IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 1949 of 2021

M/s.Value Added Futuristic Management
Private Limited .... Petitioner

Versus

1.The Union of India, through the Principal Commissioner of Income Tax, Ranchi-cum Designated Authority, having its office at 5A, Revenue Building, Main Road, Ranchi, P.O./ G.P.O., P.S. Chutia, Town and District Ranchi-834001 (Jharkhand).
2.Deputy Commissioner of Income Tax, Ranchi-cum-Designated Authority, having its office at 5A, Revenue Building, Main Road, Ranchi, P.O. G.P.O., P.S. Chutia, Town and District Ranchi-834001 (Jharkhand). .... Respondents

CORAM :**Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Kartik Kurmy, Adv.
Mr. Sumeet Gadodia, Adv.
Mrs. Shilpi Sandil Gadodia, Adv.
Mr. Ranjeet Kushwaha, Adv.
For the Respondents : Ms. Amrita Sinha, Adv.

08/14.07.2022

Per Deepak Roshan, J: Heard Mr. Kartik Kurmy along with Mr. Sumeet Gadodia, Advocates for the petitioner and Ms. Amrita Sinha, Advocate for the respondent-Income Tax Department.

2. The instant writ petition has been filed by the petitioner praying therein for the following reliefs:-

(i) For issuance of an appropriate writ, order or direction to call for and quash the decision of respondent no.1 dated 15.03.2021, wherein the declaration/revised declaration filed by the petitioner under the Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter to be referred as 'the Act, 2020') has been rejected by wrongly relying upon the provisions of Section 9(c) of the said Act.

(ii) For issuance of further appropriate writ, order or direction including writ of mandamus, directing the respondent authorities to act in terms of the certificate issued in Form-3 under sub-section (1) of Section 5 of the Act, 2020 (vide Annexure-14) after granting the benefit of adjustment of the amount already paid by the petitioner for the assessment year 2012-13, which is duly reflected in the official portal of the respondent-authorities itself.

(iii) For issuance of further appropriate writ, order or direction, including writ of declaration, declaring that the action of the respondent authorities in rejecting the declaration/revised declaration filed by the petitioner under the Act, 2020 is wholly illegal and arbitrary and beyond the scope of the powers conferred upon the respondent authorities.

(iv) For issuance of further appropriate writ, order or direction, including writ of mandamus, directing the respondent authorities to

refund the amount of Rs. 20,95,633/-, which is refundable to the petitioner in terms of Section 7 of the Act, 2020 consequent upon acceptance of its declaration under the said Act;

(v) For issuance of further appropriate writ, order or direction, including writ of mandamus, directing the respondent authorities to pay interest @ 18% per annum on the amount of Rs. 20,95,633/- with effect from the date when the refund of the said amount is due till the date of actual payment to the petitioner.

3. Brief facts of the case is that the Parliament promulgated 'The Direct Tax Vivad Se Vishwas Act, 2020' (hereinafter referred to as 'the Scheme'), published vide Gazette Notification dated 17th March, 2020 with an objective of providing resolution of disputed tax and for matters connected therewith or incidental thereto. Subsequent to promulgation of the Scheme, Central Government framed 'The Direct Tax Vivad Se Vishwas Rules, 2020' (for short 'the Rules') for giving effect to the Scheme. Section 4 of the Scheme provided, *inter alia,* for filing of a declaration and the said declaration along with undertaking was to be filed by a declarant in statutory Form-1 and Form-2, as prescribed under the Rules. Section 3 of the Scheme provided, *inter alia*, the amount which a declarant would be liable to pay pursuant to declaration filed by it and it is an undisputed fact that case of the Petitioner was falling under Section 3(a) of the Scheme, wherein the petitioner-declarant, as against its total tax arrears, was only required to pay the amount of 'disputed tax'. Section 7 of the Scheme further provided, *inter alia*, that any amount paid in pursuance of a declaration under the Act would not be refundable under any circumstances. However, said Section itself, by way of explanation, provided that if any amount has been paid under the Income Tax Act, 1961 in respect of tax arrears before filing of the declaration, and, if the said amount exceeds the amount payable under Section 3 of the Scheme pursuant to declaration made by the declarant, then the declarant would be entitled for refund of such excess amount without any interest. The Scheme further provided, *inter alia,* that subsequent to filing of declaration by the declarant, Designated Authority was required to determine the amount payable by the declarant under the Scheme and a certificate to that effect was to be issued by the Designated Authority in terms of Section 5(1) of the Scheme.

