

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD
* * * *

W.P.No.28250 of 2021

Between:

Mrs.Amina Khatoon

Petitioner

VERSUS

The Union of India
Rep. by its Secretary
Ministry of Finance,
New Delhi & 3 Others.

Respondents

JUDGMENT PRONOUNCED ON: 06.01.2022

HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

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|----|---|-------|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | : Yes |
| 2. | Whether the copies of judgment may be
Marked to Law Reporters/Journals? | : Yes |
| 3. | Whether His Lordship wishes to
see the fair copy of the Judgment? | : Yes |

UJJAL BHUYAN, J

*** HON’BLE SRI JUSTICE UJJAL BHUYAN**
AND
HON’BLE SRI JUSTICE A. VENKATESHWARA REDDY

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Between:

Mrs. Amina Khatoon

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Respondents

! Counsel for Petitioner : Sri Ch.Siddhartha Sarma

^ Counsel for the respondents : Mr.B.Mukherjee
Mr.K.Raji Reddy

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> HEAD NOTE:

? Cases referred

- ¹ 437 I.T.R. 32
2. T.C.A.No.694 of 2019, dated 13.10.2020 (Madras High Court)

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

AND

THE HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY

Writ Petition No.28250 of 2021

ORDER : *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Ch. Siddhartha Sarma, learned Counsel for the petitioner; Mr. B. Mukherjee, learned Counsel appearing on behalf of Mr. N. Rajeshwar Rao, learned Assistant Solicitor General of India, for 1st respondent; and Mr. K. Raji Reddy, learned Senior Standing Counsel, Income Tax Department, for respondent nos.1 and 2.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 20.04.2021 passed by respondent no.2 rejecting the application of the petitioner dated 03.03.2021 for settlement of tax dues under the Direct Tax Vivad Se Vishwas Act, 2020, and further seeks a direction to the 2nd respondent to consider the said application of the petitioner in terms of the aforesaid Act.

3. Case of the petitioner is that she is an assessee under the Income Tax Act, 1961 (briefly, '**the Act**' hereinafter).

4. For the Assessment Year 2008-09, the Assessing Officer, i.e., respondent no.4, passed an Assessment Order which was rectified on 05.03.2019 under Section 154 of the Act. Against the Assessment

Order, as rectified, petitioner preferred an appeal before respondent no.3. However, by order dated 10.10.2019, the appeal was partly allowed. Assailing that part of the order of the first appellate authority, i.e., respondent no.3, petitioner filed further appeal before the Income Tax Appellate Tribunal at Hyderabad on 24.02.2021 which was registered as I.T.A.No.131/Hyd/2020.

5. In the meanwhile, Union of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (briefly, the **‘Vivad Se Vishwas Act’** hereinafter) providing for resolution of disputed tax and for matters connected therewith or incidental thereto.

6. Since there was delay of (443) days in preferring the said appeal before the Income Tax Appellate Tribunal, an application for condonation of delay was filed. When the appeal along with the condonation petition was taken up by the Income Tax Appellate Tribunal, it was submitted on behalf of the petitioner that petitioner would like to avail the benefit of the Vivad Se Vishwas Act. In that view of the matter, Income Tax Appellate Tribunal by the order dated 23.03.2021 condoned the delay in filing the appeal whereafter, petitioner was granted liberty to withdraw the appeal to avail her remedy under the Vivad Se Vishwas Act.

7. Petitioner filed declaration under the Vivad Se Vishwas Act on 03.03.2021 before respondent no.2. However, by the order dt.20.04.2021, the declaration was rejected.

8. Aggrieved, present Writ Petition has been filed.

9. Common counter-affidavit has been filed by respondent no.3 on behalf of all the respondents. Though contentions have been advanced disputing the eligibility of the petitioner for resolution of tax dispute under the Vivad Se Vishwas Act, however, respondents have supported the impugned decision of the respondent no.2 on merit as well. It is stated that on the specified date, i.e., on 30.01.2020 there was no appeal of the petitioner which was pending before the Income Tax Appellate Tribunal. It is further stated that though the specified date was subsequently extended to 04.12.2020 even then also there was no appeal pending as on that date. Therefore, petitioner was not eligible to make the declaration. Accordingly, respondent no.2 had rightly rejected such declaration of the petitioner.

