

**THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA : HYDERABAD**

WRIT PETITION NO.12038 OF 2021

Boddu Ramesh.

.. Petitioner

Vs.

Designated Authority under the Direct Tax Vivad Se Vishwas Act, 2020,
Office of Principal Commissioner of Income Tax, IT Towers, AC Guards,
Masab Tank, Hyderabad and two others.

.. Respondents

DATE OF THE JUDGMENT PRONOUNCED: 28.06.2021

SUBMITTED FOR APPROVAL:

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.VINOD KUMAR**

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordships wish to
see the fair copy of the judgment? | Yes/No |

M.S.RAMACHANDRA RAO, J

T.VINOD KUMAR, J

*** HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.VINOD KUMAR**

+ WRIT PETITION NO.12038 of 2021

% DATED 28th JUNE, 2021

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\$ Designated Authority under the Direct Tax Vivad Se Vishwas Act, 2020,
Office of Principal Commissioner of Income Tax, IT Towers, AC Guards,
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.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri C.V. Narasimham

^Counsel for Respondents : Sri A. Radha Krishna,

? CASES REFERRED:

¹ (1981) 4 SCC 173

² AIR 1975 SC 706

³ (1989) 3 SCC 709

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR
WRIT PETITION No.12038 of 2021

ORDER: *(per Hon'ble Sri Justice T.Vinod Kumar)*

In this Writ Petition, the petitioner is challenging the proceeding dt. 22.04.2021 issued by the 1st respondent, whereby the petitioner's revised declaration/ application dt. 31.03.2021 in Form 1 and 2, filed under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 (for short, 'the Act of 2020'), was rejected.

Back ground facts :

2. It is the contention of the petitioner that the 2nd respondent had completed the assessment of the petitioner for the Assessment Year 2011-12 under Section 143(3) read with Section 147 of the of the Income-Tax Act, 1961 (for short, 'the Act of 1961') on 28.12.2018; that aggrieved thereby, the petitioner filed an appeal under Section 246A of the Act of 1961 before the Commissioner of Income Tax (Appeals) (for short, 'the CIT'), on 19.02.2019; that the said appeal was dismissed by the CIT on 18.09.2019; that assailing the said order, the petitioner preferred further appeal before the Income Tax Appellate Tribunal (for short, 'the Tribunal') on 25.01.2021, along with an application to condone the delay in filing such appeal; and that the Tribunal heard the appeal of the petitioner on 05.02.2021 by condoning the delay and by order dt.15.02.2021, the Tribunal allowed the appeal and remitted the matter back by restoring the file to the CIT.

3. It is further contended by the petitioner that, in the interregnum, the Government of India had enacted the Act of 2020 dt. 17.03.2020; and

that the said enactment was intended to "provide for resolution of disputed tax and for matters connected therewith or incidental thereto".

4. It is the contention of the petitioner that in respect of the tax dispute relating to the Assessment Year 2011-12, he intended to avail the benefit under the Act of 2020, and accordingly, submitted application in the prescribed form on 08.02.2021. It is claimed that, in the said application filed on 08.02.2021, the petitioner had mentioned that an appeal against the order of the CIT had been filed before the Tribunal, bearing ITA No.87/H/2021.

5. The said application filed by the petitioner on 08.02.2021 under the Act of 2020 in Form 1 was rejected by the 1st respondent on 31.03.2021.

The reason for such rejection of the application is stated as under:

"In this case the CIT(A) dismissed the appeal on 18.09.2019 and hence, the time limit for filing further appeal expires on 18.11.2019 but the assessee filed the appeal on 25.01.2021. Since there was no appeal pending as on specified date, i.e., 31.01.2020, the declaration made is invalid and hence, the same is rejected".

