IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 22952 of 2017

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YOGESH ROSHANLAL GUPTA....Petitioner(s)

Versus

CHAIRMAN, CENTRAL BOARD OF DITECT TAXES & 1....Respondent(s)

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Appearance:

MR. HARDIK V VORA, ADVOCATE for the Petitioner(s) No. 1

MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 19/02/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has prayed for a direction to the Central Board of Direct Taxes ['CBDT' for short] to decide the petitioner's application for extension of time for payment of last installment of tax under the Income Disclosure Scheme 2016 (hereinafter to be referred to as 'the said Scheme').

2. Brief facts are as under:

   The petitioner is an individual. The Central Government framed a scheme for declaration of undisclosed income. Such scheme was framed under the Finance Act of 2016 and was called 'The Income Declaration Scheme 2016' (hereinafter to be referred to as 'the said Act of 2016'). Section 183 of the said Act envisages declaration of undisclosed income. Section 184 of the said Act provides *inter alia* that notwithstanding anything contained in the Income Tax Act, the undisclosed income declared under section 183 would be chargeable to tax at the rate of thirty percent of such income and amount of tax so chargeable would be increased by a surcharge with Krishi Kalyan Cess at the rate of twenty-five percent of tax calculated. Under section 185 of the said Act, the person making a declaration of the undisclosed income in addition to the tax and surcharge provided under section 184 would pay penalty at the rate of twenty-five percent of the tax. Section 187 of the Act pertains to time for payment of tax and reads as under:

“**Time for payment of Tax**.

187. (1) The tax and surcharge payable under section 184 and penalty payable under section 185 in respect of the undisclosed income, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

(2) The declarant shall file the proof of payment of tax, surcharge and penalty on or before the date notified under sub-section (1), with the Principal Commissioner or the Commissioner, as the case may be, before whom the declaration under section 183 was made.

(3) If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the date specified under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Scheme.”

3. Section 188 of the Act provides that the amount of undisclosed income declared in accordance with section 183 shall not be included in total income of the declarant for any assessment year, if the declarant pays the tax, surcharge and penalty by the date specified under sub-section (1) of section 187. Section 195 of the said Act made certain provisions of the Income Tax Act and the Wealth Tax Act applicable in relation with the scheme also. Section 195 reads as under:

"**Applicability of certain provisions of Income Tax Act and of Chapter V of Wealth Tax Act.**

195. The provisions of Chapter XV of the Income Tax Act relating to liability in special cases and of section 119, section 138 and section 189 of that Act or the provisions of Chapter V of the Wealth Tax Act, 1957 (27 of 1957) relating to liability in respect of assessment in special cases shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income Tax Act or as the case may be the Wealth Tax Act, 1957."

4. Section 197 of the Act contains certain clarifications, relevant portion of which reads as under:

"Removal of doubts.

197.For the removal of doubts, it is hereby declared that-

(b) where any declaration has been made under section 183 but no tax, surcharge and penalty referred to in section 184 and section 185 has been paid within the time specified under section 187 the undisclosed income shall be chargeable to tax under the Income Tax Act in the previous year in which such declaration is made;”

5. In terms of section 187 of the said Act, the Government of India published in the Official Gazette a notification dated 20.07.2016 specifying the last dates for depositing the tax and penalty in three installments. This shall in substitution of dates previously prescribed in an earlier notification dated 19.05.2016. By the said notification of 20.07.2016, the three dates specified were as under:

“(ii) the date on or before which the tax and surcharge is payable under section 184, and the penalty is payable under section 185 in respect of undisclosed income shall be as follows, namely:-

(a) the 30th day of November, 2016, for an amount not less than twenty-five percent of such tax, surcharge and penalty;

(b) the 31st day of March 2017 for an amount not less than fifty percent of such tax, surcharge and penalty as reduced by the amount paid under clause (a);

(c) the 30th day of September, 2017, for the whole amount payable under section 184 and 185 as reduced by the amounts paid under clause (a) and (b)”