10. Learned counsel for the petitioner has relied upon Circular No.21 of 2020 issued by the Central Board of Direct Taxes (C.B.D.T.) on 04.12.2020, more particularly, to the answer given to Question No.59 and also to a co-ordinate Bench decision of this Court in **Boddu Ramesh vs. Designated Authority**¹ to contend that rejection of the declaration of the petitioner on the ground that there was no appeal pending on the specified date is not correct. According to learned counsel for petitioner, when the delay in filing the appeal has been condoned by the Income Tax Appellate Tribunal it can only

¹ 437 I.T.R. 32

mean that the appeal was filed within time, and as on the specified date it should be deemed to have been pending.

11. Mr. K. Raji Reddy, learned counsel for the respondents, has extensively referred to the counter-affidavit filed by the respondents and supports the impugned order rejecting the declaration of the petitioner. He further submits that against the decision of this Court in **Boddu Ramesh** (1 supra), Income Tax Department has preferred Special Leave to Appeal Petition before the Supreme Court. However, he fairly submits that there is no stay order granted in the Special Leave Petition.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

13. At the outset, we may advert to the reason for rejection of the declaration of the petitioner by respondent no.2 vide the order dated 20.04.2021. The same reads as under :

“Application in Form 1 & 2 filed on 03.03.2021 claiming appeals pending before the ITAT towards disputed interest. The said appeals were filed on 24.02.2021 against the order of the CIT(A) dated 10.10.2019. As no appeal is pending as on specified date, i.e., 31.03.2020 and also as time to file appeal is expired, the assessee is not eligible and has to be treated as not a valid declarant as per DTVSV Act, 2020. Further it is noted that while the dispute in Form 1 & 2 is disputed interest, whereas as per the grounds of appeal filed before the CIT(A) and also ITAT (filed

after specified date) the dispute is on the quantum of addition and not on interest portion. Also, in this case, the grounds raised before CIT(A) have been allowed in favour of assessee and no ground arises for appeal. This application is an attempt to misuse the provisions of the VSV Act to avoid payment of compulsory interest on which no dispute arises. In view of the above, the application filed under DTVSV is hereby REJECTED.”

14. From a perusal of the above, we find that the declaration was filed by the petitioner on 03.03.2021. It is stated that the appeals were filed before the Income Tax Appellate Tribunal on 24.02.2021 against the order of the first appellate authority dated 10.10.2019. As no appeal was pending as on the specified date, i.e., on 31.03.2020 (should be dated 31.01.2020 as we shall see), and as the time to file the appeal had expired, the assessee (petitioner) was not eligible to file the declaration under the Vivad Se Vishwas Act, and accordingly she was not treated as a valid declarant. However, respondent no.2 proceeded further and also held that the declaration was not maintainable on merit as well by holding that the dispute was of disputed interest, whereas as per the grounds of appeal before the first appellate authority and the Income Tax Appellate Tribunal the dispute was on quantum of addition and not on interest portion.

15. At the outset, we are of the view that when the declaration of the petitioner was rejected on the ground of non-maintainability / ineligibility, it was unnecessary for respondent No.2 to have entered into the merit of the claim made by the declarant and thereafter to

hold that declarant was not entitled to the relief under the Vivad Se Vishwas Act.

16. Let us now examine the said decision to hold the petitioner as ‘not a valid declarant’ and / or ‘not eligible’ in the context of the Vivad Se Vishwas Act and the related judicial pronouncements.

17. The Vivad Se Vishwas Act is an act to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. While introducing the related bill in Parliament, the Hon’ble Finance Minister made the following speech on 01.02.2020, which reads as under, viz.,

“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.”

