

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

**\* \* \***

**WRIT PETITION No.18470 of 2023**

Between:

Chandrakala Kasani.

Petitioner

VERSUS

The Principal Commissioner of Income Tax.

Respondent

**ORDER PRONOUNCED ON: 27.12.2023**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

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**

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**P.SAM KOSHY, J**

**\* THE HON'BLE SRI JUSTICE P.SAM KOSHY  
AND  
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

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Respondent

! Counsel for Petitioner(s) : Mr. P. Soma Shekar Reddy

^Counsel for the respondent(s) : Ms. Sundari R Pisupati

<GIST:

> HEAD NOTE:

? Cases referred

1. S.B. Civil Writ Petition No. 10571/2020 dated 25.03.2021  
of the High Court of Rajasthan
2. 2022 SCC OnLine Del 3647 : (2023) 330 CTR 167

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**THE HON'BLE SRI JUSTICE N.TUKARAMJI**  
**WRIT PETITION No.18470 of 2023**

**ORDER** : *(per Hon'ble Sri Justice P.SAM KOSHY)*

The instant writ petition has been filed seeking for a direction to the respondent to issue Form 5 under the Direct Tax Vivad Se Vishwas Act, 2020.

**2.** Heard Mr. P. Soma Shekar Reddy, learned counsel for the petitioner and Ms. Sundari R Pisupati, learned Senior Standing Counsel for Income Tax Department appearing for the respondent.

**3.** From the pleadings it appears that the petitioner in order to avail the benefit of the scheme under Direct Tax Vivad Se Vishwas Act, 2020, was required to make a payment of Rs.1,10,35,340/- up till 31.03.2021 and with interest at the rate of 10% amount of Rs.1,21,38,874/- up till 31.10.2021.

**4.** As is known to all, the said period was one when the whole world was reeling with COVID pandemic. There were compelling circumstances for the business world in making payments all around. Nonetheless, under the aforesaid scheme, the petitioner was able to

make 75% of the payment out of the total of Rs.1,21,38,874/- i.e. Rs.90,00,000/- by 31.10.2021 itself which is admitted by the respondent in their Counter as well. In terms of the aforesaid scheme, there was only balance of 25% amount payable by the petitioner which in the instant case has also been paid by the petitioner on 31.12.2021 i.e. which is within sixty (60) days time from the date the payment of the 75% earlier made. Thus, there appears to be delayed payment of just 25% of the amount by the petitioner and that too of a period which is around two (2) months. It is in this context when the petitioner approached the respondent for issuance of Form 5 the same was refused on the ground that that the respondent do not have power for issuance of Form 5 beyond the cutoff date leading to filing of the instant writ petition.

5. The High Court of Rajasthan in the case of ***Agroha Electronics Vs. Union Of India and Ors.***<sup>1</sup> under similar circumstances particularly in respect of the fact that the transaction therein was also under the COVID period had while allowing the writ petition in favour of the petitioner held as under:

“After hearing learned counsel for the parties and perusing the material available on record, this Court deems it fit that in the given facts and circumstances that the petitioner is a

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<sup>1</sup> S.B. Civil Writ Petition No. 10571/2020 dated 25.03.2021  
of the High Court of Rajasthan

bona fide businessman and is prepared to pay the amount in question in accordance with the scheme along with interest for the period which he has defaulted in scheme and looking into the extreme pandemic conditions of COVID and the death of petitioner's father, this is a fit case for invocation of the powers under Article 226 of the Constitution of India.”

6. A similar issue came up before the High Court of Delhi in the case of ***I.A. Housing Solution Private Limited Vs. Principal Commissioner of Income Tax-4***<sup>2</sup> decided on 02.11.2022 wherein the High Court of Delhi in paragraph Nos.19 to 24 had held as under:

“19. One of us (Manmohan, J) in Siddharth International Public School v. Motor Accident Claim Tribunal, (2016) SCC OnLine Del 4797, para 41 has held, “*it is settled law that this Court has extremely broad jurisdiction under Article 226 of the Constitution and under the said Article it can pass whatever orders are necessary for doing equity and justice. The Supreme Court in N.S. Mirajkar v. State of Maharashtra, 1966 3 SCR 744 has held that “unlike a inferior court, in respect of a High Court, which is also a Court of Record, it is assumed that every action is within its jurisdiction, unless expressly shown otherwise”.*”

20. Consequently, the power of the High Court under Article 226 of the Constitution of India to grant relief in extraordinary and exceptional circumstances cannot be taken away or curtailed by any legislation.