6. The petitioner made declaration under the said Scheme on 16.09.2016 of an undisclosed income of Rs. 5,98,20,219/- divided into three years i.e. the years 2011, 2015 and 2016. The Principal Commissioner of Income Tax thereupon asked the petitioner to make payment of a sum of Rs. 1,79,46,066/- by

way of tax, of Rs. 44,86,517/- by way of surcharge and a similar sum of Rs. 44,86,517/- by way of penalty under his communication dated 13.10.2016. He specified the following dates and percentage of such amounts to be deposited in three installments as under:

> " The declarant is hereby directed to make the payment of sum payable as per column (5) of the above table, as specified below:
>
> (i) an amount not less than twenty five percent of the sum payable on or before 30th day of November, 2016
>
> (ii) an amount not less than fifty percent of the sum payable as reduced by the amount paid under clause (i) above on or before 31st day of March, 2017.
>
> (iii) the whole of the sum payable as reduced by the amount paid under clause (i) and (ii) above on or before 30th day of September, 2017.
>
> In case of non-payment of the amount as specified above, the declaration under Form-I shall be treated as void and shall be deemed never to have been made."

7. It is undisputed that the petitioner deposited the amounts of first and second installments before the due dates. Under a chalan dated 23.11.2016, the petitioner had paid the first installment of Rs. 67,29,775/-. Under the second chalan dated 31.03.2017, the petitioner had deposited a sum of Rs. 67,29,777/-. The petitioner's last installment was due by 30.09.2017. However, according to the petitioner, he was arrested in a criminal case involving allegations of offences

punishable under sections 465, 468, 471, 120 read with section 34 of IPC filed before Kanchipuram, Tamilnadu. In connection with the said criminal case, he was arrested and remanded to judicial custody on 14.07.2017. He was granted bail by the Judicial Magistrate on 16.08.2017, however, with a condition that the petitioner shall execute a bond of Rs. 50 lacs with two sureties and that he shall appear before the Court every day at 10 AM till further orders. It was only on 30.10.2017 that the learned Magistrate relaxed the condition of appearance before the Court. The petitioner thereupon immediately reached Gujarat and applied to the departmental authorities under a letter dated 04.10.2017 for extension of time for payment of last installment of the tax and surcharge and penalty under the said Scheme. Such an application was filed before the Jurisdictional Commissioner as well as before the CBDT. The Commissioner, by the impugned order dated 18.10.2017, conveyed to the petitioner that he has no authority to grant any such extension of time. CBDT has not yet replied to the petitioner. At this stage, this petition has been filed.

8. Having heard learned counsel for the parties and having perused the documents on record, we may recall, the said Scheme itself contains a specific provision making the provision of section 119 of the Income Tax Act applicable to the Scheme. Section 119 of the Act, as is well known, pertains to the power of the CBDT to issue instructions to subordinate authorities. In terms of sub-section (1) of section 119, the Board has the power to

issue such orders, instructions and directions to the income-tax authorities as it may deem fit for proper administration of the Act and such authorities would be required to observe and follow such orders and instructions of the Board. Sub-section (2) of section 119 starts with an expression “without prejudice to the generality of the forgoing power”. Clause (b) thereof provides that the Board may, if it considers it desirable expedient so to do for avoiding genuine hardship in class of cases by general or special order authorize any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act for making such application or claim and deal with the same on merits in accordance with law.

9. Under Clause (b) of sub-section (2) of section 119 thus, the Board has ample powers if it considers it desirable or expedient with a view to avoiding genuine hardship in any case to admit an application or claim after the expiry of period specified for such purpose in the Act. This section 119 has been made specifically applicable to the Scheme under section 195 of the Act.

