

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2148 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA****Sd/-****and****HONOURABLE MR. JUSTICE ILESH J. VORA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

YOGESH ROSHANLAL GUPTA**Versus****CENTRAL BOARD OF DIRECT TEXES****Appearance:****MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1****MRS MAUNA M BHATT(174) for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 04/02/2021****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

“(A) A Writ of Certiorari or any other Writ, Order or direction in the nature of Certiorari quashing the order dated 28.12.2018 rejecting extension of time for payment of the last installment of Tax under Income Disclosure Scheme, 2016 and allow extension of time, for payment of the last installment of Tax under Income Disclosure Scheme, 2016;

(B) In alternative and without prejudice, a Writ of Mandamus or any other Writ, order or direction in the nature of Mandamus directing the respondent to refund the tax amount paid in the first and second installment of IDS, 2016.

(C) Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner.

(D) Any other and further relief deemed just and proper be granted in the interest of justice;

(E) To provide for the cost of this petition.”

2. The writ applicant 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 Scheme of 2016'). Clause 183 of the said Scheme envisages declaration of undisclosed income. Clause 184 of the said Scheme provides inter alia that notwithstanding anything contained in the Income Tax Act, the undisclosed income declared under clause 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 clause 185 of the Scheme, the person making a declaration of the undisclosed income in addition to the tax and surcharge provided under clause 184 would have to pay penalty at the rate of twenty-five percent of the tax. Clause 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 subsection (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. Clause 188 of the Scheme provides that the amount of undisclosed income declared in accordance with clause 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-clause (1) of Clause 187. Clause 195 of the said Scheme made certain provisions of the Income Tax Act and the Wealth Tax Act applicable in relation with the scheme also. Clause 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. Clause 197 of the Scheme 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 clause 187 of the said Scheme, 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 writ applicant 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 writ applicant 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 equivalent sum of Rs. 44,86,517/- by way of penalty by way of 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 writ applicant deposited the amount towards the first and second installments before the due dates. Under a chalan dated 23.11.2016, the writ applicant paid the first installment of Rs.67,29,775/-. Under the second chalan dated 31.03.2017, the writ applicant deposited a sum of Rs. 67,29,777/-. The writ applicant's last installment was to be

paid by 30.09.2017. However, according to the writ applicant, he came to be arrested in a criminal case for the offences punishable under sections 465, 468, 471, 120 read with section 34 of IPC filed at 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 writ applicant shall execute a bond of Rs. 50 Lac 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 Magistrate relaxed the condition of appearance before the Court. The writ applicant thereupon immediately reached Gujarat and applied to the departmental authorities under a letter dated 04.10.2017 for extension of time for payment of the 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 had no authority to grant any such extension of time. The CBDT has not yet replied to the writ applicant. At this stage, the present writ application came to be filed.

8. The order dated 18th October, 2017 passed by the Commissioner, referred to above, came to be challenged by the writ applicant herein by filing the Special Civil Application No.22952 of 2017. A Coordinate Bench of this Court disposed of the petition holding as under;

“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, nonpayment 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 subsection (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 time frame 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."

9. Pursuant to the aforesaid order passed by this Court, the issue with regard to extension of time for the payment of the third/last installment of tax under the scheme was considered. An order came to be passed dated 28th December, 2018 by the Under Secretary (ITA-II) CBDT as under;

"4.5 Section 119 of the Act which grants power to the Board is to condone delays in the context of the IDS Scheme can only be applied in very exceptional situation. In the case under consideration the declarant had paid the first and third installment within the due dates. The due date for making second installment under the scheme was 31.09.2017 and the declarant was having six months' time to pay third installment under IDS. From the perusal of submission, it has been ascertained that the declarant was confined to jail from 14.07.2017 and was granted bail on 16.08.2017 with the condition that the declarant should remain present in the court every day at 10:00 A.M. It has been stated that as per the bail condition, he could not move out of Tamilnadu from 14.07.2017 to 03.10.2017. It is to be noted that the declarant was granted bail on 16.08.2017 and he could very well had arranged the funds even though he was away from Ahmedabad. Even before 14.07.2017, when he was not taken into custody between 11.04.2017 to 13.07.2017 he has almost three and half months time to effect payment of the third installment. The claim of the declarant that he could not arrange funds as he was out of Gujarat is not acceptable as the declarant was free to interact with anyone with use of advanced communication facilities during the period when he was on bail even though he was in Tamilnadu. It is also to be noted that the declarant did not make any genuine attempt to pay the third installment under IDS. Therefore, it is treated as a