6. The petitioner contends that immediately on receipt of the above said communication rejecting the declaration/application filed in Form 1, an e-mail communication was addressed by him, wherein it is stated that the petitioner had filed an appeal against the order of the CIT dismissing the appeal on 18.09.2019, before the Tribunal on 25.01.2021, along with an application for condonation of delay for non filing of the appeal in time. In the said communication, the petitioner also stated that the delay in filing the appeal was condoned by the Tribunal, the appeal was admitted, and by order dt. 15.02.2021, the Tribunal allowed the appeal and remitted the appeal back to the CIT; and thus, the appeal is pending for fresh adjudication. Hence, the appeal is to be treated as pending before the CIT

as on 31.01.2020 and accordingly, requested for accepting the application submitted in Forms 1 and 2 under the Act of 2020, and the same cannot be rejected on the ground that there was no appeal pending as on the specified date viz., 31.01.2020.

7. The petitioner, in the writ affidavit on oath, has stated that the 1st respondent, on being contacted, had informed the petitioner that there is no mechanism provided for withdrawing the rejection order passed or rectifying the same, and advised the petitioner to resubmit Forms 1 and 2 afresh.

8. The petitioner thereafter re-submitted declaration/application under the Act of 2020 in Form 1 and 2, on 31.03.2021, opting to settle the dispute pending re-adjudication before the CIT, pursuant to the order of the Tribunal dt.15.02.2021. The said application submitted by the petitioner on 31.03.2021 was once again rejected by the 1st respondent on 22.04.2021. The reason of such rejection is stated as –

“the assessee filed revised application on 31.03.2021.” As per the DTVSV, there should be an appeal pending before any of the appellate authorities as on 31.01.2020. Since in this case, no appeal is pending as on 31.01.2020, the application filed is invalid and accordingly rejected.”

Contentions of Petitioner :

9. Learned counsel for the petitioner would contend that having regard to the scheme of the Act of 2020 and various clarifications issued by the Central Board of Direct Taxes in exercise of powers conferred under Sections 10 and 11 therein from time to time, the appeal filed by the petitioner before the Tribunal, even though with an application for condonation of delay, has to be considered, as dispute pending as on the “specified date” under the Act of 2020.

10. It is further contended that the Tribunal on 05.02.2021 had accepted the application filed by the petitioner seeking to condone the delay in filing the appeal, and took up the appeal for hearing for adjudication on merits, and ultimately on 15.02.2021 the appeal was allowed and was remanded back to the CIT for re-adjudication. Thus, it is contended that upon the delay in filing being condoned, by implication, the appeal would have to be considered as having been filed in time. Once, the appeal before the Tribunal is considered as having been filed in time, it implies that the appeal was pending before the appellate forum as on the "specified date" i.e., 31.01.2020. Therefore, the reason assigned by the 1st respondent, to reject the declaration of the petitioner under the Act of 2020 is vitiated.

11. Learned counsel for the petitioner would also contend that the Central Board of Direct Taxes (for short "Board"), in exercise of powers conferred under Section 10 and 11 of the Act of 2020 has issued Circular No.21/2020 dt.04.12.2020, providing clarifications relating to the Act of 2020, in the form of questions and answers. By the answer to Q.No.59, it is stated :

'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 of delay 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.'

12. Placing reliance on the answer as provided to Q.No.59, the learned counsel contends that having regard to the purpose for which the Act of

2020 was enacted, the benefit to seek for resolution of pending dispute is extended even where the appeal has been preferred with condonation of delay, and is pending before the appellate authority, and in all such cases the appeal will be deemed as pending as on 31.01.2020. However, the benefit is sought to be restricted only to the applications for condonation of delay filed in such appeals before the date of issue of this Circular, i.e., dt.04.12.2020, which restriction, in the submission of the learned counsel for the petitioner, has no basis or any sanctity apart from being discriminatory and violative of Articles 14 and 19 of the Constitution of India.