4. It is the case of the petitioner that for the Assessment Year 2012-13, assessment order under Section 143(3) of the Income Tax Act was

passed, wherein, against its declared income of Rs. 10,48,440/-, the net taxable income was determined at Rs. 2,41,80,980/- (Annexure-5). The said assessment order was subject matter of challenge under Section 264 of the I.T. Act, and, vide order dated 28.03.2017, said assessment order was set aside by the Principal Commissioner of Income Tax with a direction to the Assessing Officer to frame de novo assessment by making fresh enquiries, and, pursuant to the aforesaid order passed under Section 264, fresh de novo Assessment Order dated 29.12.2017 was passed, wherein income of the petitioner was enhanced from Rs. 10,48,440/- to Rs. 2,62,71,970/-. Being aggrieved by the said Assessment Order, petitioner preferred statutory appeal under Section 250 of the I.T. Act before the Commissioner (Appeal), which was dismissed vide order dated 05.12.2018 and, subsequently, petitioner preferred further appeal before the Income Tax Appellate Tribunal, Ranchi on 30.03.2019 which was pending consideration on the date of filing of the declaration form.

5. It is the further case of the Petitioner that for the same Assessment Year 2012-13, during pendency of the appeal before ITAT, Ranchi, Assessing Authority initiated re-assessment proceedings under Section 144 read with Section 147 of the I.T. Act and passed an order dated 16.12.2019 by further enhancing the income of the petitioner by Rs. 56,67,412/-. Thus, the total addition of income was of an amount of Rs. 3,19,39,380/-. Petitioner, being aggrieved by the re-assessment order under Section 144/147 of the I.T. Act, preferred statutory appeal before the Commissioner of Income Tax, Ranchi and the said appeal was also pending adjudication at the time of filing declaration form.

6. Since two separate appeals for the Assessment Year 2012-13 were pending before the Appellate forums i.e. ITAT, Ranchi and CIT, Ranchi, Petitioner was entitled to avail the benefit of the Scheme and, accordingly, petitioner filed its declaration in statutory Form-1 along with undertaking in statutory Form-2 in the online portal on 24.12.2020 for availing benefit of the Scheme.

7. It is an admitted fact that the declaration filed by the petitioner was categorized as a declaration under Section 3(a) of the Scheme, and, consequent to filing of the said declaration, the same was accepted by **the Designated Authority and the amount payable by the Petitioner-**

declarant was determined by the Designated Authority and certificate dated 20.01.2021 was issued in statutory Form-3 accepting the declaration of the Petitioner by the Designated Authority in exercise of the powers conferred under sub-section (1) of Section 5 of the Scheme.

8. Declaration filed by the petitioner was duly accepted, but, at the time of determining the amount payable/refundable to the petitioner, an amount of Rs. 9,08,075/- was reflected as payable by the petitioner as against the amount of Rs. 20,96,726/- which, as per the petitioner, was refundable to it after taking into consideration tax already paid by the petitioner. It is the further case of the petitioner that an amount of Rs. 23,26,380/- already paid by the petitioner was not adjusted at the time of acceptance of its declaration, with an alleged remark of 'mismatch'.

9. The petitioner, immediately after receipt of certificate dated 20.01.2021, approached the Respondent-authorities and explained them regarding the amount shown as 'mismatch' and requested the Respondent-authorities to rectify declaration certificate issued in Form-3. However, Petitioner was verbally informed that since certificate has already been issued, Petitioner should file revised declaration and, if such revised declaration is filed by the Petitioner, tax which has already been paid by the Petitioner and not reflected in the certificate would be rectified and, if any amount is found refundable to the Petitioner, same would be refunded to it. Accordingly, Petitioner filed a revised declaration on 23.01.2021 before the Respondent-authority. However, said declaration was rejected vide order dated 15th March, 2021 by placing reliance upon Section 9(c) of the Scheme. Said revised/fresh declaration dated 23.01.2021 was rejected by the Designated Authority on the ground that Charge-sheet No. 12 dated 31.12.2020 has been submitted in Case No. AC1 2018 A0007 in which one of the Directors of the declarant-company namely, Sunil Sah has been made as an accused for the offences punishable under Section 120B and 511 I.P.C. read with Sections 7,12, 15, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. It is in the said factual background, present writ application has been filed by the Petitioner.