lapse on the part of the declarant as he was well aware of the payment schedule and it cannot be stated that the situation was completely beyond the control of the declarant. It is relevant to mention that the request for further extension of time for making payment under first and second installment of IDS on personal reasons had been rejected by CBDT vide a general order dated 28.03.2017 in F.No.215/86/2012, ITA-II.

5. For the reasons mentioned in para above, there is no merit in granting further relaxation or time for effecting payment of the third installment for personal reasons which are found to be solely attributable to the declarant. In view of the above, I am directed to state that it is not case for exercise of powers u/s.119 of the Act by the Board and therefore, request for granting further time, in case of the Petitioner, for effecting payment of third installment under IDS is hereby rejected."

10. Mr. Hardik Vora, the learned counsel appearing for the writ applicant would submit that he does not intend to raise the issue with respect to extension of the time for the payment of the third/last installment, more particularly, in view of the order dated 28th December, 2018, referred to above. Mr. Vora submits that he would like to confine his case only to the extent of adjusting the amount already deposited by the writ applicant for the relevant assessment year. In the aforesaid context, Mr. Vora seeks to rely upon the following judgments;

"(i) Sangeeta Agarwal vs. Principal Commissioner of Income Tax-I, (2018) 409 ITR 254 (MP); This decision of the Madhya Pradesh High Court was challenged by the Revenue before the Supreme Court. The Revenue lost before the Supreme Court. The order of the Supreme Court is reported in 2019 103 Taxmann.com 420 (SC).

(ii) ***Shankarlal vs. Income Tax Officer & Ors.***, reported in (1998) 230 ITR 536 (AP);

(iii) ***Patchala Seethramaiah vs. Commissioner of Income Tax, Vijayawada & Ors.***, (2000) 241 ITR 287 (AP);

11. We take notice of the fact that the decision of the Madhya Pradesh High Court in the case of Sangeeta Agrawal (supra) is in context with the Income Declaration Scheme, 2016, with which, we are concerned. The other judgments are in context with the Voluntary Disclosure of Income Scheme, 1997.

12. In such circumstances, referred to above, Mr. Vora prays that the respondents be directed to adjust the amount for the relevant assessment year, i.e, the amount already deposited under the Scheme of 2016.

13. On the other hand, this writ application has been vehemently opposed by Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue. Mr. Bhatt would submit that the claim put forward by the writ applicant as regards adjusting the deposited amount is not tenable in law. Mr. Bhatt first invited the attention of this Court to certain provisions of the Scheme. Clause 187 of the Scheme reads thus;

“Time for payment of tax.

187.(1) The tax and surcharge payable under section 14 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."

14. Clause 191 of the Scheme reads thus;

"Any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable."

15. Clause 195 of the Scheme reads thus;

"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 Scheme not to apply to certain persons."

16. According to Mr. Bhatt, Clause 191 of the Scheme makes it abundantly clear that any amount of tax paid under clause 184 or penalty under clause 185 in pursuance of a declaration made under the clause 183 is not refundable. Mr. Bhatt would submit that the sub-clause (3) of clause 187 provides for a

deeming fiction. If the declarant fails to pay the tax in respect of the declaration made under clause 183 on or before the dates specified under sub-section (1) , the declaration filed by the declarant would be deemed never to have been made under the Scheme. Mr. Bhatt, thereafter, invited the attention of this Court to Article 265 of the Constitution. According to Mr. Bhatt, a Writ Court can order refund of tax or adjustment of the tax only if the same has been paid under mistake of law. He would submit that tax, if illegally levied, can also be ordered to be refunded. He would submit that the doctrine of “unjust enrichment” cannot be applied in all cases by a straight-jacket formula. This doctrine has to be applied having regard to the facts of each case. According to Mr. Bhatt, the writ applicant cannot claim adjustment of the deposited amount on the strength of Article 265 of the Constitution.

ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicant is entitled to get the amount already deposited by him under the scheme adjusted in any manner so far as his tax liability is concerned.

18. It is settled law that an application under [Art. 226](#) of the Constitution would lie for enforcing the obligation of the State to refund and/or return the money-collected towards an illegal tax or duty. Ever since the decision in the case of [Sales Tax Officer v. Kanhaiya Lal](#), AIR 1959 SC 135, it has been

consistently held that the payment towards tax or duty which is without authority of law is a payment made under mistake within the meaning of [S. 72](#) of the Indian Contract Act. [Section 72](#) is based on equitable principles. Therefore, by claiming to retain the tax which has been collected without the authority of law, the Government cannot enrich itself and it is liable to make restitution to the person who had made payment under any mistake or under coercion vide (1) [Patel India \(Pvt.\) Ltd. v. Union of India](#), ; (2) [D. Cawasji and Co. v. State of Mysore](#), (supra); (3) [Shri Vallabh Glass Works Ltd. v. Union of India](#), (4) [Salonath Tea Co. v. Supdt. of Taxes](#), ; (5) [Ayurveda Pharmacy v. State of Tamil Nadu](#), .

19. Another basic proposition which is beyond controversy is that the Court's jurisdiction under [Art. 226](#) of the Constitution is discretionary. The powers under [Art. 226](#) cannot be taken away or curtailed by any legislation short of amendment of the Constitution (vide *In re The Kerala Education Bill, 1957*, AIR 1958 SC 956. But the Writ Court does not act arbitrarily and guides itself according to certain well settled principles for doing justice. Therefore, the Court's powers under [Art. 226](#) are subject to certain self-imposed limitations.

20. We shall first look into the decision of the Madhya Pradesh High Court in the case of Sangeeta Agrawal (supra), as significant reliance has been placed by the learned counsel appearing for the writ applicant. In the said case, the writ applicant, being an assessee, applied under the Scheme of Income Declaration Scheme, 2016 as declared by the Government of India, which came into force from 1st June,

2016. The writ applicant disclosed an undisclosed income of a particular amount for the A.Y.2014-15. The case of the writ applicant was selected for scrutiny for the relevant assessment year, and notice under Section 143(2) of the Act was issued. His application, therefore, under the scheme came to be rejected. The writ applicant claimed that the first installment paid by him should be refunded. As the request was declined, the writ applicant approached the High Court of Madhya Pradesh. The Madhya Pradesh High Court allowed the writ application holding as under;

"5. Learned counsel for the petitioner has submitted that he has paid the first installment amounting to Rs. 3,28,068 on 19-11-2016 and after coming to know about the aforesaid, he prayed for refund of the amount.

6. As per Clause No. 191 of the Finance Act, 2016, any amount paid under Scheme is not refundable and, therefore, he prayed for adjustment of the aforesaid amount.

7. To support his argument he has drawn our attention to the decision of the Hon'ble Apex Court in the case of Hemalatha Gargya v. CIT [2003] 128 Taxman 190/259 ITR 1 in respect of similar Scheme which was issued in the Year 1997 and submitted that in view of the law laid by the Apex Court, his application cannot be rejected and submitted that in the aforesaid matter the issue relates to Scheme VDIS, 1997 in which, it was held that the assesseees were not entitled to the benefits of the scheme since the payments made by them were not in terms of the scheme, the revenue authorities were directed to refund or adjust the amounts already deposited by the assesseees in purported compliance with the provisions of the scheme to the concerned assesseees in accordance with law. He further submitted that similar direction has been made by the Andhra Pradesh High Court in the case of Patchala Seethramaiah v. CIT [1999] 107 Taxman 305/ [2000] 241 ITR 287 as well as Bombay High Court in the case of Sajan Enterprises v. CIT [2006] 151 Taxman 164/282 ITR 636. With the aforesaid, he prays that the

impugned order be quashed and respondent be directed to adjust the amount of tax already paid under the Income Declaration Scheme - 2016 against the demand which is outstanding in relation to the pending Assessment Year specifically Assessment Year 2014-15.

