

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

WRIT PETITION No. 2271 of 2001

Between:-

SUBHASH CHANDRA S/O RAMESH CHANDRA
ASAWA, AGE 44, OCCUPATION SERVICE,
RESIDING AT 50, SHRADDANAND MARG INDORE
(M.P.)

....PETITIONER

AND

1 COMMISSIONER OF INCOME TAX INDORE
REGION, OPP. WHITE CHURCH, A.B. ROAD,
INDORE

2 INCOME TAX OFFICER, WARD-02 (6) AYKAR
BHAWAN, OPP. WHITE CHURCH, A.B. ROAD,
INDORE (M.P.)

3 UNION OF INDIA, THRU. SECRETARY, MINISTRY
OF FINANCE, NEW DELHI

....RESPONDENTS

ORDER

(Delivered on 23.03.2022)

Shri Kaustubh Fadnis learned counsel for the petitioner.

Ms. Veena Mandlik learned counsel for the respondents.

Petitioner has filed this petition being aggrieved by the order dated 29.03.2021 passed by Commissioner of Income Tax, whereby revision filed under section 264 of Income Tax Act in respect of assessment of the year 1996-97 and 1997-98 has been disposed of against the petitioner.

The facts of the case in short are as under: -

1. Petitioner became the assessee of the income tax department in the year 1997-98. At the relevant time, he was an employee of United India Insurance Company. He did not file an income tax return from 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 within the prescribed time as per provision of 139 (1) of Income Tax Act. He filed his IT returns for the above 4 assessment years only on 23.01.1998. According to the petitioner, he could not file the above IT returns within the prescribed time because certificates under Section 203 of Income Tax Act vide form No.16 which were issued by the employer only on 24.06.1993, 31.05.1994, 03.05.1995, 13.05.1996 and 11.07.1997 for the assessment year 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 respectively. According to the petitioner the advance tax had already been paid for the aforesaid assessment year well before the prescribed due dates by the employer. In these returns, the petitioner has shown his regular income from salary, interest, dividends and capital gains.

2. The Central Government introduced the **Voluntary Disclosure of Income Scheme, 1997** (hereinafter referred to as "VDIS") by introducing **CHAPTER IV** comprising sections 62 to 78 in the Finance Act, 1997. Under the VDIS all persons were permitted to submit income tax return between the period the date of commencement of scheme till 31st day of December 1997 in respect of any income chargeable to tax under the Income-tax for any assessment year, *firstly*- for which he has failed to furnish a return, *secondly*- which he has failed to disclose in a return of income tax furnished by him, *thirdly*, which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the income tax Act. Under Section 65 of Finance Act, 1997, a declaration under subsection 64 shall be made to the Commissioner of IT in the prescribed form. The tax payable under this scheme shall be paid by the declarant and shall submit proof of payment of such tax. Section 68 of Finance Act, 1997 provides that income so voluntarily disclosed shall not be included in the total income of the declarant for any

assessment year under the Income-tax Act on two conditions namely the declarant credits such amount in the books of account, if any, maintained by him and the income-tax in respect of voluntarily disclosed income tax is paid by the declarant within the time specified in section 66 or section 67. After fulfilling aforesaid requirements, the Commissioner shall grant a certificate to the declarant. Section 70 says that any amount of tax paid under this VDIS scheme shall not be refundable under any circumstances.

3. The petitioner took the advantage of aforesaid VDIS scheme and filed an application under Section 65 (1) of the said act on 19.12.1997 disclosing the income to the tune of Rs.1,57,410/-, Rs. 1,81,823/-, Rs. 2,54,955/-, Rs.3,34,234/- and Rs. 4,46,525/- for the assessment year 1993-94, 1994-95, 1995-96, 1996-97 and 1997 -98. The petitioner has shown the aforesaid income from sources namely cash, debtors, shares and bank account, which is as under:-

Availability of value of assets as on 31st each year as per Balance- Sheet attached with the returns of income for the A.Y.1993-94;94-95;95-96, 95-97;97-98