10. Mr. Kartik Kurmy, while advancing arguments on behalf of the Petitioner, contended, inter alia, that provision of the Scheme is declarant centric and the word 'person' used under Section 9(c) of the Scheme is to

be read in the context of the word 'declarant' defined u/s 2(c) of the Scheme. While placing reliance upon the Judgment rendered in the case of ***'State, CBI Vs. Sashi Balasubramanian, reported in (2006) 204 ELT 193 (SC) (Paras 22, 23)***, it has been contended that company and its Directors are separate legal entities and Section 9(c) can be invoked only if prosecution is instituted against the declarant i.e. the Petitioner-company and not its Directors or any other person. It has been argued that definition of 'person' u/s 2(31) of the I.T. Act has been incorporated by reference into the Scheme and the term 'person' under the Income Tax Act includes both 'an individual' as well as 'a company' as separate, different and distinct person in the eyes of law, and, a company being a separate legal entity and being declarant, cannot be denied benefit under the Scheme merely because against one of its Directors prosecution has been initiated. It has been further contended that the scheme is a beneficial piece of legislation and Section 9, being an exclusion clause of a beneficial legislation, must be construed accordingly and its benefit must be liberally extended applying purposive construction. Reliance in this regard was placed upon decisions rendered in the cases of ***'M. Nizamudeen Vs. Chemplast Sanmar Ltd., reported in (2010) 4 SCC 240 (Para 38) and Pappu Sweets and Bischits Vs. CTT reported in 2004 (178) ELT 48 (SC) (Para 10)***' to contend, inter alia, that Section 9(c) would have been applicable against the Petitioner-company if prosecution would have been initiated against the Petitioner which is the declarant being a company, and not against its Directors.

11. In alternative, it has been argued by the Petitioner that in the worst case scenario, after the first order dated 20.01.2021 was passed by the Designated Authority u/s 5(3) of the Scheme accepting declaration of the Petitioner, the Designated Authority has become *functous officio* and even if the revised declaration filed by the Petitioner was rejected, Petitioner would still be entitled to the benefit under Section 3 read with Section 5 of the Scheme, as its original declaration dated 24.12.2020 was already accepted vide order dated 20.01.2021. It has been vehemently argued that at the time of acceptance of the original declaration, Respondent-authorities committed error in not granting adjustment of the entire tax paid by the Petitioner prior to filing of the declaration and it was contended that had the entire tax amount paid by the Petitioner been adjusted at the time of original

declaration itself, there would have been no occasion for the Petitioner to file revised declaration and the Petitioner, as against an amount of Rs. 9,08,075/- determined as payable in the certificate issued to the Petitioner in Form-3, would have been entitled for refund of an amount of Rs. 20,96,726/-. Further, while placing reliance upon Para-38 of the writ petition, it has been stated that Petitioner, in the writ application, has clearly stated, *inter alia*, that on noticing the error which crept in the original certificate dated 20.01.2021, it approached the Respondent-authorities and was verbally informed to file revised declaration and assurance was given that if Petitioner files revised declaration, benefit under the Scheme would be extended to the Petitioner and **'mismatch'** shown in the original certificate would be rectified and, if any amount is found payable to the Petitioner, the same would be refunded.

12. It has been vehemently contended that the said statement made in the writ petition has not been denied by Respondents in their Counter Affidavit and it is only on the representation of the Respondents that Petitioner filed fresh declaration in order to give effect to the amount shown as **'mismatch'** in the original certificate, but Respondents authority, contrary to their assurance, rejected the revised/fresh declaration dated 23.01.2021 vide rejection order dated 15.03.2021 on a complete de novo ground of applicability of Section 9(c) of the Scheme. Thus, it was argued that even if, for the sake of argument, it is presumed that charge-sheet submitted against the Director of the Petitioner-company dated 31st December, 2020 would be deemed to be a charge-sheet against the Petitioner, then also, said charge-sheet was submitted after submission of the original declaration filed by the Petitioner on 24.12.2020 and provisions of Section 9(c) of the Scheme would, otherwise, not be attracted and the Petitioner cannot be denied the benefit of the certificate in Form-3 issued to it on 20.01.2021 under the Scheme.