8. In the case of Patchala Seethramaiah (supra) the Apex Court has held that when Commissioner declined to grant certificate under Section 67(2) of the Finance Act, 1997 (Voluntary Disclosure of Income Scheme 1997) on the ground that declarant paid tax beyond prescribed period, such declaration was non est, and consequently, revenue was not entitled to retain amount of tax paid under such declaration. It was also held that the retention of tax contrary to the very scheme was in teeth of Article 265 of the Constitution of India, therefore, the provision under Section 70 could not have any application to a situation where the tax is paid beyond the prescribed period and accordingly the retention of the said tax by the department was illegal and the petitioner was entitled to refund the same.

9. In the case of Sajan Enterprises (supra), wherein the assessee filed a declaration under Voluntary Disclosure Scheme, 1997, but did not pay the entire tax liability within stipulated period of 3 months from date of filing of declaration. It was held by the Apex Court that any amount paid after 90 days cannot be accepted under the scheme, hence, the balance amount will have to be refunded back to the assessee.

10. Learned counsel for the respondent opposed the prayer and submitted that the Scheme of 2016 is very clear and there is no provision to adjust the amount and, therefore, no such direction can be issued and prays for dismissal to the writ petition.

11. Para 14 of the decision of the Hon'ble Supreme Court in the case of Hemalatha Gargya (supra) is relevant which reads as under:--

"14. As a consequence, in our view, the appeals preferred by the assessees must be and are hereby dismissed whereas the appeals preferred by the Revenue Authorities must be and are hereby allowed. However, having held that the assessees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of

the Scheme, we direct the Revenue Authorities to refund or adjust the amounts already deposited by the assesseees in purported compliance with the provisions of the Scheme to the concerned assesseees in accordance with law. All the appeals are accordingly disposed of without any order as to costs."

12. Considering the aforesaid, so also the law laid by the Bombay High Court in the case of Hemalatha Gargya (supra) as well as in Sajan Enterprises (supra), we quash the impugned order and direct the respondent - Revenue to adjust the amount of Rs. 3,28,068 which has been deposited by the petitioner in relevant Assessment Year 2014-15. In the result, the writ petition stands allowed and disposed of, but without any order as to costs."

21. Thus, the High Court directed the Revenue to adjust the amount which had been deposited by the writ applicant in the relevant assessment year. The Revenue, being aggrieved by the order passed by the Madhya Pradesh High Court, went in appeal before the Supreme Court. The Supreme Court declined to interfere and rejected the special leave petition.

22. It appears that the Madhya Pradesh High Court relied upon the decision of the Supreme Court in the case of Hamalatha Gargya (supra). Para-14 of the judgment of the Supreme Court in the case of Hemalatha Gargya (supra) has been quoted by the Madhya Pradesh High Court in Para-11 of its judgment. If we read para-14 of the Supreme Court judgment in the case of Hemalatha, it reveals that the assesseees were not entitled to the benefit of the scheme, and the payments made by those assesseees under the scheme were found to be not in terms of the scheme. In such circumstances, the Supreme Court directed the Revenue Authorities to refund or adjust the amount already deposited

