

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 600 OF 2023

Mrs Neelam Ajit Phatarpekar,
Wife of late Mr Ajit Phatarpekar,
Aged about 61 years, housewife,
Indian National, having her office
At 601/603, 6th Floor, Gera Imperium I,
Panaji, Goa 403 001.

... Petitioner

Versus

1 The Assistant Commissioner of
Income Tax, Circle 1(1), Panaji,
Having his office at Aayakar Bhawan,
Plot No.5, EDC Complex, Patto Plaza,
Panaji Goa, 403 001.

2 Principal Commissioner of Income Tax,
Having its office at Aayakar Bhavan,
EDC Complex, Patto-Plaza, Panaji Goa 403001

3 Principal Director General of Income Tax
(Systems), Having its office at ARA Centre,
Ground Floor, E-2 Jhandewalan Extension,
New Delhi.

4 Commissioner of Income Tax (Appeals)
Faceless Assessment,
Through Principal Commissioner of
Income Tax, Having its office at
Aayakar Bhavan, EDC Complex,
Patto Plaza, Panaji Goa 403 001.

... Respondents

Mr Rahul Sarda, Mr Gaurang Panandiker and Ms Eesha Dukle,
Advocates for the Petitioner.

Ms Susan Linhares, Standing Counsel for the Respondents.

CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ

Reserved on : 16th JANUARY 2024
Pronounced on: 22nd JANUARY 2024

JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr Rahul Sarda with Mr Gaurang Panandiker and Ms Eesha Dukle, learned counsel for the Petitioner and Ms Susan Linhares, learned Standing Counsel for the Respondents. Rule. At the request and with the consent of the learned counsel for the parties, the rule is made returnable immediately.

2. The Petitioner challenges communications dated 22.01.2022 and 01.04.2022 (Exhibit M and O, respectively) rejecting the Petitioner's declaration under the Vivad Se Vishwas Act, 2020 (VsV Act) and thereby denying the Petitioner benefits under the VsV Act.

3. On 29.01.2021, the Petitioner filed a declaration under the VsV Act in Form 1 *inter alia*, giving particulars of tax arrears and amounts payable in respect of the pending Income Tax dispute for Assessment Year 2017-18. Since the outstanding tax demand was of ₹35,94,164/-, the amount under the VsV Act was computed at ₹14,04,620/- after adjustment of the amount of ₹8,14,000/- which the Petitioner already paid to the revenue.

4. On 25.02.2021, Form 3 was issued by the Respondents, determining amounts payable at ₹16,97,010/- (if paid on or before 31.03.2021) and ₹19,48,111/- (if paid after 31.03.2021).

5. The Petitioner pointed out that the above figures were patently erroneous, and therefore, the Petitioner approached the Respondents to get the errors corrected. After numerous follow-ups by the Petitioner, the Respondents acknowledged their error and assured the Petitioner that the fresh Form 3 under the VsV Act would be issued to the Petitioner.

6. The Petitioner has pleaded that in June 2021 or thereabouts, the Respondents closed their old website and migrated to a new website. The Petitioner has pleaded that, as a result, there were several technical glitches in accessing the new website. The Petitioner has pleaded that this technical error continued beyond September 2021. As a result, the Petitioner was disabled from accessing the e-filing account until the first week of October 2021.

7. The Petitioner has further pleaded that after numerous follow ups by the Petitioner to correct the amount payable by the Petitioner, the authorised representative of the Petitioner was informed that the Respondents had uploaded corrected and revised Form 3 dated 01.09.2021 in the Petitioner's e-filing account on the new website of

the Respondents. The Petitioner accordingly accessed this in the first week of October 2021.

8. In terms of the revised Form 3, the Petitioner was required to pay an amount of ₹14,04,620/- (if paid on or before 30.09.2021) and an amount of ₹16,26,482/- (if paid on or after 30.09.2021). Incidentally, this was the precise amount computed by the Petitioner in the declaration made by her by filing Form 1 on 29.01.2021. Thus, it is quite clear that the Petitioner would have obtained benefit under the VsV Act if, in the first instance, the Respondents were to issue Form 3 containing the correct amounts as declared by the Petitioner.

9. The Petitioner has pleaded that there is no dispute that within 15 days of the receipt of the revised Form 3, the Petitioner paid an amount of ₹14,04,620/-. This amount was paid on 12.10.2021. The receipt of this amount was acknowledged, and in terms of the VsV Act, the Petitioner also withdrew her pending appeal before the fourth Respondent on 12.10.2021. The Petitioner relies on Section 5(2) of the VsV Act, which provides that the Applicant has to pay the amount stated in Form 3 within 15 days of the receipt of Form 3. According to the Petitioner, this requirement was fully complied with.