13. Per contra, Ms. Amrita Sinha supported the action of Respondent-authorities and vehemently contended that revised/fresh declaration dated 23.01.2021 filed by the Petitioner has been rightly rejected in terms of Section 9(c) of the Scheme, as on the date of filing of the said declaration, prosecution against the Petitioner was initiated under the Prevention of Corruption Act, 1988, as charge-sheet dated 31.12.2020 was submitted

against the Director of the Petitioner-company in Case No. R.C. AC 1 2018 A0007. It was vehemently contended that the purpose behind promulgating the Scheme was to ensure that beneficial legislation is not utilized for regularizing or seeking benefits qua tainted monies or monies which fall under the shadow of a socio-economic offence. On the strength of the above, it was contended that the legislature, in its wisdom, with a definite purpose, has carved out exceptions as provided under Section 9 of the Scheme and since, at the time of submission of revised/fresh declaration dated 23.01.2021, prosecution was already initiated under the Prevention of Corruption Act, 1988 against the Director of the Petitioner-company, said revised/fresh declaration has been rightly rejected by the Designated Authority. Reliance was placed upon the decision of the Hon'ble Supreme Court in the case of '***Grid Corporation of Orissa Ltd. Vs. Eastern Metals and Ferro Alloys & Anr., reported in (2011) 11 SCC 334',*** to contend, inter alia, that purposive construction of a Statute should be advanced in furtherance of the objective of the provisions of the statute.

14. Ms. Amrita Sinha further, by placing reliance upon decision of the Hon'ble Supreme Court in the case of ***Shashi Balasubramanian, reported in (2006) 204 ELT 193 (SC)***, contended, inter alia, that the term 'prosecution has been instituted' would not only mean that charge-sheet has been filed and cognizance has been taken, and, on the strength of the above, it was contended that since the criminal case was instituted in the year 2017 itself and charge-sheet was submitted before filing of the fresh declaration, the same was rightly rejected by Respondent-authority. Ms. Amrita Sinha placed reliance upon ***CBDT Circular No. 21/2020 dated 4th December, 2020*** and has referred to Question No. 89 and its answer, to contend, inter alia, that second declaration filed by the Petitioner on 23.01.2021 is a fresh declaration and not a revised declaration and, under the said circumstances, fresh declaration has been independently considered and rejected by the Designated Authority. It was argued that once the Petitioner- declarant itself filed fresh declaration on 23.01.2021, earlier declaration filed on 24.12.2020 and the consequential certificate issued in Form-3 on 20.01.2021 stands obliterated in law and it is the fresh declaration alone which exists in law.

15. However, it is relevant to note herein that this court directed Ms. Amrita Sinha, Advocate to seek instructions as to whether the certificate earlier granted to the Petitioner-declarant under section 5(1) of the 'Director Tax Vivad Se Vishwas Act, 2020 has been revoked by the Department or not? Ms. Amrita Sinha, on instruction, stated to this court that the certificate under Section 5(1) of the Scheme has not been revoked by the Department and the said fact was duly recorded in the order dated 22.06.2022.

16. Having heard learned counsels for the parties and after going through the documents available on record including the provisions of 'The Direct Tax Vivad Se Vishwas Act, 2020' i.e. the Scheme, we are of the considered opinion that revised/fresh declaration filed by Petitioner-declarant dated 23.01.2021 is *non-est* in the eyes of law and any consequential order passed thereto is of no significance for the reasons stated hereunder.

17. Section 2(d) of the Scheme defines the term 'declaration', which means the declaration filed under Section 4 of the Scheme. Section 4 of the Scheme clearly stipulates that a declaration referred to in Section 3 can be filed by a declarant before the Designated Authority in such form and in such manner as may be prescribed. A conjoint reading of the provisions of Section 3 read with Section 4 of the Scheme would reveal that the Scheme only envisaged filing of one declaration by a declarant in respect of tax arrears, and, upon filing of such declaration in respect of tax arrears, the Designated Authority, in terms of Section 5 of the Scheme, was required to determine the amount payable by the declarant in accordance with the provisions of the Scheme and to grant certificate to the declarant containing particulars of tax arrears and the amount payable by the declarant after such determination. The declarant was further liable to pay the amount determined under sub-section (1) of Section 5 within 15 days of receipt of the certificate, and, Section 5(3) clearly provided, inter alia, that every order passed under Section 5(1) would be conclusive as to the matter stated thereunder and no matter covered by such order shall be reopened in any other proceeding under the Income Tax Act. For the sake of ready reference, Section 5 of the Scheme is quoted herein-under:-

> ***"5. (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.

(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.

(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.

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."