by the assesseees. This, according to us, is a relevant distinguishing feature so far as the case on hand is concerned. In the case on hand, the payment with respect to the first two installments were made in accordance with the scheme of 2016. It is the failure on the part of the writ applicant to deposit the amount of the third installment in time that created the trouble for him. The scheme, more particularly, the Clause 191 thereof specifically provides that any amount of tax paid under clause 184 in pursuance of a declaration made under clause 183 shall not be refundable. The case on hand is not one of illegal recovery of tax by the Revenue, or in other words, any tax paid by the assessee under mistake of law. This is a case of default on the part of the writ applicant as an assessee, and the consequences of the default are itself provided under the scheme in the form of Clause 191. We find it difficult to accept the view of the Madhya Pradesh High Court. It is true that the decision of the Madhya Pradesh High Court has not been interfered with by the Supreme Court, but at the same time, we should not ignore the fact that the Supreme Court declined to dismiss the SLP summarily. The judgment of the Andhra Pradesh High Court in the case of Parchala Seethramaiah (supra) also, in our opinion, is of no avail to the writ applicant. It was a case under the Voluntary Disclosure of Income Scheme, 1997. The Andhra Pradesh High Court, while allowing the writ petition and directing the respondents to refund the tax paid under the declaration, held as under;

“6. Thus, from a reading of the aforesaid provisions and the scope and ambit of the Scheme as contemplated, it is quite apparent that if one has to avail the benefit under

the Scheme, he has to mandatorily comply with the requirements. It contemplates the payment of tax along with the declaration itself, but at the same time, making a provision for payment of tax at a later stage not beyond three months from the date of filing the declaration with interest. Further, sub-section (2) of [Section 67](#) stresses upon the mandatory requirement of payment of tax within the outer limit of time and in the event of any such non-payment of tax, the declaration shall be deemed never to have been made under the Scheme, i.e., it will be non-est. [Section 70](#) of the Scheme contemplates that no amount of tax paid in pursuance of a declaration shall be refundable under any circumstances. Necessarily, it would only mean that the expression "declaration" used in [Section 70](#) should be a declaration as contemplated by [Section 66](#) read with [Section 67\(1\)](#) of the Scheme. When the very Scheme contemplates that a declaration without payment of tax is void and non-est and the declaration filed by the assessee was not acted upon, the question of retention of the tax paid under such declaration will not arise. The Revenue cannot retain any amounts paid under a declaration falling within the mischief of [Section 67\(2\)](#). There is no provision under the Scheme whereby the Revenue can retain the tax so paid in respect of a declaration which is void and non-est. In the absence of any such authority of law, the retention of tax contrary to the very Scheme is in the teeth of [Article 265](#) of the Constitution of India. Therefore, the provision under [Section 70](#) of the Scheme cannot have any application to a situation where the tax is paid beyond the prescribed period and accordingly, the retention of the said tax by the department is illegal and the petitioner is entitled to refund of the same. “

23. The important distinguishing feature in the case of Andhra Pradesh High Court is that in the Scheme of 1997, there was no provision whereby the Revenue could retain the tax so paid in respect of a declaration which was void and non-est. Keeping this aspect in mind, the Andhra Pradesh High Court took the view that in the absence of any such authority of law, the retention of tax contrary to the very scheme was in

the teeth of Article 265 of the Constitution.

24. The decision of the Andhra Pradesh High Court in the case of Shankarlal (supra) also, in our opinion, is of no avail to the writ applicant.

25. In the overall view of the matter, we are not convinced with the case put up by the writ applicant for adjusting the amount already deposited. At this stage, we may refer to few relevant averments made in the reply filed on behalf of the respondents. The same reads thus;

8. *I submit that it is pertinent to make reference to the relevant extracts of the Budget speech of the Hon'ble Finance Minister in 2016 while introducing the IDS scheme is reproduced below;*

"159. We are moving towards a lower tax regime with non-litigious approach. Thus, while compliant taxpayers can expect a supportive interface with the department, tax evasion will be countered strongly. Capability of the tax department to detect tax evasion has improved because of enhance. access to information and availability of technology driven analytical tools to process such information.] want to give an opportunity to the earlier non-compliant to move to the category of compliant.