Asstt.Yrs	1993-94	1994-95	1995-96	1996-97	1997-98
Particulars case	47102	96318	139234	205501	314396
Debtors	373459	467752	625577	930577	11,33,6577
Shares	107735	157410	156859	122259	128469
Bank A/c	70917	99357	187884	166149	170286
Value of total assets	599213	820838	1109554	1124486	1746728
TOTAL VALUE OF ASSETS DISCLSOED UNDER VDIS	157410	181823	254955	334234	446525

4. In the IT returns for the assessment year 1996-97 and 1997-98, the petitioner has deducted the income disclosed in VDIS in his total income and assesses the income tax on balance amount Rs.40,000/- i.e.

and tax liability as 'Nil'. The Income Tax Officer has rejected the returns of the AY 1996-97 and 1997-98 under Section 143 (1) (4) of the Income Tax Act.

5. Being aggrieved by the aforesaid rejection, the petitioner preferred two revisions for both the assessment years the AY 1996-97 and 1997-98 before the Commissioner of Income Tax on two grounds, *firstly*; that he could not file the income tax return before the Income Tax Officer in time due to circumstances beyond his control, *secondly*, he is entitled to refund of Rs. 45,000/- as he had paid the Income-tax under VDIS-1997 and again payment of tax on the said income does not arise, therefore assessment be revised for the assessment of the year 1996-97 and 1997-98 for granting the refund of Rs. 45,000/- and 92,064/- respectively. Vide common order dated 29.03.2001, the Commissioner of Income Tax Indore has dismissed both the revision on the ground that the petitioner being assessee was not eligible for basis exemption under query No.25 of VDIS as he is trying to take benefit under the Income Tax as well as VDIS which is not permissible. It has also been held that the assessee i.e. petitioner is an employee of United India Insurance Company, he gave the incorrect reason that there was a delay in payment of income-tax within the prescribed limit under Section 139 (1) due to the non-availability of the TDS certificate. Form 16 has been issued to the petitioner by the employer for the assessment year 1996-97 and 1997-98 on 13.05.1996 and 11.04.1997 respectively. The Commissioner has dismissed the revision on the ground that the nature of assets of income disclosed under VDIS as well as in the regular IT returns is different. The description of assets shown in the VDIS applications is not at all match with the source of income shown in the return. No TDS has been deducted or advance tax has been paid with respect to assets declared under VDIS and now filing belated return of these to assessment years, the petitioner is avoiding income-tax by deducting the income disclosed in the VDIS.

6. Being aggrieved by the aforesaid, the present petition has been

filed. Although, the petitioner ought to have filed two different petitions because the petition is about two assessment years.

7. Learned counsel for the petitioner has argued that the petitioner took advantage of the VDIS by voluntarily disclosing his income in respect of assessment years 1993-94 to 1997-98. He has paid the entire tax payable under the VDIS which is not in dispute. The said declaration has duly been accepted by the Commissioner and a certificate as required under Section 68 (2) of Finance Act, 1997 was issued. Later on, he filed income tax returns for the assessment year 1996-97 and 1997-98 on 23.01.1998 which was within the period permissible under sub-section 4 of section 139 and as per 68 of Finance Act, the amount of the voluntarily disclosed income is not to be included in the total income of the declarant/assessee for any particular assessment year as per the VDIS, hence, the petitioner has rightly excluded the undisclosed from his total income. Hence, in these two assessment years involved in this case, no tax was payable on the income of Rs. 40,000/- claimed refund of the amount of Rs. 49,003/- being the advance tax and TDS, likewise Rs.92,064/- for the assessment year 1997-98. It is further submitted by the learned counsel that despite sending intimation under Section 143(1) (a) of Income-tax, the refund has wrongly declined by Commissioner.

8. Learned counsel for the petitioner further submitted that the learned Commissioner of IT has wrongly relied on the answer to query No.25 while dismissing the revision. Section 237 of the Income Tax Act clearly provides that where the advance tax paid by the assessee exceeds the amount with which he is chargeable for that year shall be entitled to refund, therefore by deducting the income disclosed in the VDIS from his total income, no liability to pay the income tax would come on the petitioner, hence, tax paid as advance tax is liable to be refunded.