18. A holistic reading of the Scheme would unambiguously reveal that under the Scheme, a declarant was entitled to file its declaration in respect of tax arrears within the stipulated time, and, after filing of such declaration, the Designated Authority was to determine the said declaration by calculating the amount payable by the declarant and grant certificate to the declarant containing particulars of tax arrears. The Scheme further provided that once the certificate was issued, the same would be conclusive and no matter covered by certificate and order would be reopened in any other proceedings under the Income Tax Act. In fact, Section 4(2) of the Scheme clearly provided, inter alia, that upon filing of declaration, any appeal pending before the Appellate Authority in respect of disputed income or disputed interest or disputed penalty, etc. 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. Section 4(2) of the Scheme is quoted herein-under:-

"4. (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) or Section 5 is issued by the designated authority."

19. Thus, once a certificate under sub-section (1) of Section 5 is issued by the Designated Authority, any appeal pending before ITAT or

Commissioner (Appeals) in respect of the disputed amount and/or tax arrears shall be deemed to have been withdrawn. Meaning thereby, in the instant case, after the declaration of the Petitioner-declarant was accepted by issuance of certificate under Section 5(1) of the Act, dated 20.01.2021 (Annexure-14), appeal pending before ITAT, Ranchi filed on 13.03.2019 (Annexure-9) and the appeal pending before the CIT (Appeals), Ranchi filed on 24.02.2020 pertaining to Assessment Year 2012-13 were deemed to have been withdrawn.

20. Once the said appeals are deemed to have been withdrawn by operation of law, the same cannot be revived or restored merely because a declarant, under mistaken notion, has filed a fresh declaration, which was, subsequently, rejected by the Designated Authority. If the said situation is allowed to operate, the same would have devastating effects and would prejudice the entire Scheme framed by the Parliament. If filing of one declaration after another is permitted, then even the provisions of Section 7 of the Scheme would be rendered futile which provides, inter alia, that any amount paid in pursuance of a declaration, shall not be refundable under any circumstances. An assessee, taking advantage of filing second declaration and its rejection by the Authority, can contend, inter alia, that its original declaration has lost its force in the eyes of law and can claim refund of the amount paid pursuant to the original declaration, which is clearly not the mandate of the Scheme.

21. Further, the Scheme and/or the Rules does not contain any provision for filing review, appeal, etc. against an order accepting the declaration under Section 5(1) of the Scheme. There is no provision in the Scheme which further envisages filing of revised/fresh declaration after the declaration has been accepted by the Designated Authority. At this stage, it is relevant to mention here that as per the oral instructions of the Revenue counsel, the said Certificate issued under the scheme has not yet been withdrawn. In fact, CBDT Circular No. 21/2020 dated 4th December, 2020 (F.No. IT(A)/1/2020-TPL), relied upon by the counsel for the Revenue, itself clearly fortifies the fact that once a declaration has been accepted by the Designated Authority by issuance of certificate under Section 5(1) of the Scheme, revised declaration cannot be filed. Relevant extract of the Circular is quoted hereunder:-

Q. No.	89.	*Once declaration is filed by assesse u/s 4 of Vivad se Vishwas can the same be revised? If yes, at what stage of the proceedings will the same be allowed?*
Answer		Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of Vivad se Vishwas.

22. In view of the discussion made herein above, we have no hesitation in observing that the revised fresh declaration dated 23.01.2021 filed by the petitioner was not maintainable in the eye of law and consequently the order passed thereto is *non est* in the eye of law. An alternative contention has been raised on behalf of the petitioner it is entitled to the benefit of original declaration filed by it. Since we have held that the second declaration filed by the petitioner was not maintainable and *non est* in the eye of law, we refrain ourselves from observing further on the others issues raised by the parties including the issue as to whether revised declaration of the petitioner company could have been rejected due to initiation of the criminal prosecution against one of the Directors of the company.

23. Since, admittedly, Respondents, pursuant to filing of revised/fresh declaration by the Petitioner dated 23rd January, 2021, entertained the said declaration and examined the same on merits and, thereafter, rejected it vide order dated 15.03.2021 which is our opinion has no legal effect, we are of the opinion that equities would be balanced if we direct the parties to comply with the certificate dated 20.01.2021 issued in favour of the petitioner pursuant to original declaration as per section 5(2) of the scheme i.e. within a period of fifteen days from today. If petitioner makes deposit of an amount of Rs.9,08,075/- being the amount determined as payable by the petitioner under the certificate dated 20.01.2021 within fifteen days from today, the same shall be accepted by Respondent-authorities and the declaration filed by the petitioner would be deemed to have been satisfied in terms of provisions of the Direct Tax Vivad Se Vishwas Act, 2020. Ordered accordingly.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Amardeep/AFR