalty or fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under Section 3 and 4 has been issued by the designated authority.

Section 5 of the Act pertains to time and manner of payment. Sub-section (1) of Section 5 provides that the designated authority shall within a period of 15 days from the date of receipt of the declaration by an order determine amount payable by the declarant. As per sub-section (2) of Section 5 the declarant has to pay the amount as determined under sub-section (1) within 15 days of the date of receipt of the certificate and intimate the details of such payments to the designated authority.

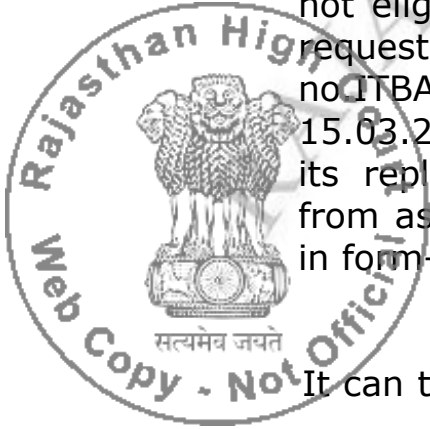
Sub-section (1) of Section 10 provides that Central Board of Direct Taxes made from time to time issue such directions or orders to the income tax authorities as it may deem fit. Sub-section (2) of Section 10 empowers the CBDT to issue general order or special order in respect of any class of cases setting forth the directions or instructions as to the guidelines, principles or procedures to be followed in relation to the act.

The petitioner was desirous of taking benefit of the said settlement scheme contained in the Act of 2020 and therefore applied before the designated authority on 09.09.2020. This application was rejected by an order dated 19.12.2020. After the delay condonation application filed by the petitioner was allowed by the tribunal he again filed an application before the designated



authority on 25.02.2021 which was rejected on 22.03.2021 in following terms:-

"The assessee is not eligible to avail benefit under VSVS as there was no appeal pending as on 31.01.2020. Further the appeal filed by assessee before Honble ITAT is not covered by the circular issued by CBDT dated 04.12.2020 as the appeal in this case has been filed after the issuance of this circular. Therefore assessee is not eligible to avail benefit under VSVS. Assessee was requested to offer her comment vide this office letter no ITBA/COM/F/17/2020-21/1031493613(1) DATED 15.03.2021. The assessee was requested to submit its reply by 17.03.2021. However no reply received from assessee. Hence the declaration filed by assessee in form-1&2 under VSVS is rejected."



It can thus be seen that the declaration of the petitioner was rejected on the ground that the CBDT circular dated 04.12.2020 does not cover his case. The entire controversy involved in this petition revolves around the correctness of the stand of the department. We may refer to the relevant portion of the circular dated 04.12.2020. This circular contains several clarifications in the form of questions and answers. We are concerned with the clarification issued by the CBDT in relation to question No.59. This question and the related answer of the CBDT reads as under:-

"Q.No.59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?

Answer: If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020."

Perusal of the Act would show that as per Section 3 and 4 of the Act a declarant can file a declaration to the designated

