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

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Date of decision: 03.03.2021

+ **W.P.(C) 2291/2021 and CM APPL. 6677/2021**

SHYAM SUNDER SETHIPetitioner

Through: Mr. Sumit Lalchandani with Ms. Soumya Singh and Ms. Ananya Kapoor, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX-10 & ORS.

.....Respondents

Through: Mr. Shailendera Singh, Jr. Standing Counsel for Ms. Vibhooti Malhotra, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[PHYSICAL COURT HEARING]

RAJIV SHAKDHER, J.: (ORAL)

1. The petitioner is aggrieved by the fact that his application filed under the provisions of the Direct Tax *Vivad Se Vishwas* Act, 2020 (in short '2020 Act') has been rejected.
2. The backdrop in which the petitioner approached the designated authority under the 2020 Act is, broadly, set forth hereafter:
3. The petitioner had filed his income-tax return concerning the assessment year 2011-2012 on 12.05.2012. In the return, the petitioner had declared his income as Rs.49,32,900/-. The petitioner avers that in the said income-tax return, exemption had been claimed under Section 54 of the



Income Tax Act, 1961 (in short '1961 Act') and accordingly against "capital gains", the amount shown was 'Nil'.

4. The revenue, it appears, on 29.03.2018 issued a notice for reassessment under Section 148 of the Act, concerning the aforementioned assessment year.

4.1 In the reassessment proceedings, the exemption claimed by the petitioner under Section 54 of the 1961 Act was disallowed and the petitioner's income was recomputed. The income was, accordingly, assessed at Rs.3,08,94,767/-. This order was passed on 26.12.2018.

5. Being aggrieved, the petitioner preferred an appeal with respondent no. 3/CIT(A). The appeal along with the condonation of delay application was filed on 11.07.2019. Pertinently, the appeal was filed in the prescribed format which contained a provision for setting out the grounds for condonation of delay for cases where the appeal was not instituted within the stipulated timeframe.

6. On 01.02.2020, the Finance Bill, 2020 was introduced in the Parliament. *Via* the said Finance Bill, the *Vivad Se Vishwas* Scheme (in short 'Scheme') was introduced to resolve the pending disputes concerning income-tax payable by the assesseees. The petitioner avers that it was, perhaps, in this background that he was sent an intimation dated 03.03.2020 by respondent no. 2 whereby he was informed that he could avail of the benefits under the 2020 Act.

7. On 17.03.2020, the 2020 Act received the assent of the President of India. Given the aforementioned development, the petitioner took the requisite steps under the 2020 Act to resolve his pending disputes with the revenue and to avail the benefits available thereunder.



7.1 Consequently, in consonance with the provisions of Section 3 read with Section 4(1) of the 2020 Act, the petitioner, on 12.06.2020, filed Form nos.1 and 2.

7.2 The forms having been filed, the petitioner followed it with a request, made to respondent no.1 on 21.08.2020, that the said forms be processed under the 2020 Act. Since there was no movement in the matter, the petitioner approached the Grievance Committee on 18.11.2020.

8. On 14.12.2020, the petitioner received a letter from respondent no.2 which *inter alia* conveyed the following.

“This is in reference to your VSVS form filed for A.Y. 2011-12. In this regard, you are requested to file condonation letter from CIT (Appeals) for granting condonation of delay in filing appeal before CIT (Appeals) as appeal was filed by you on 11.07.2019 i.e. after the due date of 30 days from the date of service of order. This is required to process your application under VSVS.”

9. Surprisingly, on 27.01.2021, the petitioner appears to have received a letter from the Grievance Committee which *inter alia* indicated that the grievance articulated by him stood “fully resolved”.

10. Because respondent no. 2 had, *via* communication dated 14.12.2020, raised an issue that the condonation of delay letter had not been filed with respondent no. 3, the petitioner submitted a communication, through his attorney, dated 01.01.2021, wherein, he averred that the appeal and the condonation of delay application (which, as indicated above, was part of the appeal) had been filed with respondent no.3 on 11.07.2019.

11. It is not in dispute that the petitioner's request for processing of forms filed under the 2020 Act was rejected on 28.01.2021. This information was uploaded on the web-portal maintained by the respondents. We have been



shown the screenshot of the portal. For the sake of convenience, the relevant part of the screenshot is extracted below:

e-Filing Anywhere Anytime
Income Tax Department, Government of India

Welcome SHYAM SUNDER SETHI (Individual) Logout
Last Login: 01/03/2021 12:37:18
Idle Session Timer 4 4 8

Dashboard My Account e-File e-Proceeding e-Nivaran Compliance Worklist Profile Settings Vivad Se Vishwas