160. I propose a limited period Compliance Window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. There will be no scrutiny or enquiry regarding income declared in these declarations under the Income Tax Act or the Wealth Tax Act and the declarants will have immunity from prosecution. Immunity from Benami Transaction

(Prohibition) Act, 1988 is also proposed subject to certain conditions. The surcharge levied at 7.5% of undisclosed income will be called Krishi Kalyan surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1st June to 30th September, 2016 with an option to pay amount due within two months of declaration.

161. Our Government is fully committed to remove black money from the economy. Having given one opportunity for evaded income to be declared once, we would then like to focus all our resources for bringing people with black money to books."

In view of the above, it is clear that after making a declaration under the IDS, the petitioner is duty bound to effect timely payment of liability under IDS and therefore, the impugned order is legal and valid.

Furthermore, it is pertinent to mention that earlier, under the Voluntary Disclosure Scheme, 1997, the issue of granting general relaxation in prescribed schedule for the payment of taxes was considered by the Hon'ble Supreme Court in Appeal (civil) 6266 of 2000 dated 28.11.02 in the case of Hemalatha Gargya vs. Commissioner of Income Tax. The Hon'ble Supreme Court, on consideration of relevant provisions of the VDIS Scheme, held that since the VDIS was a beneficial scheme, the declarants seeking to claim the benefit under the statutory scheme are bound to comply strictly with the conditions under which benefit was granted. Thus, the Hon'ble Court upheld the action of Income-tax Department in invalidating the declarations for non-payment of taxes within the prescribed time frame under the VDIS Scheme. Relying upon this judgement, the Hon'ble Karnataka High Court in W.P. No. 5740/2018 dated 20.02.18 in the case of M/s Suman vs. The Principal Commissioner, upheld action of the jurisdictional Pr. CIT in not condoning the delay in payment of the third installment.

In the present case, the reason for not making payment of the last installment was clearly attributable to the Petitioner, and therefore, impugned order is legal.

9. I submit that the petitioner under letter dated 24.02.2018 had expressed his willingness to pay interest as the rate of 12% p.a. for the delayed last installment. I submit that the IDS do not contain any provision for

payment of interest for any delay in discharging the liability towards tax, penalty and surcharge. There is no provision for interest under IDS, as the declarants under the IDS were expected to adhere to the prescribed time limits. Any relaxation to the declarants who defaulted in timely payment of any of the installment as per the prescribed schedule without imposing any condition upon those defaulters, would in factt be discriminatory against those declarants who managed to adhere to the prescribed time schedule. It is not within the ambit of CBDT to impose additional conditions of payment of interest for late payment as there is no such provision under the IDS. Therefore, it is reiterated that the Respondent-CBDT was right in rejecting delay condonation application. Moreover, as mentioned in earlier paras, IDS contains provisions for taxation of income so declared under IDS as per the provisions of Income-tax Act if the declaration becomes void.

10. I submit that the Petitioner has prayed in the alternative that the taxes, surcharge and penalty paid under the first and second installment of IDS be refunded to the Petitioner. I humbly submit that such prayer may not be entertained in view of subsection (3) of section 187 of Chapter IX of the Finance Act, 2016 which clearly provides that if the declarant fails to pay the tax, surcharge and penalty in respect of declaration made under section 183 on or before the date so notified by the Central Government in the Official Gazette, the declaration filed by him shall be deemed never to have been made under the IDS Scheme. Further, as per section 191 of the Chapter IX of Finance Act, 2016, any amount of tax and surcharge paid under section 184 or penalty paid under section 185 in pursuance of a declaration made under section 183 shall not be refundable. Therefore, the Petitioner at the time of making a declaration under the IDS would have been aware of the adverse consequences which might become applicable in case he failed to adhere to the time schedule for effecting payment. Therefore, the petitioner's prayer with regard to refund of taxes, surcharge and penalty paid under the first installment and second installment of IDS does not merit acceptance."

26. In the overall view of the matter, we are convinced that no case is made out by the writ applicant for interference.

27. In the result, this writ application fails and is hereby rejected.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

Vahid