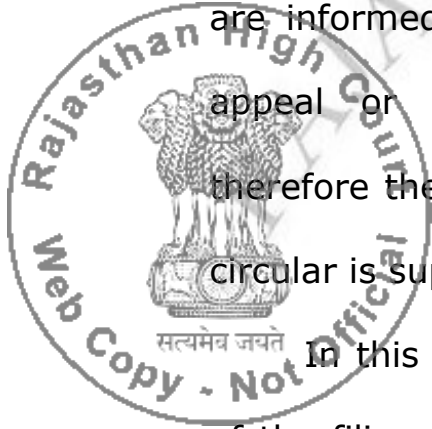


authority during the specified time upon which there would be reduction in the arrears of the tax, penalty, fee etc. as prescribed under the Act. The term "appellant" as noted earlier means a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income tax authority or by both, a person in whose case an order has been passed by the assessing officer or the CIT (Appeals) or Tribunal or by the High Court in a writ petition before a specified date and time for filing any appeal has not lapsed or a person who has filed objection before the dispute resolution panel under Section 144C of the Act of 1961 and the assessing officer has not issued any direction or a person in whose case the panel has issued a direction but the assessing officer has not passed an order or a person who has filed an application for revision under Section 264 of the Act of 1961 and such application is pending. It was in this context that the CBDT had issued a clarification in the context of question No.59 whether taxpayer in whose case the time limit for filing of appeal has expired before 31st January 2020 but an application for condonation has been filed is eligible to make a declaration or not? The clarification issued by the CBDT was that if the time limit for filing appeal expired during the period from 1st April 2019 to 31st January 2020 both dates included and the application for condonation of delay is filed before the date of issuance of this circular and the appeal is admitted by the appellate authority before the date of filing of declaration, such appeal shall be deemed to be pending as on 31st January 2020.

What hurts the petitioner is the portion of the clarification contained in the CBDT circular which provides that the application



for condonation of delay must have been filed before the date of issuance of circular. The petitioner fulfills all other conditions namely the time for filing appeal has expired during the period from 1st April 2019 to 31st Jan 2020, that he had filed an application for condonation of delay which was pending. He had also filed an appeal before the date of filing of the declaration. We are informed that there is no stage of formal admission of the appeal or condonation application before the tribunal and therefore the reference to this term of admission of appeal in the circular is superfluous.



In this context the question arises whether the specification of the filing of the application for condonation before the date of circular is sacrosanct as to destroy the right of assessee to apply for settlement if even though all other conditions are specified.

This question has been examined by several High Courts. The lead case is that of the Telangana High Court in case of **Boddu Ramesh v. Designated Authority reported in 2021 (6) TMI 1054** decided on 28.06.2021. The Division Bench of the High Court has dealt with an identical situation and in a detailed judgment come to the following conclusions:-

"30. It is to be noted that the date for filing of declaration under the Act of 2020 opting to avail the benefit of Scheme was originally notified as 30.03.2020, which was extended from time to time, including up to 31.12.2020.

31. Subsequently the time for filing declarations under the Act of 2020 was finally extended by Notification No.9/2021 dt.26.02.2021 up to 31.03.2021. So petitioners application filed on 08.02.2021, was with in time.

32. However, while providing answer to Q.No.59, in Circular No.21/2020 issued on 04.12.2020, the last date for filing declaration under the Act of 2020 was



considered as 31.12.2020, as notified by the Government at the relevant point in time.

33. It is only on 31.12.2020, the time for filing declarations under the Act of 2020 was extended for further period.

34. In the answer provided to Q.No. 59 in circular No 21/2020, it is stated that even "if the limitation for filing appeal has expired before 31.01.2020, i.e., the 'specified date', if an application for condonation of delay is filed on or before the date of issue of Circular, and the delay is condoned, the appeal should be deemed to be pending as on 31.01.2020".

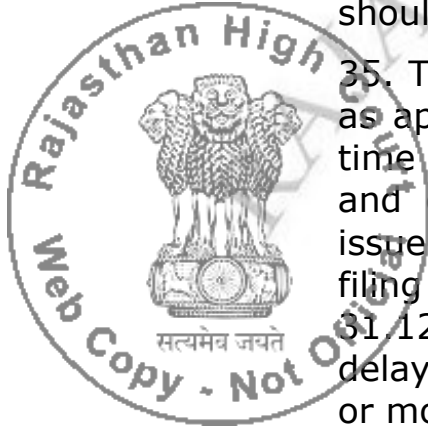
35. This would have to be considered, in our opinion, as applicable even in relation to further extension of time granted for filing declarations till 31.03.2021, and cannot be restricted either up to the date of issue of circular (ie. 04.12.2020) or even the date for filing declaration mentioned therein ((ie.) 31.12.2020, as there cannot be any differentiation in delay as it stands on the same footing be it of a day or more.

36. If Board circular is construed in such a restrictive manner, as is contended by respondents, the same would run contrary to the scheme of the Act of 2020 and the powers exercised by Board under Section 10 and 11 to issue directions or orders in public interest or to remove difficulties.

