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

% ***Judgment delivered on: 22.08.2024***

\+ W.P.(C) 17323/2022

SATISH KUMAR DHINGRA .....Petitioner

Through: Mr. Nischay Kantoor, Mr. Ved Jain and Ms. Soniya Dodeja, Advs.

versus

ASSISTANT/DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 61(1), NEW DELHI & ANR. ....Respondents

Through: Mr. Vipul Agrawal, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The writ petitioner impugns the rectification notice dated 08 March 2022 as well as the order passed thereon dated 30 March 2022 and additionally seeks a writ of prohibition restraining the respondents from taking any further steps pursuant to the impugned orders and the notices of demand.

2. The petitioner undoubtedly came to obtain a settlement of all disputes pertaining to demands emanating from the **Income Tax Act, 1961**[1] by virtue of an application which was made under the **Direct Tax Vivad Se Vishwas Act, 2020**[2]**.** Before us, it is not disputed that

[1] Act
[2] DTVSV Act

pursuant to the declarations which were made, Form 5 came to be issued and the total liability determined and conferred finality in terms as contemplated under the provisions of the DTVSV Act.

3. It is thereafter that the respondents sought to invoke the power conferred by Section 154 of the Act to revisit a computation of liability which stood settled, at least upto the stage of the **Commissioner of Income Tax (Appeals)**[3]. That action undisputedly was commenced after the issuance of Form 5 under the DTVSV Act. It is in the aforesaid backdrop that the writ petitioner impugns the action for rectification.

4. For the purposes of disposal of the instant writ petition, we take note of the following salient facts. The dispute itself pertains to **Assessment Year**[4] 2015-16 and in respect of which the petitioner filed a Return of Income on 15 September 2015 declaring a total income of INR 50,31,150/- The aforesaid Return is stated to have been processed in terms of Section 143(1) of the Act. On 22 December 2017, the case of the petitioner was selected for scrutiny assessment and pursuant to the same, a final assessment order under Section 143(3) of the Act came to be framed whereby additions to the tune of INR 54,50,438/- were made to the returned income of the writ petitioner and the total income was assessed at INR 1,04,81,590/-. The petitioner is stated to have assailed the aforesaid assessment order before the CIT(A) where those additions ultimately came to be upheld in terms of an order rendered by the said authority on 11 March 2019. The petitioner thereafter approached the **Income Tax Appellate**

[3] CIT(A)
[4] AY

Tribunal[5] by way of a statutory appeal.

5. It appears that the during the pendency of the said appeal, the petitioner seeking to derive benefit of the DTVSV Act which had, in the meanwhile come to be announced in the Budget Speech of the Finance Minister for the year 2020, opted for settlement of the dispute and submitted requisite Forms 1 and 2 on 17 November 2020. After due processing of the aforesaid Forms, the amount as payable by the petitioner was determined by the Designated Authority on 18 December 2020 when Form 3 was issued under the DTVSV Act. The disputed tax payable in terms thereof was ultimately deposited on 26 March 2021 and whereafter the second respondent proceeded to issue Form 5.

6. It was, according to the writ petitioner, after more than a year from the date when Form 3 had been issued, that it came to be served with a notice dated 08 March 2022 under Section 154 of the Act. Since the contents and the avowed reasons which appear to have weighed upon the authority to invoke Section 154 would have some relevance and bearing on the challenge which stands raised, the same is reproduced hereinbelow:-

> "The appeal effect order u/s 250 in your case for A Y 2015-16 was completed at income of Rs. 1,04,75,879/-. On perusal of record, it is found that the short tax and interest was charged in the computation sheet inadvertently which resulted into charging of short gross tax liability.
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> As the mistake is apparent from record, you are requested to submit your reply on or before 14.03.2022 in this regard failing which the matter will be concluded on the basis of material available on record."

[5] Tribunal

7. The petitioner submitted its objections to the proposed action of rectification which ultimately came to be disposed of in terms of an order dated 30 March 2022 which reads as follows:-

> "In this case the assessment was completed at income of Rs.1,04,81,590/- after making addition of Rs. 54,50,438/- on 22/12/2017. Aggrieved with the order passed by the AO, the assessee has filed the appeal before Ld. CIT(A) grant part relief to the assessee and the income is recomputed at Rs. 1,04,50,164/-.
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> On perusal of record, it is found that the wrong tax rate was charged on the additions made by the AO, therefore, notice u/s 154 was issued to the assessee on 08/03/3022. In response the assessee has filed its reply through email on 14/03/2022.
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> The reply filed by the assessee was duly considered but not found tenable.
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> Accordingly, income assessed at Rs. 1,04,50,164/-.
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> Give credit of prepaid taxes. Prepare computation sheet with charging correct tax rate on the additions made. Issue demand notice."