9. Learned counsel for the petitioner further submitted that the tax paid under VDIS is not a tax paid under I.T. Act, therefore, tax deducted at source and/ or any other mode of payment of Tax under

Section IT Act cannot be used to disclose the obligation to pay the tax under VDIS on the disclosure of undisclosed income. In support of his contention, he has placed reliance on the judgment passed by the High Court of Bombay in the case of *Earnest Business Services (P) Ltd. And another Vs. The Commissioner of Income Tax and other reported (2017) 294 CTR (Bombay) 80*.

10. Learned counsel for the Income-tax/respondent has contended that the petitioner initially did not file the IT returns for the assessment year 1993-94, 1994-95, 1995-96, 1996-97 and 1997 -98 well within time. The VDIS scheme was introduced and he disclosed his income from sources other than regular income and paid the income tax. Thereafter he filed the return on the basis of different sources and assets and deducted the income disclosed in VDIS and claimed the refund, which is reprobate to the scheme. The VDIS was launched to enable those assesseees who had failed to disclose their income to the Department earlier and disclose the same and pay due taxes thereon. The scheme was announced an only purpose to mop up additional revenue as a specific provision was inserted in section 70 of the VDIS 1997 as any amount of tax paid pursuant to the declaration in this scheme shall not be refundable under any circumstances and the petitioner is trying to do the same thing. The credit can be claimed only in assessment in the regular course of income in respect of which the tax has been deducted. As per provision of section 237 of Income Tax Act, the assessee did not satisfy the Assessing Officer that the amount of tax paid by him for the two assessment years under subject exceeded the amount of tax chargeable in him under the income tax Act. It is evident from the certificate under section 203 of I.T. Act issued by the employer each assessment year 1993-94 to 1997-98, the assessee did not report any income to the employer, therefore, no tax has been deducted from the source of income shown in VDIS. Query No.25 has rightly been applied in the case of the petitioner while dismissing the revision. In support of her contention, learned counsel for the Income Tax has also placed reliance on judgment *Earnest*

Business Services (P) Ltd (supra) on the point the adjustment as sought of the tax paid as TDS under the 1961 Act to reduce the tax payable under the Scheme of 1997 Act is not permissible. Finally learned counsel has concluded by submitting that there is no substance in the writ petition and the same is liable to be dismissed.

We have heard learned counsel for the parties and perused the record as well as judgment cited by the learned counsels.

11. The **Voluntary Disclosure of Income Scheme, 1997** (VDIS) was introduced by way of the Finance Act, 1997. Section (a) defines "declarant" and according to which a person making the declaration under sub-section (1) of section 64 of Finance Act, 1997 which enables any person to make the declaration in accordance with the provision of section 65 in respect of any income chargeable to tax under the Income-tax Act for any assessment year between the date of commencement of scheme till 31 December 1997, *firstly*, for which he has failed to furnish a return under section 139 of the Income Tax Act, *secondly*, which he has failed to disclose in a return of income furnished by him under the Income Tax Act before the date of commencement of this scheme and *Thirdly*, which has escaped assessment by reason of the omission or failure on the part of such person to make a return. When the petitioner submitted a declaration under the VDIS, there was no income disclosure by way of IT returns filed under Section 139 of the Income Tax Act. Despite anything contained in the Income Tax Act, income tax shall be charged @ 30% in respect of income so disclosed and income shall be called as voluntary disclose income and if declarant being a person other than company. According to the petitioner, he disclosed his income for the assessment year 1996-97 and 1997-98 and paid the income tax @ 30% within time.

12. Section 68 of the Finance Act, 1997 provides that the amount of the voluntarily disclosed income shall not be included in the total income of the declarant for the assessment year under the Income-tax Act if he fulfills the two conditions:

(i). the declarant credits such amount in the books of account, if any maintained by him for any source of income or in any other record, intimates the credit to the Assessing Officer

(ii) the income tax in respect of voluntarily disclosed income paid by the declarant.