13. Learned counsel for the petitioner would further contend that if the intention of the Board as per the circular was to extend the benefit in respect of only appeals where the time limit for filing appeal expired between 01st April, 2019 to 31st Jan,2020, such benefit has to be extended to all appellants uniformly,(i.e.,) whoever seeks to file declaration/application under the Act of 2020 falling within the above period, and it cannot be restricted only to appeals where application for condonation is filed up to the date of issue of circular on 04.12.2020. Therefore, it is contended that the petitioner, having filed declaration/application on 08.02.2021 seeking resolution of the pending dispute under the Act of 2020, and having regard to the fact that by the said date, the appeal filed by the petitioner was pending before the Tribunal along with application for delay condonation, the petitioner would have to be considered as eligible and entitled to avail the benefit under the Act of 2020. Thus, it is contended that the reasons assigned by the 1st respondent in rejecting the declaration filed is contrary to the object sought to be achieved by Act of 2020 and the circulars issued thereunder.

Contentions of respondents :

14. Counter-affidavit is filed on behalf of respondents.

15. *Per contra*, learned Senior Standing Counsel appearing for the respondents would submit that the declaration/application filed by the petitioner either on 08.02.2021 or 31.03.2021 cannot be considered for the reason that no appeal was pending on the "specified date", i.e., 31.01.2020. It is contended that, as per the Act of 2020, in order to be eligible to avail the benefit of the scheme and file declaration, there should be a dispute pending before any of the authorities as on specified date i.e., 31.01.2020.

16. Learned Senior Standing Counsel would contend that though the petitioner had filed appeal before the CIT on 19.02.2019, the same was dismissed on 18.09.2019. As the petitioner did not take any further steps by carrying the matter in appeal to the next authority within the time prescribed or thereafter, as such, as on 31.01.2020, no appeal is pending against the order of the CIT at the next level, i.e., before the Tribunal. It is only after a lapse of more than one year three months that the petitioner chose to file the appeal before the Tribunal along with application for condonation and such appeal cannot be taken to be pending on 31.01.2020, which is the "specified date".

17. Learned Senior Standing Counsel would further contend that, since, the scheme is in the nature of conferring benefit, and so there has to be strict adherence to the conditions specified therein. As there was no appeal pending on the specified date mentioned in the Act of 2020, the declaration filed by the petitioner on 08.02.2021 mentioning that an appeal is pending before the Tribunal on the "specified date" cannot be accepted, and thus, the reason assigned by the 1st respondent while

rejecting the declaration form-1 is valid and does not call for any interference.

Consideration by the Court :

18. We have considered the submissions made by the respective learned counsel.

19. Before advertng 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 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 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.11.3 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. More over, 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 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 31st 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 re-assessment 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 31st day of March, 2020 and for the payments made after 31st day of March, 2020, but on or before a date notified by the Central Government, the amount payable shall be increased by 10% of the 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 31st day of March, 2020. If the payment is made after 31st day of March, 2020, but on or before the date notified by the Central Government, the amount payable shall be increased to 30% 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."

20. A reading of the statement of objects and reasons would indicate that the intent and purport behind the introduction of the Vivad Se Vishwas Bill, 2020 (Act of 2020) was i) to reduce tax disputes pertaining to direct taxes, ii) the staggering disputed direct tax arrears, nearly as equal to nations one year direct tax collections of the year 2018-19. This was the cause of concern which was sought to be addressed by the Government with the introduction of the said Bill, which later, on receiving the assent of the President of India had become the Act of 2020 w.e.f. 17.03.2020.

21. Further, the intent of the Presenter of the Bill, i.e., the Hon'ble Finance Minister, was to reduce tax litigations, as there is a huge pendency of direct tax cases before various appellate forums. The tax payer in whose cases the appeals are pending before various forums can make use of the scheme and benefit, as he is required to pay only the amount of disputed taxes and would get complete waiver of interest and penalty. The relevant portion of the Budget Speech of the Hon'ble Finance Minister made on 1st February 2020, while placing the Bill before the Parliament, reads as under:

"Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sub Ka Vishwas scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums, i.e., Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax, Sub Ka Vishwas for reducing litigations even in the direct taxes.

Under the proposed Vivad Se Vishwas scheme, a taxpayer would be required to pay only the amount of disputed taxes and will get complete waiver of interest and penalty provided he pays, by 31st March, 2020. Those who avail the scheme after 31st March 2020, will have to pay some additional amount. The scheme will remain open till 30th June 2020.

Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.

I hope the taxpayers will make use of this opportunity to get relief from vexatious litigation process."

22. From a reading of the objects and reasons as appended to the Bill and the speech of the Mover of the Bill, it would be clear that the pendency of litigation in relation to direct taxes before various forums was considered as a vexatious litigation process. Further, it would also be clear that the Government intended to free up the revenues which were

blocked on account of the tax disputes pending consideration in appeals before various forums.

23. It is trite law that the speech of Mover of Bill is very relevant for interpreting a new law, as held by the Supreme Court in ***K.P.VARGHESE V/s. INCOME TAX OFFICER, ERNAKULAM***¹.

24. Thus, it would be safe to conclude that the scheme was intended to give a quietus to huge pending direct tax litigation either at the behest of the assessee or by the Department and collect only the disputed taxes by granting waiver of penalty and interest. If the above object is taken into consideration, the Act of 2020, as enacted, would have to be considered as a beneficial piece of legislation.

25. Once a legislation is considered as a beneficial piece of legislation, the interpretation of the same should be in such a manner which would go to achieve the object for which the same was enacted.

26. The Hon'ble Supreme Court in ***COMMISSIONER OF SALES TAX V/s. MANGAL SEN SHYAM LAL***², held that,

"a statute is supposed to be an authentic repository of the legislative will" and the function of a Court is to interpret it 'according to the intent of them that made it.' From that function, the Court is not to recile. It has to abide by the maxim, "ut res magis valeat quam pereat", lest the intention of the Legislature may go in vein or be left to evaporate into the thin air.

27. A Constitution Bench of the Hon'ble Supreme court in ***Tinsukhia Electric Supply Co. Ltd. V. State of Assam***³, 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

¹ (1981) 4 SCC 173

² AIR 1975 SC 706

³ (1989) 3 SCC 709

construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'."

28. By applying the principles inferred from the settled position of law as above, to the facts of the present case, it is to be seen that the Act of 2020 is intended to apply to all direct tax disputes which are pending at various levels, before the "specified date", as defined in Section 2(n) of the Act of 2020, i.e., 31st day of January, 2020.

29. Though the cut-off date is mentioned as 31st day of January 2020, by Notification No.21/2020, dt. 04.12.2020, which has been issued by the Board exercising powers conferred under Sections 10 and 11 of the Act of 2020, it has been stated that even in respect of appeals where time for filing appeal has expired during the period 1st April 2019 to 31st January 2020, and an application for condonation of delay is filed before the date of issue of Circular No.21/2020 on 04.12.2020, and the appeal is admitted before the filing of declaration, such appeal is to be treated as deemed pending as on 31st January 2020.

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)(j)(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'.

43. Further, as noted above, the Act of 2020 is a beneficial piece of legislation and the benefit under such legislation should enure to the benefit of the assessee and cannot be denied by taking hyper-technical view.

44. In view of the above, this Court is of the considered view that the remark/reason given by the 1st respondent in rejecting the declaration in Forms 1 and 2 filed by the petitioner on 31.03.2021 as well as on 20.02.2021 cannot be sustained, as the said reasons are not inconsonance with the scheme of the Act and also do not confirm to the intent and purpose of the Legislation.

45. Accordingly, the Writ Petition is allowed and the impugned proceeding of the 1st respondent, dt.22.04.2021, is hereby set aside; the

1st respondent is directed to accept the revised declaration Form 1 and 2 filed by the petitioner on 31.03.2021; process the same in accordance with the Act of 2020; issue Form 3; and accept the payment from the petitioner in terms thereof before the due date as notified.

46. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T.VINOD KUMAR

Date: 28.06.2021

GJ

Note : Issue copy today i.e. 28.06.2021.

L.R. Copy to be marked.

B/o

GJ

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.12038 of 2021

(Order of the Bench delivered by the Hon'ble Sri Justice T.Vinod Kumar)

Dt: 28.06.2021