18. From a perusal of the speech of the Hon’ble Finance Minister, as extracted above, it is seen that the Central Government was concerned by the huge pendency of direct tax cases in various appellate forums. Therefore, it was proposed to bring a scheme which was similar to the scheme introduced for resolution of indirect tax disputes, the purpose being for reduction of litigation in direct taxes. It was proposed that the eligible taxpayer would be required to pay only the amount of disputed tax and would get complete waiver of interest and penalty if he paid by 31.03.2020. Those availing the scheme after 31.03.2020 would have to pay some additional amount. It was stated that the scheme would remain open till 30.06.2020. It was clarified that the taxpayers in whose cases appeals were pending at any level could benefit from the scheme. The speech of the Hon’ble Finance Minister, while introducing the related bill, indicates or reveals the intention behind introduction of the bill leading to enactment of the Vivad Se Vishwas Act. To remove any doubts in this regard, we may advert to the statement of objects and reasons necessitating enactment of the aforesaid act, 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."

19. Thus, from a careful analysis of the statement of objects and reasons, as extracted above, we find that the Central Government was concerned about the huge pendency of appeals related to direct taxes as a result of which a huge amount of disputed tax arrears is locked up in these appeals. Noting that tax disputes consume copious amount of time, energy and resources, both on the part of the Government as well as taxpayers besides depriving the Government from timely

collection of revenue, it was noted that there was an urgent need to provide for resolution of pending tax disputes. Such resolution would not only benefit the Government by generating timely revenue but also the taxpayers who would be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.

20. Thus, a conjoint reading of the speech of the Hon'ble Finance Minister as well as the statement of objects and reasons would indicate that the intent and purport behind enactment of the above act was to reduce tax disputes (appeals) pertaining to direct taxes in such a manner that it would be beneficial both to the Government as well as to the assesseees. Huge amount of disputed tax arrears is locked up in large number of pending appeals for early resolution of which the above act has been enacted.

21. Keeping the above in mind, we may now refer to some of the provisions of the Vivad Se Vishwas Act which have relevance to the present *lis* before us.

22. 'Appellant' has been defined under Section 2(i)(a), amongst others, to mean - "*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*".

23. ‘Specified Date’ is defined in Section 2(1)(n) to mean, “31.01.2020”.

24. ‘Declarant’ has been defined in Section 2(1)(c) to mean, “*a person who files a declaration under Section 4*”. Filing of declaration and the particulars to be furnished are provided for in Section 4. The benefits which may accrue to an eligible declarant are provided in Section 3.

25. Referring back to Section 2(1)(e), we find that ‘designated authority’ has been defined to mean, “*an officer not below the rank of a Commissioner of Income Tax notified by the Principal Chief Commissioner for the purposes of the Vivad Se Vishwas Act*”.

26. Under Section 2(1)(l), “last date” has been defined to mean, “*such date as notified by the Central Government in the Official Gazette*”.

27. Section 5 provides for the designated authority dealing with the declarations so filed. As per Sub-Section (1) of Section 5, the designated authority shall, within a period of fifteen (15) days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of the Vivad Se Vishwas Act and grant a certificate to the declarant containing the particulars of the tax arrear and the amount payable after such determination. Sub-Section (2) of Section 5 says that the

declarant shall pay the amount so determined within fifteen (15) days from the date of receipt of the certificate and inform the designated authority about the details of such payment. On receipt of such information, the designated authority shall pass an order stating that the declarant has paid the amount. Sub-Section (3) of Section 5 makes it very clear that every order passed under Sub-Section (1) determining the amount payable under the Vivad Se Vishwas Act shall be conclusive as to the matters stated therein, and no matter covered by such order shall be re-opened in any other proceeding under the Act or any other law for the time being in force or under any agreement.

28. As per Section 6, subject to the provisions of Section 5, the designated authority shall not institute any proceeding in respect of an offence or impose or levy any penalty or charge any interest under the Act in respect of tax arrear.

29. It may be mentioned that by subsequent notifications issued by the Ministry of Finance, Government of India, various dates relevant for the Vivad Se Vishwas Act were extended. Ultimately, by the notification dt.26.02.2021, the last date for filing of declaration was extended up to 31.03.2021. However, we do not find anything on record to suggest that the specified date initially fixed on 31.01.2020 was extended.