13. Section 69 of the Finance Act, provides that the voluntarily disclosed income shall not affect the finality of the completed assessment. It means the declarant shall not be entitled to reopen any assessment or reassessment made under the Income-tax Act or claim any set-off or relief in any appeal, reference in respect of voluntarily disclosed income. Section 70 of Finance Act, 1997 disentitles the declarant to claim a refund of the amount of tax paid in pursuance of a declaration made under sub-section (1) of section 64. Therefore, co-joint reading of Sections 68, 69 and 70 makes it clear that tax paid under VDIS is totally different to the income-tax paid under Income-tax Act. The tax on 'voluntary disclosed income' for which he has not filed any return under Section 139 or which he has failed to disclose in the income-tax return or which he has escaped assessment by reason of the omission or failure and income so voluntarily disclosed shall not be included in his total income for any assessment of under income-tax Act and on the basis of Voluntary scheme, he shall not be entitled to reopen any assessment and the tax paid under VDIS shall not be refundable in any circumstances.

14. In the present case, the petitioner has first availed the benefit of VDIS by submitting the return 01.07.1997 and 31.12.1997 for the assessment year 1993-94 to 1997-98 and paid the income-tax @ 30%. Thereafter, he filed the belated IT returns under Section 139 on 23.01.1998 and deducted income so disclosed in VDIS i.e. voluntary disclose income. For the assessment year 1993-94 to 1997-98, he has declared his income Rs.13,74,947/- with the description of assets i.e. cash, debtor, share and bank account and paid income tax Rs. 4,12,482/- on 26.12.1997. Thereafter, he submitted return for those two assessments years 1996-97 and 1997-98 by declaring income from

salary, NSC, Bank, Unit Trust, Mutual fund etc Rs.3,74,234/- and deducted the income under VDIS and claimed tax liability 'Nil' to claim the refund of Rs.49003/-. This is not the intention of the VDIS. The voluntarily disclosed income is not liable to be included with regular income declared in the return under section 139 as tax paid under VDIS is not liable to be refunded at any cost. The income tax return submitted under Section 139 is not liable to be reopened after availing of the VDIS. The source of income shown for voluntary disclose income and income source shown in the return under Section 139 is altogether different. Under Section 64 of the Finance Act only those persons are entitled to give declaration in respect of income chargeable under the tax under the Income Tax Act for any assessment year, firstly for which he has failed to furnish return under Section 139, secondly, which he has failed to disclose in a return of income furnished by him under the Income Tax Act before the date of commencement of the scheme, thirdly, which has escaped assessment by reason of the omission or failure. As per clause sub-clause (a), in this case, the petitioner did not furnish any return under Section 139 before 31.12.1997, therefore, in voluntarily disclosed income, he ought to have disclosed his all income from all the sources because till 31.12.1997, he did not disclose his any of the income by submitting the return under Section 139. He submitted the return under section 139, after 31.12.1997 i.e. 23.01.1998 to bring his case within clause 64 (1) (b). He submitted belated IT returns under section 139 but as per the requirement of section 64 (1)(b) that ought to have been filed before the date of commencement of the scheme. Since he did not submit any return under section 139 before this scheme, therefore involuntarily disclosed income, he ought to have disclosed his entire income. He cannot be permitted to commit mischief with the Act or VDIS by disclosing part of his income in VDIS and thereafter part of his income by submitting belated return as the Bombay High Court in case of *Earnest Business Services (P) Ltd (supra)* has rightly held that both the tax altogether different and there cannot be any adjustment

between them. Section 70 and 71 mandate that the income disclosed in VDIS shall not be included income under section 139 means income which had already been disclosed and that assessment is not liable to be reopened. The petitioner in order to avail the undue benefit of this scheme has filed the belated return by contending that the filing of such belated return is permissible and claimed the deduction of income as well as the refund of the tax.

15. In view of the above, we are not inclined to interfere with the order dated 29.03.2001 passed by the Commissioner, Income-tax. Hence, Writ Petition is hereby dismissed.

Certified copy as per Rules.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI)
JUDGE

praveen/-