21. In fact, the Supreme Court in Dal Chandra Rastogi v. CBDT (2019) 104 taxmann.com 341 (SC) wherein the assessee had filed a declaration of undisclosed income under the Income Declaration Scheme, 2016 and had failed to pay the third installment of the remaining 50 per cent of tax, surcharge and penalty permitted the assessee to make late deposit of tax under Income Declaration Scheme subject to interest at the rate of 12% per annum. It is pertinent to mention that there was no provision for late

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<sup>2</sup> 2022 SCC OnLine Del 3647 : (2023) 330 CTR 167

deposit of tax in the Income Declaration Scheme, 2016. Yet the Supreme Court taking note of the genuine hardship faced by the assessee and short delay in payment, ruled in favour of the taxpayer. NO PREJUDICE CAUSED TO THE RESPONDENTS BY ACCEPTING THE PRAYER OF THE PETITIONERS. RATHER, SUCH ACTION SHALL HELP ACHIEVE THE OBJECTIVES OF THE VSV ACT.

22. This is also a fit case where no prejudice will be caused to the Respondents by accepting the prayer of the Petitioners. Rather, the Respondents benefit and achieve the purpose of the Scheme, namely, to reduce pendency of cases, generate timely revenue for the government and provide certainty and savings of resources that would be spent on the long-drawn litigation process.

23. Consequently as the delay in payment in the present cases were unintentional and supported by justifiable reasons, this Court is of the opinion that the cause of substantial justice deserves to be preferred, and this unintentional delay deserves to be condoned. This approach will only further the object and purpose of the VSV Act.

#### RELIEF

24. Keeping in view the aforesaid, the present writ petitions are allowed and the respondents are directed to accept the declarations/applications (Forms-1 and 2) dated 04th March, 2021 filed by the petitioners as valid declarations/applications within two weeks and accept the balance disputed amounts as stipulated by respondents in Forms-3 dated 07th May, 2021 and 22nd June, 2021 issued under VSV Act along with simple interest @ 9% per annum till the date the amounts are paid within four weeks.

**7.** Keeping in view the aforesaid two decisions rendered by the High Court of Rajasthan as also by the High Court of Delhi, if we look into the facts of the present case, where there appears to be certain payment of tax which was due on the part of the petitioner herein. That under the provisions of Direct Tax Vivad Se Vishwas Act, 2020, on an application made by the petitioner, the respondent had offered

for settlement of the said case by payment of Rs.1,10,35,340/- by 31.03.2021. If for any reason the amount was not able to be paid by the said date, the petitioner would be required to make a payment of Rs.1,21,38,874/- by 31.10.2021. Of this amount, the petitioner admittedly paid Rs.90,00,000/- on 31.10.2021 i.e. the petitioner had paid about 75% of the amount payable by him.

**8.** We cannot brush aside the fact that it was admittedly COVID pandemic period and there were compelling circumstances faced by every person including the business entities. Nonetheless, the petitioner herein had cleared the balance of 25% as well within a further period of sixty (60) days i.e. 31.12.2021 clearing the entire amount payable by him i.e. balance amount of Rs.31,38,874/- which was the total amount payable by him by 31.10.2021.

**9.** Thus, *prima facie*, we are of the considered opinion that the petitioner had not tried to evade payment of tax at any point of time and if at all there is any delay, the delay is only to the extent of 25% of the total tax payable which too he has paid in its entirety within sixty (60) days beyond the date of 31.10.2021.

**10.** In the given factual circumstances, we are inclined to endorse the views taken by the High Court of Rajasthan as also by the High Court of Delhi in the aforesaid two decisions referred above. And as a

consequence, we are inclined to allow the writ petition with a direction to the respondent to immediately take necessary steps for issuance of Form 5 under the Direct Tax Vivad Se Vishwas Act, 2020. However, the petitioner would be liable to make payment of extra payment of interest for the period 31.10.2021 to 31.12.2021 for the amount which was paid belatedly on 31.12.2021 within a period of thirty (30) days from today. Immediately upon the petitioner making payment, the respondent shall issue Form 5 to the petitioner forthwith.

**11.** The writ petition accordingly stands allowed. No order as to costs.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

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**P.SAM KOSHY, J**

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**N.TUKARAMJI, J**

Date: 27.12.2023

**Note:** LR copy to be marked.

B/O  
GSD/TJMR