10. The Petitioner has pleaded that between 12.10.2021 and 22.01.2022, the Petitioner heard nothing further in the matter. Mr Sarda, learned counsel for the Petitioner, submitted that the Petitioner

was under the bonafide impression that the Respondents duly accepted the Petitioner's VsV declaration.

11. However, on 22.01.2022, the Petitioner received a communication stating that her declaration was null and void on the ground that *“you have not filed Form 4 till date. The last date for payment of taxed under the VsVs extended upto 31.10.2021 has also lapsed.”*

12. The Petitioner has contended that she had, on 12.10.2021, already filed Form 4, which the Respondents even acknowledged. Therefore, the statement in the communication dated 22.01.2022 was factually erroneous. The Petitioner, therefore, addressed a communication dated 25.01.2022, pointing out that she had made the demanded payments within a few days of the receipt of revised Form 3.

13. The Petitioner contended that despite the above communication, along with proof of acknowledgement of amounts along with Form 4 on 12.10.2021, the Petitioner was forced to make numerous follow-ups. In February 2023 or thereabouts, the Petitioner claims that her authorised representative was informed that communication dated 01.04.2022 was posted in her e-filing account.

14. Accordingly, the Petitioner's representative downloaded the letter dated 01.04.2022 from the e-filing account in which the

Respondent admitted that the Petitioner had made a payment of ₹14,04,620/- on 12.10.2021. But this communication stated that the Petitioner ought to have paid ₹16,26,482/- since such payment was made after 30.09.2021. Based on this new reason, once again, the Petitioner's declaration under the VsV Act was rejected.

15. The Petitioner, by her communication dated 13.02.2023, protested the rejection of her declaration under the VsV Act and instituted this petition to challenge the communications dated 22.01.2022 and 01.04.2022 denying her benefit under the VsV Act.

16. Mr Sarda learned counsel for the Petitioner, submitted that the VsV Act is beneficial legislation to reduce litigation indirect taxes and to enable the revenue to recover the pending tax dues. He submitted that there were technical glitches on account of migration from the old website to the new website. The factum of such technical glitches was in the public domain and even the newspaper reported about the same. He submitted that, as a result, the Petitioner could access the new website only in the first week of October 2021. Within 15 days of such access, the Petitioner promptly paid the demanded amount of ₹14,04,620/- within 15 days of the receipt of revised Form 3. He submitted that this was consistent with the provisions of Section 5(2) of the VsV Act. He submitted therefore, the Respondents were not justified in rejecting the Petitioner's declaration under the VsV Act.

17. Mr Sarda submitted that the Petitioner has been constantly pursuing the matter with the Respondents. Initially, erroneous figures were entered in Form 3 and uploaded on the old website, which was accessible without any considerable glitches. The Petitioner immediately applied for correction and after several follow-ups, the corrected Form 3 was uploaded on the new website. Due to technical glitches, the Petitioner was able to access this new website only on 08.10.2021, though the revised Form 3 was dated 01.09.2021. Within 15 days of such access, the Petitioner paid the amount demanded. Still, the Respondents refused to consider such payment and issued the impugned communication. Mr Sarda submits that there is arbitrariness in the approach of the Respondents, and provisions of the VsV Act are being pedantically construed.

18. Mr Sarda submitted that every time different reasons were being cited by the Respondents to deny the Petitioner benefits of the VsV Act. There was no denial of the pleadings about technical glitches in the new website. Mr Sarda, therefore, submitted that the Petitioner has made out a good case to quash the impugned communications and grant the Petitioner benefits under the VsV Act.

19. Mr Sarda submitted that there was no delay on the Petitioner's part. He submitted that even assuming that there was some delay, the same was attributable to the technical glitches on the Respondents'

website, and this Court has sufficient powers to extend the period or condone the delay.

20. Mr Sarda relied on *I A Housing Solutions (P) Ltd. Vs Principal Commissioner of Income Tax*¹, *Arjun Amarjeet Rampal Vs Union of India and others*², *Kartik Pravinchandra Mehta Vs Principal Commissioner of Income Tax*³ and *Vidhi Garments (P) Ltd. Vs Central Board of Direct Taxes & Another*⁴ in support of his contentions.