37. Therefore, we are unable to persuade ourselves to confine the benefit of "deemed pendency of appeal" only if an application for condonation is filed on or before 04.12.2020, as in our view no significance can be attached to the said date of issue of the circular, since, what is required to be considered is the pendency of the appeal with an application for condonation and the admission of the appeal as on the date of filing of declaration.

38. Thus, in our view, even after 04.12.2020, if an appeal is filed with an application for condonation of delay and the appeal is admitted by the appellate authority before the date of filing of the declaration, the benefit is to be extended, as otherwise, it would lead to creation of separate class of persons among the declarants, without any reasonable basis, resulting in discrimination thereby violating Article 14 of the Constitution of India.

39. In the present case, the petitioner having filed an appeal before Tribunal along with an application for condonation and the Tribunal, having heard the matter on 05.02.2021 by condoning the delay, it is to be construed as 'pending' appeal as on the date of filing of declaration on 08.02.2021. As a matter of fact, the Tribunal by order dt.15.02.2021, allowed the





appeal of the petitioner remitted the matter back by restoring the appeal on the file of CIT, for fresh adjudication.

40. The natural corollary of the Tribunal accepting the application for condonation is to the effect that the appeal before the Tribunal as having been filed in time, since, such condonation would relate back to the date by which time, the appeal against the order of CIT ought to have been filed by the petitioner. Once it is considered that the appeal before the Tribunal is deemed as having been filed in time, the same would have to be construed as having been filed before the "specified date", and thus, an appeal can be stated to be pending before the appellate forum and the petitioner would have to be considered as an 'appellant' as defined in Section 2(1)(a)(i) of the Act of 2020, and the tax as assessed would have to be considered as 'disputed tax', as defined under Section 2(1)(i)(B) of the Act of 2020.

41. Alternatively, it is to be noted that since, the last date for filing declaration had been extended up to 31.03.2021 and the Tribunal, having found cogent reasons to condone the delay and allowing the appeal filed by the petitioner and remitting the matter back to the CIT by its order dt.15.02.2021, would automatically revive and restore the appeal, which was dismissed by the CIT by his order dt.18.09.2019. Thus, by order of the Tribunal dt.15.02.2021, the appeal of the petitioner before of the CIT filed on 19.02.2019 would stand revived, and such restoring of appeal relates back the original date of filing, which is within the "specified date" as per Act of 2020.

42. Thus, considered from any angle, the declaration/application submitted by the petitioner on 08.02.2021 or the revised declaration/application submitted in Form 1 and 2 on 31.03.2021 cannot be considered as 'invalid' and liable for 'rejection'."

This judgment of the Telangana High Court in case of **Boddu Ramesh (supra)** was followed by the Division Bench of Gujarat High Court in case of **Maheshbhai Shantilal Patel V. PCIT dated 23.09.2021 reported in 2021 (9) TMI 1237**. The following observations may be noted:-

"35 Therefore, when the Circular has been issued by the CBDT on 04.12.2020 answering to one of the Frequently Asked Questions, it is not expected of the Revenue to contend contrary to the said guidelines

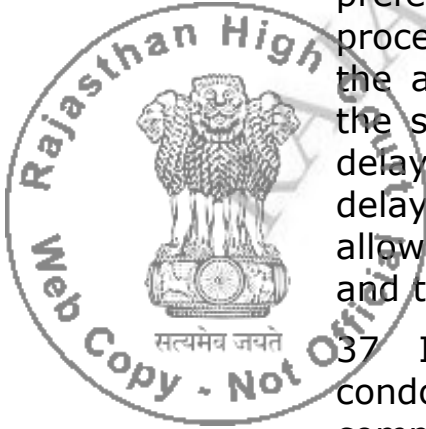


in the answer given in the Circular. Obviously, the Circular cannot override the express provisions of the Act and they are to be considered clarificatory in nature. They are basically meant to guide the officers and those, who execute the law in the field. They may not also bind the Court while it interprets statutory provisions.