10. While recognizing such powers of the Board we do not mean to convey that such powers could be exercised lightly. We do not mean to water down the provisions of the scheme which undoubtedly convey a sense of urgency and finality to the

disclosure scheme framed by the parliament. Several provisions contained therein give indication that the provisions of the Scheme, particularly with respect to declaration of undisclosed income and payment of tax, surcharge and penalty in terms of such declaration in the prescribed time limit would brook no delay. For example, section 187 of the said Act itself while requiring the declarant to make the payment of tax, surcharge and penalty under sections 184 and 185 on such dates as may be notified by the Central Government, contains sub-section (3) which provides that if the declarant fails to do the same on or before the specified day, the declaration filed by him shall be deemed never to have been made under the Scheme. Thus, non-payment of any of the installments by the due dates would automatically annul the declaration made by the declarant. Thereupon, the consequences envisaged under the Scheme would follow.

11. Nevertheless, neither the Scheme in general nor section 195 of the said Act conveys any intention of the legislature that the powers of the Board for relaxation of the time limit in terms of sub-section (2) of section 119 of the Income Tax Act were meant to be taken away. In fact, section 195 of the Act made the provision of section 119 of the Income Tax Act specifically applicable to the Scheme. In rare and exceptional cases howsoever few and far between may be they, that may be the powers of the Board to condone delay in terms of sub-section (2) of section 119 of the Income Tax Act are not shut out completely in their applicability to the scheme.

12. Counsel for the Revenue, however, vehemently contended that the Board has taken a conscious decision not to make any departure primarily in view of the finality sought to be attached to the declarations and payments envisaged under the Scheme and to avoid any discriminatory application of extensions. Our attention was invited to a circular dated 28.03.2017 issued by the Board. This circular was primarily in response to large number of complaints and representations received by CBDT by the declarants, who were unable to make the payment of first installment itself. The Board separated out certain technical issues and listed five typical categories of reasons cited for such failure in para 3 as under:

"3. As far as remaining declarants are concerned, the reasons for not making timely payments are stated as under:-

(a) Personal/emergency reasons
(b) Lack of liquidity
(c) Confusion about the due date
(d) Rush at banks
(e) Any other reasons which are attributable to declarants"

13. In this context, the Board cited detailed reasons such as sufficient availability of time to come to a conclusion that granting relaxation or extension beyond the due date would not be feasible in case of delays due to circumstances mentioned in para 3. While doing so, the Board still specified as under:

"4. However, some instances have been brought to the notice where the declarant effected the full payment within the due date and same was also acknowledged by the bank, but it was intimated later by the bank that fund transfer did not materialize within the prescribed timeframe and the money was either returned back to the declarant or credited to Govt. A/c after 5th December, 2016. Such instances clearly refer to the circumstances over which the declarant had absolutely no control. Only, in such cases, the concerned Pr. CIT/CIT is hereby authorized to deal with the applications on a case to case basis after verifying the claim of the declarant through the relevant bank statements/certificates etc. and consider on merits the condonation in appropriate cases provided the amount payable as per the first installment as well as second installment is paid by 31st March, 2017 by the concerned declarant."

14. Two things emerge from this circular of the Board. One is that it related to the failure of large number of declarants to make payment of first installment. The Board was of the view that such difficulties cannot be obviated and extension, as prayed for, cannot be granted. This was conveyed to the concerned authorities. While doing so in the above quoted para 4 of the circular, Board still recognized its power for extension and specified that in cases, where because of bank transactions failing though the amount was already deposited before the bank before the due date, the amount was not received by the department, time would be suitably extended subject to conditions contained therein.

15. We are not concluding in this order whether the petitioner has made out sufficient grounds for exercise of the powers of the Board. Nevertheless, we have noted that the relevant facts which include the circumstances under which the petitioner claims incapacity to make the payment of the last installment. It would be for the Board to judge the facts on record and come to the conclusion whether this is a fit case for exercise of powers under sub-section (2) of section 119 of the Act. We request the Board to do so preferably within three months from the date of receipt of copy of this order. If the petitioner is willing to deposit such amount of third installment with reasonable interest as may be directed by the Board, he may indicate so in writing to the Board within 10 days from today.

16. With these observations and directions, the petition is disposed.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

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