21. Ms Linhares, at the outset, submitted that there were no technical glitches, and Form 3 dated 01.09.2021 was uploaded on the same date, i.e. 01.09.2021 itself. She produced on record a printout from the website along with acknowledgement to show that Form 3 was uploaded on the website on 01.09.2021 itself.

22. Ms Linhares submitted that in terms of Form 3 dated 01.09.2021, the Petitioner had time up to 30.09.2021 to pay the amount of ₹14,04,620/-. The Petitioner also had the liberty to pay an increased amount of ₹16,26,482/- up to 31.10.2021. She submitted that the Petitioner, however, paid only ₹4,04,620/- on 12.10.2021, i.e. beyond 30.09.2021, when the correct amount payable by the Petitioner

¹ (2023) 147 taxmann.com 198 (Del.)

² WP No. 1468 of 2021 decided by Principal Bench on 30.03.2023

³ (2023) 149 taxmann.com 482 (Bom.)

on the said date would have been ₹16,26,482/-. She submitted that because the Petitioner failed to pay the correct amount on or before the due date, the Respondents were justified in rejecting the Petitioner's declaration. She submitted that the Petitioner makes no case for quashing the impugned communications or for availing benefits under the VsV Act. She, therefore, urged the dismissal of this petition.

23. The rival contentions now fall for our determination.

24. From the factual position borne from the records and the various dates and events referred to above, we cannot say that the Petitioner was either indolent or that she intended to avoid payment of any amount under the VsV Act or to avail of benefits under the VsV Act within the prescribed periods. The record, in fact, supports that the Petitioner was constantly following up on the matter with the Respondents with a view to obtain benefits under the VsV Act. Therefore, the approach of the Respondents, in the present matter, cannot be said to be in consonance with the objects and reasons of the VsV Act to provide for the resolution of disputed tax and matters connected therewith or incidental thereto.

25. The VsV Act entered force on 17.03.2020. The primary objective of this Act is to reduce pending tax litigations pertaining to direct taxes and in the process, grant considerable relief to the eligible

⁴ (2023) 7 NYPCTR 30 (Del.)

declarants while at the same time generating substantial revenue for the Government.

26. The Hon'ble Finance Minister's budget speech made on February 1, 2020, by which the VsV Act was tabled before the Parliament, pointed out that under the Scheme formulated under the VsV Act, a taxpayer would be required to pay only the amount of disputed taxes and would get a complete waiver of interest and penalty subject to payment by the specified date. In case of payment made after the specified date, the taxpayer would have to pay some additional amount. In terms of the Hon'ble Finance Minister's budget speech, the taxpayers in whose cases appeals were pending at any level could get the benefit from the scheme.

27. The statement of objects and reasons of the VsV Act states that over the years, the pendency of appeals filed by taxpayers as well as the 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 of. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As of November 30, 2019, the amount of disputed direct tax arrears was ₹9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was ₹11.37 lakh crores, the disputed tax arrears constitute nearly one year of direct tax collection'. The tax disputes consume copious amounts of time, energy and resources both on the part of the Government as well as taxpayers.

Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for the resolution of pending tax disputes. This will benefit not only 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. SOR then proceeds to list benefits under the VsV Act.

28. The Petitioner, in her declaration in Form 1 submitted on 29.01.2021, correctly assessed the amount payable under the VsV Act at ₹14,04,620/-. This Form had to be processed within 15 days as required under Section 5(1) of the VsV Act, i.e. by 13.02.2021. However, after processing, Form 3 was issued on 25.02.2021, and that too with an error in computing the amounts. Form 3, issued on 25.02.2021, stated that the amount payable by the Petitioner was ₹16,97,010/- (if paid on or before 31.03.2021) and ₹19,48,111/- (if paid after 31.03.2021).

29. The Petitioner, therefore, had to communicate with the Respondents by pointing out the error. Ultimately, the errors were acknowledged, and therefore, Form 3 had to be issued by the Respondents. Despite follow-up, no such revised or corrected Form 3 was issued for quite some time. In the meanwhile, the Respondents closed their old website and migrated to a new website. The Petitioner alleged that due to several technical glitches, which continued beyond

September 2021, the Petitioner could not access this corrected form. This position about the closure of the old website and the migration to the new website that took place in June 2021 or thereabouts was not even denied or contested by the Respondents.

30. The Petitioner has pleaded that after numerous follow ups, the authorised representative of the Petitioner was informed in the first week of October 2021 that a revised/corrected Form 3 reflecting amounts declared by the Petitioner in her declaration in Form 1 dated 29.01.2021 had been uploaded on the new website. Accordingly, the Petitioner managed to access the new website in the first week of October 2021.