View DTVSV Forms

| PAN | Assessment Year | Filing Date | Filing Type | Receipt No. | Action |
|------------|-----------------|-------------|-------------|-----------------|--------------------------|
| ABJPS3735Q | 2011-12 | 24/02/2021 | Revised | 273323951240221 | Awaiting Form 3 from CIT |
| ABJPS3735Q | 2011-12 | 30/01/2021 | Revised | 233430801300121 | Rejected |
| ABJPS3735Q | 2011-12 | 12/06/2020 | Original | 352468691120620 | Rejected |

Back

Details Of Receipt Number - 352468691120620

| PAN | Assessment Year | Form |
|------------|-----------------|-----------------|
| ABJPS3735Q | 2011-12 | Form 1 & Form 2 |

Filing Type Original Receipt Number 352468691120620

Remarks AS QAPPEAL WAS FILED BY THE ASSESSEE AFTE3R3 THE TIME LIMIT, THE SAME CAN NOT BE TREATED AS VAILID APPEAL IN THE ABSENCE OF SPECIFIC CONDONATION FROM CIT APEEAL. HENCE VSVS FORM FILED BY TH ASSESSEE IS HEREBY REJECTED.

| Date | Form Name | Download |
|------------|-----------------|----------|
| 12/06/2020 | Form 1 & Form 2 | Form |

Admittedly, the portal only adverted to the decision taken on the petitioner's request, which was, that the same had been "rejected".

12. It is on account of this circumstance that the petitioner moved respondent no.1, i.e., for being furnished the reasons for the decision.

12.1 Concededly, no reasons were given for rejecting the petitioner's request for being considered under the provisions of the 2020 Act.

13. Having met a wall, in a manner of speech, the petitioner approached this Court. The writ petition came up for hearing for the first time on 19.02.2021.

13.1 It appears that since the deadline for processing the petitioner's request was expiring, the bench, *inter alia*, observed as follows. The relevant part of the order dated 19.02.2021 is extracted hereafter:

"3. The petition impugns the rejection of the application dated 12th June, 2020 of the petitioner under the Direct Taxes Vivad se Vishwas Act, 2020, on the ground that the appeal of the



petitioner though pending consideration before the Commissioner of Income Tax (Appeals), was without any application for condonation of delay and otherwise it was barred by time and thus cannot be considered as pending.

4. The counsel for the respondents, appearing on advance notice, fairly states that though there is no such provision in the Act but the application has been rejected in view of FAQs issued. He also states that no reason has been given for the rejection; time is sought to obtain instructions.

5. Issue notice.

6. Notice is accepted by the counsel for the respondents.

7. Reply/counter affidavit, if any, be filed before the next date.

8. List on 3rd March, 2021.

9. If the petition is allowed, the application filed by the petitioner shall be deemed to have been filed on the date on which it was filed and be treated as within time.”

[Emphasis is ours]

14. Mr. Sumit Lalchandani, who appears on behalf of the petitioner, has assailed the rejection of the petitioner's request to process Form nos.1 and 2 *inter alia* on the ground that respondent no.1 has stepped outside of the periphery drawn for him under the provisions of the 2020 Act. Mr. Lalchandani says that the Act required, at the stage at which the petitioner's request was poised, the fulfilment of two ingredients for the petitioner's request to be processed.

(i) First, that the appeal filed before the appellate forum, i.e., respondent no.3/CIT(A) should have been pending.

(ii) Second, that the factum of the pendency of the appeal should have obtained on the "specified date", i.e., 31.01.2020.

15. According to Mr. Lalchandani, the fact that the appeal had been filed with respondent no.3/CIT(A) on 11.07.2019, which included a prayer for



condoning the delay in preferring the appeal would show that the petitioner fulfilled the necessary prerequisites required for processing his request under the provisions of 2020 Act.

15.1 Mr. Lalchandani went on to state that the reliance by respondent no.1 on FAQ 59, which is part of a clarificatory circular dated 04.12.2020 issued by the Government of India, Ministry of Finance, Department of Revenue, CBDT is erroneous, as it takes into account aspects which are beyond the scope of the provisions of the 2020 Act.

16. On the other hand, Mr. Shailendera Singh states that since the time limit for filing the appeal expired before 01.04.2019, the appeal could not be said to be pending, and therefore, could not have been entertained. According to Mr. Singh, the limitation for filing the appeal expired in the petitioner's case on 03.02.2019, whereas the appeal had been filed on 11.07.2019.

16.1 Mr. Singh says that the appeal of the petitioner could only be considered as viable under the 2020 Act, if the application for condonation of delay was filed before the issuance of circular dated 04.12.2020 and the appeal had been admitted by respondent no.3/CIT(A) before the filing of forms 1 and 2.

16.2 It is Mr. Singh's contention, that it is only in such a circumstance that the appeal could be construed as pending as on 31.01.2020.

17. We have heard learned counsel for the parties and perused the record. The dates and events which have been set out hereinabove, are not in dispute. What has emerged, though, from the record is the following:

(i) That the petitioner filed an appeal with respondent no.3/CIT(A) concerning the assessment year 2011-2012 on 11.07.2019.