8. As is manifest from a perusal of the reasons which have ultimately been assigned for the purposes of justifying the action for rectification, the respondents take the view that the **Assessing Officer**[6] while computing the additions in the original order of assessment had referred to and applied an incorrect tax rate. It becomes relevant to note that the original order of assessment had been made as far back as on 22 December 2017. Although the matter travelled to the CIT(A) thereafter, the said authority while according part relief had recomputed the taxable income of the petitioner at INR 1,04,50,164/-. Even at this stage, the issue of a wrong tax rate having been applied does not appear to have been either raised or alluded to.

[6] AO

9. We bear in mind the indisputable position that even if we were to assume that the power comprised in Section 154 of the Act were available to be exercised or wielded notwithstanding the conclusion of proceedings under the DTVSV Act and the issuance of Form 5, the same would clearly not be sustainable bearing in mind the statutory period of limitation which would apply.

10. We firstly take note of the contention of Mr. Kantoor, learned counsel for the writ petitioner, who submits that ordinarily the order of 22 December 2017 could have been rectified only upto 31 March 2022. However, and our attention is drawn to the order under Section 154 which, even though dated 30 March 2022, seems to indicate that it was signed and communicated only on 22 April 2022. In our considered opinion, the validity of the notice would necessarily have to be evaluated basis the date of its issuance as opposed to when the same may have be drawn.

11. Notwithstanding the above, and in our considered opinion, the order under Section 154 is liable to be struck down on a more fundamental plane. As per the scheme of the DTVSV Act, we find that an applicant desirous of settlement is required to file a declaration carrying requisite particulars in terms of Section 4. That provision reads as under:-

> "**4. Filing of declaration and particulars to be furnished**.—(1) The declaration referred to in Section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.
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> (2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1)

of Section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of Section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of Section 5.

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of Section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of Section 5.

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,—
(*a*) any material particular furnished in the declaration is found to be false at any stage;
(*b*) the declarant violates any of the conditions referred to in this Act;
(*c*) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),
and in such cases, all the proceedings and claims which were withdrawn under Section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of Section 5 by the designated authority or the

payment of sum determined under that section."

12. Section 5 prescribes the time and manner of payment of the amount which may be determined by the Designated Authority and reads thus:-

> " **5. Time and manner of payment**.—(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.
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> (2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.
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> (3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.
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> *Explanation*.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute."

13. As we go through the provisions made in Sections 4 and 5, it becomes apparent that the Designated Authority upon receipt of a declaration made and referable to Section 4 is obliged to determine the amount payable by the declarant in accordance with the provisions of the DTVSV Act. To facilitate the aforesaid, the Designated Authority

is required to grant a certificate which would encapsulate particulars of the tax arrears and the amount payable upon such determination. In terms of sub-section (2) of Section 5, the declarant is thereafter statutorily placed under an obligation to pay the amount as determined under sub-section (1) within 15 days of the receipt of the certificate and duly intimate the Designated Authority of compliance.

14. Of significance are the provisions made in sub-section (3) and which confer conclusiveness and finality on the amounts that may be determined under sub-section (1) of Section 5. The aforesaid provision clearly injuncts the respondents thereafter from reopening any matter covered by an order of determination made by the Designated Authority in any other proceedings under the Income Tax Act or, for that matter, any other law for the time being in force.

15. We also bear in mind the provisions which stand enshrined in Section 4(6). On a conjoint reading of Section 4(6) alongside Section 5(3), we find that the determination as carried out by the Designated Authority is clearly rendered finality and cannot possibly be reopened or revised by any authority under the Income Tax Act by taking recourse to a power which may otherwise be available to be exercised. As is manifest from a reading of those provisions, the only contingency where a determination made may be liable to be revisited or recalled would be where it is subsequently found that the application made by the declarant is found to suffer from an incorrect declaration or the suppression of a material fact. Absent the above, the declaration and the determination is conferred finality under the DTVSV Act. The closure which comes to be accorded to the dispute thus is intended to operate upon both sides, namely, the assessee as

well as the Revenue. This would clearly flow from the special legislative objectives underlying the DTVSV Act and its avowed intent of according a closure to all tax disputes.

16. It is perhaps for this reason that the Legislature constructed in Section 4(6) a salutary safeguard with regard to the conclusiveness and finality which otherwise stands attached to a determination under the enactment by virtue of Section 5(3).

17. However, the action which is asserted to be one in exercise of the powers conferred by Section 154 of the Act would clearly not fall within the ambit of Section 4(6). We note that it is not the case of the respondent that the petitioner had failed to make a disclosure with respect to any material particular or any disclosure so made subsequently being found to be false. In view of the aforesaid, we find ourselves unable to sustain the impugned action.

18. We consequently allow the instant writ petition and quash the rectification notice dated 08 March 2022, rectification order dated 30 March 2022 issued under section 154 of the Act, notice of demand dated 30 March 2022, order dated 28 April 2022 and notice of demand dated 28 April 2022. The parties shall proceed in terms of the determination made under the DTVSV Act.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 22, 2024/RW