31. The record supports that within 15 days of the Petitioner accessing the new website on 08.10.2021, the Petitioner made a payment of ₹4,04,620/- on 12.10.2021 to the Respondents in the prescribed Form 4, which the Respondents even acknowledged by issuing an acknowledgement. Section 5(2) of the VsV Act *inter alia* provides that the declarant shall pay the amount determined under Section 5(1) within 15 days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form. Thereupon, the designated authority shall pass an order stating that the declarant has paid the amount.

32. However, no such order was made under Section 5(2) within 15 days of the date of receipt of the certificate in the prescribed form. After considerable delay, however, the Petitioner, by communication dated 22.01.2022, was informed that the Petitioner's declaration was null and void since the Petitioner *had not filed Form 4 to date and the last date for payment of taxes under the VsV extended up to 31.10.2021 had also lapsed.*

33. The above communication dated 22.01.2022, which has been impugned in this petition, deserves to be quashed because, factually, the Petitioner had not only filed Form 4 within 15 days of the receipt of Form 3 and in any case before 31.10.2021, an amount of ₹14,04,620/- was paid by the Petitioner on 12.10.2021 and the Respondents even acknowledged this. The acknowledgment is on page 106 of the paper book of this petition. Therefore, to say that the Petitioner had not filed Form 4 or that the Petitioner had not made any payment up to 31.10.2021 was not correct, and based upon such an incorrect premise, the impugned communication dated 22.01.2022 could not have been issued.

34. The Petitioner, therefore, pointed out the above facts with details to the Respondents, along with proof of acknowledgement. Again, there was no response from the Respondents. In February 2023, the Petitioner was informed that the response dated 01.04.2022 was posted in the Petitioner's e-filing account on the website. The Petitioner

accordingly downloaded the response dated 01.04.2022 in which the factum of filing of Form 4 and payment of ₹14,04,620/- was acknowledged. However, this time, it was stated that since this amount was paid on 12.10.2021 and not before 30.09.2021, the Petitioner should have paid the amount of ₹16,26,482/-. The communication stated that since there was a deficit, the Petitioner's declaration under the VsV Act was being rejected. This is the second communication impugned in this petition.

35. As noted earlier, the record supports that the Petitioner had been continuously following up on the matter with the Respondent. On the first occasion, the Respondents made an obvious error in determining the amount payable under the VsV Act. The Petitioner was forced to follow up on the matter with the Respondents to have this determination corrected. After the correct amounts were determined, there was no clarity about when and where the revised Form 3 would be uploaded. There is no dispute that in June 2021 or thereabouts, the Respondents closed their old website and migrated to a new website. Although the Respondents have denied the allegation of technical glitches, considering the errors that the Respondents have made in the present case itself, the Petitioner's statement about technical glitches, cannot be simply rejected.

36. The Petitioner accessed the new website in the first week of October 2021 and obtained a revised Form 3 dated 01.09.2021.

Within 15 days, the Petitioner paid the amount of ₹14,04,620/-. Though revised Form 3 was dated 01.09.2021 and Ms Linhares did produce a document to show that the same was uploaded on 01.09.2021 still, the document is not an answer for the allegation of technical glitches depriving the Petitioner of effective access to this document, which may have been uploaded on 01.09.2021. Considering the fact that the Petitioner was continuously following up on the matter with the Respondents, we agree with Mr Sarda that the Petitioner's version about her not being able to access this Form due to technical glitches deserves consideration and not outright rejection in the peculiar facts and circumstances of this case.

37. Even after the Petitioner paid the amount of ₹14,04,620/- in the prescribed Form 4, the Respondents, by communication dated 22.01.2022, informed the Petitioner that they had not received Form 4 or, for that matter, any payment on or before the extended date of 31.10.2021. As noted earlier, this was an error apparent on the face of the record. This also supports the Petitioner's case about technical glitches in the new website. Possibly, the Petitioner and even the respondents were the victims of such migration and the consequent glitches. But for such glitches, it is unexplainable why the Respondents could not access the Petitioner's Form 4 and Petitioner's payment of ₹14,04,620/- which the Respondents duly acknowledged. This error was, however, acknowledged by the Respondents in the communication

dated 01.04.2022, which again could be accessed by the Petitioner much later.