- (ii) This appeal included a plea for condonation of delay which was filed by the petitioner in the prescribed format.
- (iii) Because the petitioner was seeking condonation of delay in filing the appeal, quite obviously, the limitation provided for instituting the appeal had expired. The limitation, even according to the petitioner, had expired on 03.02.2019.
- (iv) The plea for condonation of delay, as noticed above, was incorporated in the appeal and was preferred before issuance of the circular dated 04.12.2020.
- (v) Respondent no.3/CIT(A) as on the date of rejection, i.e., 12.06.2020 had not dealt with the plea for condonation.

18. Therefore, what we are required to delve into is: whether the response given to FAQ 59 circumscribed the power of the designated authority to process forms 1 and 2 filed by the petitioner. It would be relevant in this context to advert to Section 2 (1) a (i) and Section 2 (1) a (n) of the Act. For the sake of convenience, the same is extracted hereafter:

“2. (1) (a) (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;”

“2. (1) (a) (n) “specified date” means the 31st day of January, 2020”

19. A perusal of the aforesaid provisions and the attendant provisions of the Act would show that the request should have been made in the prescribed format, i.e., form 1 and 2 before the specified date, i.e., 31.01.2020 and that the appeal (we are not concerned with other forms of action) should be pending before the appellate forum, [i.e., respondent no.3/



CIT(A) in this case] on the specified date.

20. These provisions do not advert to what has been contended before us by Mr. Singh.

20.1 To shed light on what has been submitted before us by Mr. Singh, it would be necessary to extract FAQ 59 and the response provided thereto.

“Q 59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st January, 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 January, 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 January, 2020.”

21. As would be evident, the response was not only beyond the provisions of the 2020 Act but also qua the query raised. Simply put, the query raised in the form of FAQ 59 was: if an appeal had been filed before the specified date, i.e., 31.01.2020 along with an application for condonation of delay, would such assessee (i.e., the taxpayer) be eligible for availing benefits available under the 2020 Act?

22. However, in response to this query, several facets have been alluded to, which are not found in the 2020 Act. For instance, the respondent states that if the limitation or the time limit for filing the appeal expires during the period 01.04.2019 and 31.01.2020 (both dates included) and the application for condonation is filed before the date of issuance of the said clarification, i.e., 04.12.2020, the appeal can be construed as pending on the specified date i.e. 31.01.2020, only if it is “admitted” by the appellate authority before the filing of the declaration in the form prescribed under the 2020 Act.



23. Insofar as the petitioner is concerned, as noted, the appeal which included the condonation of delay application, was filed on 11.07.2019, that is, well before the specified date; the specified date under the 2020 Act being 31.01.2020.

23.1 We were not referred to any provision under the 2020 Act, which provided that limitation qua the subject appeal should be expired within the period spread out between 01.04.2019 and 31.01.2020 (both dates included) and it ought to have been admitted for it to be considered as “pending” under the 2020 Act.

24. The fact that the appeal included a plea of condonation of delay is not in dispute. Therefore, the appeal could not have been admitted unless the delay was condoned. But that by itself does not efface the fact that the appeal was pending. An appeal would be “pending” in the context of Section 2 (1) (a) of the 2020 Act when it is first filed till its disposal¹. Section 2(1)(a) of the 2020 Act does not stipulate that the appeal should be admitted before the specified date, it only adverts to its pendency. Respondent no.1 seems to have, in our view, wrongly equated admission of the appeal with pendency. In our view, as noted above, the appeal would be pending as soon as it is filed and up until such time it is adjudicated upon and a decision is taken qua the same. We could have appreciated the stand of the respondents if a plea made for condonation of delay would have been

¹

See Prem's Judicial Dictionary, Vol. III 196:

“The word pending is thus defined in Stroud's Judicial Dictionary Ed. 3, vol. 3, p.2141: (1) A legal proceeding is 'pending' as soon as commenced and until it is concluded i.e., so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein. Similar are the observations of Jessel, M.R. In Re Clagett's Estate Fordham v. Clagett, (1882) 20 Ch. D. 637 at p. 653. “



rejected by respondent no.3/CIT(A) before the petitioner had filed Forms 1 and 2. If that situation obtained, the respondents could have, possibly, taken the stand that nothing was pending before the appellate forum.

25. As indicated above, when Forms 1 and 2 were filed by the petitioner, respondent no.3/CIT(A) was seized of the appeal, which included, a plea for condonation of delay.

26. Therefore, in our opinion, the order of rejection dated 28.01.2021 is bad in law. It is, accordingly, set aside. Respondent no.1 is directed to process the forms filed by the petitioner, i.e., Forms 1 and 2 under the provisions of the 2020 Act.

27. The writ petition is disposed of with the aforesaid directions. The pending application stands closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

MARCH 3, 2021

pa/tr

[Click here to check corrigendum, if any](#)