36 However, the Court when regards and takes into consideration the fundamental principles along with the provision of Limitation Act, particularly Section 5 of the Limitation Act seeking condonation of delay in preferring any petition, appeal or litigation or proceedings, it is meant for exercise of discretion by the adjudicatory authority, which, if is satisfied with the sufficiency of cause, is expected to condone the delay. And, once the application for condonation of delay in any such matter is preferred and the same is allowed, it would be construed as if there is no delay and the appeal is preferred well within time.

37 In such eventuality to say that order of condonation of delay though is already made by the competent forum, that cannot be construed as pendency of appeal, would also amount to arguing against the well established principle of law. Even without delving much into the provisions of VsV Act, if other laws holding the field for decades and the principles carved out during this journey, are considered, the simple answer to the delay condoned by the appellate authority is that there was no delay at all in preferring the appeal and the appeal, which has been preferred by the petitioner would relate back to the original date of filing of appeal, which would in other words mean that under the VsV Act, the petitioner would fall into the bracket of the definition of appellant in whose case, the appeal preferred before the ITAT was pending as on the specified date i.e. 31.01.2020. It is also necessary to know that the last date for declaration was finalised as 31.03.2021 and in the case of the present petitioner, his declaration has been filed once delay was condoned before the was over. Had it been the case of the date of declaration having expired, prior to the delay having been condoned, answer possibly could be otherwise and not so simple, but, here the assessee's timely allowance of condonation of delay by ITAT on dated 23.02.2020 would not in any manner hamper his path of his case being considered under the VsV Act as an Appellant.

38 Resultantly, the petition is allowed, quashing and setting aside the order of rejection by the respondent authority on dated 30.03.2021. Consequently, the petitioner is entitled to the participation in the process under the VsV Scheme.



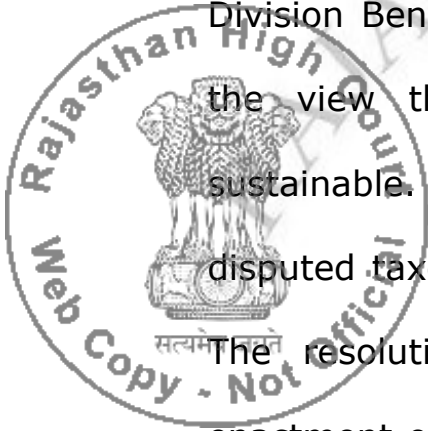


39 Let the declaration of the petitioner be accepted by the respondent within three (3) days from the receipt of the copy of this order and the petitioner shall follow the requirement of payment of tax as the last date is 30.09.2021. All consequential procedural actions shall be permitted by the respondent in accordance with law, to enable the petitioner to be considered under the VsV Act.”

Quite apart from these two well considered judgments of the Division Bench of two High Courts, independently also we are of the view that the stand taken by the department is not sustainable. To begin with the act was framed for resolution of the disputed taxes and the matters connected therewith and thereto. The resolution of disputed taxes is thus prime purpose of enactment of the act. We would therefore adopt an interpretation which would further this intention instead of restricting its scope. More importantly what the CBDT had done under its circular dated 04.12.2020 was to issue a clarification. A clarification by its very nature is declaratory. If for applicability of such clarification a cut off date is introduced it would run counter to the very concept of a clarification. If the CBDT circular is not read-down as to remove the rigors of the cut off date by holding that the same is not sacrosanct the same may suffer from vice of arbitrariness.

We are informed that the scheme for settlement was extended from time to time and finally the last extension ended on 31.03.2021. The interpretation that we have adopted therefore does not make a right of a person to seek settlement open ended. It has a terminal point of 31.03.2021 in any case.

In the result the petitions are allowed. Impugned orders dated 22.03.2021 are set aside. The declarations of the petitioners





shall be accepted. The same would be thereafter dealt with as provided under the Act.

It is pointed out to us that in the declarations which the petitioner has filed, he has referred to the pendency of appeals before CIT (Appeals) whereas undisputedly such appeals were pending before the ITAT. The designated authority shall not dismiss the declarations only on this ground and if so needed require the petitioner to correct the same.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

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NAVAL KISHOR /221,222 and 224



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