38. In the communication dated 01.04.2022, the Department did not allege that the Petitioner had not filed Form 4 or failed to make any payments to the Respondents. However, this time, it was alleged that the Petitioner made a short payment, due to which the Petitioner's declaration was not accepted. This is a reason quite different from that stated in the previous communication dated 22.01.2022.

39. Considering the above factual situation borne out from the record and the object of the VsV Act, the Respondents should have either accepted the Petitioner's payment of ₹14,04,620/- made within 15 days from the receipt of Form 3 or at least informed the Petitioner that she was required to pay an additional amount of ₹2,21,862/- on or before 31.10.2021. The Respondents did neither. Even the requirement of paying an additional amount of ₹2,21,862/- was informed to the Petitioner only by communication dated 01.04.2022, long after the extended date of 31.10.2021 had lapsed. Suppose the object of the VsV Act is to reduce the pending tax litigations, grant relief to eligible declarants and generate substantial revenue for the Government. In that case, such an approach cannot be said to be in furtherance of such an objective. Such an approach almost amounts to frustrating the provisions of the VsV Act, and the scheme made thereunder.

40. In this case, the delay alleged on the part of the Petitioner is hardly 11 days. The alleged deficit payment, if any, is of hardly ₹2,21,862/-. From the facts borne out of the record, it is difficult to hold that there was any such delay. However, even if it is assumed that there was some marginal delay, this delay is attributable to the technical glitches referred to by the Petitioner and also the mistakes of the Respondents in processing the Petitioner's declaration.

41. As noted above, even if the contention about technical glitches is kept aside, this is a matter where the Respondents themselves committed several errors in processing the Petitioner's declaration in Form 1, which was made within the prescribed period and by due compliance with the prescribed procedure. This is a matter where the Petitioner withdrew her pending appeal. This is a matter where the Petitioner, in the first instance, determined the amount payable under the VsV Act correctly but had to struggle to get the Respondent's determination corrected. Even though the Petitioner had filed Form 4 and made a payment of ₹14,04,620/- on 12.10.2021, i.e. much before the extended date of 31.10.2021 still, the impugned communication dated 22.01.2022 erroneously alleged that the Petitioner had not filed Form 4 or that the Petitioner had made no payments before the extended date. In such peculiar facts and circumstances, we think that the petitioner should not have been denied the benefits under the VsV Act.

42. The decisions cited by Mr Sarada suggest that the Courts, having regard to the cause shown by the parties, including the cause of technical glitches, have extended the time under the VsV scheme. In this case, the extension, strictly speaking, may not even be necessary, given the factual position. Therefore, we do not propose to go into the larger issues about the power to condone etc., since the matter can be decided on a narrow factual base. However, even if it is considered that there was some marginal delay of 10 to 12 days, the Respondents, in the peculiar facts and circumstances of this case, were not justified in rejecting the Petitioner's declaration or holding that the Petitioner's declaration was null and void.

43. In *Vidhi Garments* (supra), the Division Bench of the Delhi High Court noted that the assessee was quite vigilant and had reported substantial compliance. The assessee had deposited a major portion of the tax amount of ₹9 lakh even before the declaration was filed. On account of the assessee's Chartered Accountant not being vigilant in accessing the information and sharing his login ID and password, if there was a marginal delay, such delay should have been condoned and the deficit payments accepted. In the case before the Delhi High Court, the interest was paid for the delayed deposits. Here, the case of the Petitioner is on a much better footing because most of the glitches were on the part of the Respondent. Mr Sarada submitted that even in this

case, at the highest, some interest and additional payments could be ordered. Still, the rejection of the benefits under a mutually beneficial scheme was harsh and disproportionate.

44. Upon a cumulative consideration of the peculiar facts and circumstances in this case and for all the above reasons, we allow this petition and quash the communication dated 22.01.2022 and 01.04.2022 (Exhibit M and O, respectively). Further, we direct the Respondents to accept the Petitioner's declaration in Form 1 under the VsV Act and process the same by issuing the final certificate in Form 5 subject to the following conditions:

- (a)** The Petitioner must pay the balance amount of ₹2,21,862/- with interest at the rate of 12% per annum from 31.10.2021 till the date of payment, which shall be within 21 days from today; and
- (b)** The Petitioner shall pay an additional amount of ₹2,00,000/- to the Respondents within 21 days from today.

45. The rule is made absolute in the above terms without any order for costs.

46. All concerned must act on an authenticated copy of this order.

VALMIKI SA MENEZES, J

M. S. SONAK, J