

Court No. - 39

Case :- WRIT TAX No. - 566 of 2021

Petitioner :- Umesh Garg

Respondent :- Union Of India And Another

Counsel for Petitioner :- Kartikeya Saran, Divyansh Jain, Paritosh Jain, Ujjawal Satsangi

Counsel for Respondent :- A.S.G.I., Abrar Ahmad, Gaurav Mahajan, Krishna Agarawal

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard learned counsel for the petitioner and Sri Krishna Agarawal, learned counsel for the revenue.
2. Present appeal has been filed against the order dated 24.12.2020 passed by the Designated Authority under The Direct Tax Vivaad Se Vishwas, Act, 2020 (hereinafter referred to as 'the Act').
3. Undisputedly, for the assessment year 2013-2014 the petitioner was imposed under Section 271 AAB of the Income Tax Act, 1961. Thus Rs.1,71,371/- was raised.
4. Initially the petitioner filed an appeal against the order dated 29.09.2015. That appeal was partly allowed vide order dated 16.02.2017 and the penalty amount was reduced. However, the petitioner did not file any further appeal from the order of the appellate authority over a long period time. That appeal was filed carrying a delay of 1261 days. Thus the second appeal was filed by the appellant on 30th August, 2020. By order dated 23.12.2020 the delay in filing the second appeal was condoned. The appeal is pending before the Tribunal.

5. In such circumstances, learned counsel for the petitioner would submit, grave injustice has been caused in not allowing the petitioner to take benefit of the Act. The petitioner is not looking to litigate the matter with the revenue authorities. It seeks an amicable settlement in terms of the Act. Insofar as it is the stated policy of the Union to prefer settlement over litigation, indulgence may be granted to allow the petitioner's application/ declaration for settlement, filed on 24.12.2020 to be entertained on merits. The designated authority has completely erred in mechanically rejecting that application/ declaration for reason of second appeal not filed before the cut off date 01.04.1919 to 31.01.2020.

6. On the other hand, learned counsel for the revenue would submit not only the petitioner did not file any appeal within limitation, he also did not file such appeal with delay within the cut off time. Had such delay condonation application being filed, the revenue authorities would have remained enabled to consider the application/ declaration on merits. In that regard reliance has been placed on an order of the Supreme Court in **Yashi Constructions Vs. Union of India (UOI) (2022) 100 GSTR 275 (SC)**.

7. Having heard learned counsel for the parties and having perused the records, we find no good ground to offer any interference. In the first place, settlement of disputes outside courts/ judicial process is not a fundamental or inherent right of any litigant. That right was created by the statute i.e. the Act. Being a statutory right, the same may have been availed strictly in accordance with the statutory conditions and further inasmuch as it was a stipulation that the application/ declaration may be maintainable only if there was pending a litigation between the parties before the cut off date, it remained from the petitioner to satisfy that condition. Not only

the petitioner did not file the appeal before the Tribunal, within time it also remained from him to file any defective proceeding seeking condonation of delay in filing such appeal before the cut off date. Therefore, no right vested or accrued to the petitioner to seek a settlement in terms of the conditions prescribed by the Act. For that reason, we find no error in the order passed by the designated authority.

8. Insofar as the further submission of learned counsel for the petitioner is concerned based on the objects and reasons of the Act, while objects and reasons may never defeat specific provisions of enactment, here we also note that the petitioner is not at loss inasmuch as his right of appeal before the Tribunal, against the order passed by the first appellate authority has been preserved upon condonation of delay of 1261 days in filing the second appeal.

9. The writ petition lacks merits and is **dismissed**.

Order Date :- 23.11.2023

Abhishek Singh

(Shiv Shanker Prasad,J.)

(Saumitra Dayal Singh, J.)