30. From a reading of the Vivad Se Vishwas Act, it is seen that a declarant would be eligible to file a declaration under Section 4 of the aforesaid Vivad Se Vishwas Act if his appeal or Writ Petition or Special Leave Petition filed by him or by the Income Tax authority or by both is pending as on the specified date, i.e., 31.01.2020.

31. Reverting back to the facts of the case, we find that against the order of the first appellate authority, i.e., respondent no.3, dated 10.10.2019, petitioner had filed appeal before the Income Tax Appellate Tribunal being I.T.A.No.131/HYD/2021 on 24.02.2021. However, there was delay of (443) days in filing the appeal. Accordingly, an application for condonation of delay was filed. In the supporting affidavit, petitioner had pointed out that she was desirous of availing the benefit of the Vivad Se Vishwas Act. Therefore, it was contended that the delay should be condoned and the appeal should be considered to have been filed within time. We find that the learned departmental representative had made a submission before the Income Tax Appellate Tribunal that if the assessee (petitioner) desired to avail the benefit under the aforesaid Vivad Se Vishwas Act, Revenue had no objection. Be that as it may, Income Tax Appellate Tribunal referred to the decision of the Madras High Court in **DCIT vs. M/s. Keyaram Hotels P. Ltd²** and condoned the delay of (443) days in filing the appeal. After condoning the delay, the Tribunal proceeded to hear the appeal. However, in view of the submissions made by the

² T.C.A.No.694 of 2019, dated 13.10.2020 (Madras High Court)

assessee (petitioner) the appeal was dismissed as withdrawn with the clarification that if the assessee's case was not accepted by the Revenue under the Vivad Se Vishwas Act then the assessee would be at liberty to move the Tribunal for reinstatement of the appeal.

32. To remove various doubts as to applicability of the Vivad Se Vishwas Act, the Central Board of Direct Taxes (C.B.D.T.) issued Circular No.21 of 2020, dated 04.12.2020, explaining certain situations in the form of 'question and answer'. Question No.59 and the answer given thereto may have some bearing on the present dispute.

33. Question No.59 and the answer given thereto are extracted hereunder for ready reference, viz.,

“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.”*

34. From the above, we find that the situation visualised was *whether* the taxpayer in whose case the time limit for filing of appeal

had expired before 31.01.2020, but an application for condonation of delay had been filed before the date of issuance of the circular i.e., 04.12.2020, and *whether* such a taxpayer would be construed to be eligible. Clarification given by the C.B.D.T. is that if the application for condonation of delay was filed before the date of issue of the circular, i.e., 04.12.2020 and if the appeal was admitted by the appellate authority before the date of filing of the declaration, such appeal would be deemed to be pending as on 31.01.2020. In other words, the appeal need not be filed on or before 31.01.2020 to be construed as pending. If the application for condonation of delay was filed before 04.12.2020 (which was after the specified date of 31.01.2020) and the appeal was admitted, then it would be deemed that the appeal was pending as on 31.01.2020.

35. Thus, Central Board of Direct Taxes (C.B.D.T.), which is the highest body under the Act, has clarified by way of its answer that if the time limit for filing appeal had expired during the period from 01.04.2019 to 31.01.2020 and the application for condonation of delay was filed before the date of issue of the circular, i.e., 04.12.2020, and the appeal was admitted by the appellate authority before the date of filing of the declaration, such appeal would be deemed to be pending as on 31.01.2020 notwithstanding the fact that it was actually filed after 31.01.2020.

36. Though the fact situation, as visualised by question No.59 and the answer given thereto, may not be exactly similar to the facts of the present case, nonetheless, the same is indicative of the view taken by the Central Board of Direct Taxes (C.B.D.T.) that a liberal approach should be adopted while considering various provisions of the Vivad Se Vishwas Act which appears to be in consonance with the objective of the scheme as explained by the Hon'ble Finance Minister in her introductory speech read with the statements and objects of the Vivad Se Vishwas Act.

37. Moreover, we find that a similar issue had cropped up before a coordinate Bench of this Court in **Boddu Ramesh** (1 supra) where also the declaration of the petitioner dated 08.02.2021 was rejected on 31.03.2021 on the ground that the assessee had filed the appeal before the Income Tax Appellate Tribunal on 25.01.2021, thus, there being no appeal pending as on the specified date i.e., 31.01.2020. Accordingly, it was held that the declaration made was invalid and was rejected. We may mention that against the decision of the first appellate authority dated 18.09.2019, the said petitioner had preferred further appeal before the Income Tax Appellate Tribunal on 25.01.2021 along with an application for condonation of delay. The delay was condoned and the matter was remanded back to the first appellate authority vide order dated 15.02.2021. In the meanwhile, the said petitioner filed declaration under the Vivad Se Vishwas Act

on 08.02.2021 which was rejected by the designated authority on 31.03.2021 in the following manner :

“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.”

38. After elaborate discussion on various facets governing the Vivad Se Vishwas Act, this Court held as follows, viz.,

*“**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 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 in consonance with the scheme of the Act and also do not confirm to the intent and purpose of the Legislation.”

39. This Court had thus taken the view that when the Income Tax Appellate Tribunal had accepted the application for condonation of delay and had condoned the delay, the effect would be that the appeal before the Income Tax Appellate Tribunal would be construed to have been filed within time and the limitation would relate back to the date by which time the appeal against the order of the first appellate authority ought to have been filed. Once it is considered that the appeal before the Income Tax Appellate Tribunal is deemed to have been filed within time, the same would be construed as having been filed before the specified date which in turn would mean that the petitioner would have to be construed to be an *appellant* as defined in Section 2(1)(a)(i) of the Vivad Se Vishwas Act.

40. Though learned counsel for the Revenue submits that Special Leave Petition has been preferred against the said decision of the coordinate Bench, but he fairly concedes that there is no *stay* order.

41. Insofar the present case is concerned, petitioner filed her declaration on 03.03.2021 which was before the last extended date for filing declaration i.e., 31.03.2021. But, before 03.03.2021, the appeal was filed by the petitioner before the Income Tax Appellate Tribunal on 24.02.2021 along with an application for condonation of delay.

The delay was condoned on 23.03.2021 on which date the appeal was also disposed of considering the submission of the petitioner that she would file declaration under the Vivad Se Vishwas Act which was not objected to by the Revenue.

42. On due consideration, we are in agreement with the view taken by the coordinate Bench in **Boddu Ramesh** (1 supra) more particularly to those expressed in paragraph nos.40 and 43 thereof.

43. That apart, we find that rejection of the declaration was not preceded by any notice or hearing. Though such notice or hearing is not provided under Section 5 of the Vivad Se Vishwas Act, it is axiomatic that principles of natural justice, which is the very essence of fairness, demands that before an adverse decision is taken affecting the rights and liabilities of an aggrieved person, he ought to be put on notice and given an opportunity of hearing. The same having not been done in the present case, the impugned decision suffers from violation of the principles of natural justice which is one more reason why we are constrained to interfere with the same.

44. Accordingly, we set aside the impugned order dated 20.04.2021 passed by respondent no.2 rejecting the declaration / application of the petitioner dated 03.03.2021 for settlement of tax dues under the Direct Tax Vivad Se Vishwas Act, 2020 and remand the matter back to the authority for taking a fresh decision in accordance with law.

45. Since the present designated authority has already disclosed his mind on the merit of the declaration in the impugned order dated 20.04.2021, we direct the jurisdictional Principal Chief Commissioner of Income Tax to assign another designated authority to deal with the declaration of the petitioner. Let a fresh decision be taken by the new designated authority on the declaration of the petitioner within a period of eight (08) weeks from the date of receipt of a copy of this order.

46. Writ Petition is disposed of. No order as to costs.

47. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

UJJAL BHUYAN, J

A. VENKATESHWARA REDDY, J

Date: 06.01.2022
Ndr