



IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.118 OF 2024

Smt Sharen Nitin Naik, Aged 49 Years
R/O H. No. 74, Bombi Niwas, Dando,
Damodar College Road, Margao, 403 601.
Pan: AAZPN5437B

...PETITIONER

~ VERSUS ~

**1. The Principal Commissioner of Income Tax,
Panaji.**

Designated Authority Under The Direct Tax Vivad
Se Vishwas Act, 2020

Aayakar Bhavan, Edc Complex, Patto-Plaza, Panaji
Goa.

Email: panji.pcit@incometax.gov.in

**2. The Deputy Asst. Commissioner of Income
Tax, Circle 1 Margao Goa** Aayakar Bhavan, EDC
Complex, Patto-Plaza, Panaji Goa.

Email: panaji.dcit@incometax.gov.in

**3. The Commissioner of Income Tax (Appeals)
Panaji,** Aayakar Bhavan, EDC Complex, Patto-
Plaza, Panaji Goa.

...RESPONDENTS

APPEARANCES:

for the Petitioner

Mr. Purushottam Karpe

for the Respondent Nos.1
to 3.

Ms. Susan Linhares, Standing Counsel,

**CORAM : SUMAN SHYAM &
AMIT S. JAMSANDEKAR, JJ.**

Dated : 28th January 2026

JUDGMENT (PER AMIT S. JAMSANDEKAR, J).

1. Heard.
2. Rule. Rule made returnable forthwith
3. Ms. Susan Linhares, the Learned Standing Counsel appearing for the Respondents, waives service.
4. Heard finally with the consent of the Learned Counsels appearing for the parties.
5. By the present Petition under Article 226 of the Constitution of India, the Petitioner has challenged the order passed by the 1st Respondent. By an order dated 17.03.2021 (*the impugned order*), the 1st Respondent rejected the Petitioner's application under the "Vivad Se Vishwas Scheme" (*the Scheme*). The Petitioner challenges the impugned order on various grounds, including that it was passed without affording an opportunity of hearing, is arbitrary and perverse, and is contrary to the very object of the Scheme. It is further submitted that there are no reasons assigned to the impugned order, and the application of the Petitioner is rejected by passing an online order, which reads:

<i>Activity / Status</i>	<i>Reason of Rejection</i> <i>X</i>
<i>17-Mar-2021 Submitted Form 1 & 2</i>	<i>Assessee has not filed Appeal before CIT (A) against the order of AO. As there is no appeal pending, hence the application filed under DTVSV is hereby rejected.</i>
<i>17-Mar-2021 Date of Rejection of Form 1 & 2</i>	<i>close</i>

6. Further it is submitted that the 1st Respondent has failed to consider the that:- i) the Appeal filed by the Petitioner, challenging the order of penalty, is pending and ii) the peculiar situation contemplated under Section 5A of the Income Tax Act, 1961 (the Act) by which a provision is made in respect of apportionment of income between spouses governed by Portuguese Civil Code. Therefore, Mr. P. Karpe, the Learned Counsel for the Petitioner submitted that merely because the Petitioner has not filed any Appeal against the Assessment Order in her individual capacity, that does not mean that the Petitioner is not entitled to avail the benefit of the Scheme.
6. Ms. Susan Linhares, the Learned Standing Counsel appearing on behalf of the Revenue, submitted that the order passed by the 1st Respondent is justified because the Petitioner has not challenged the Assessment

Order. Therefore, the Petitioner cannot avail the benefit of the Scheme. She relies upon the affidavit in reply filed on behalf of the Revenue to oppose the present Petition, primarily on the statements therein that the Petitioner did not file any Appeal against the Assessment Order dated 30.12.2016 passed under Section 143(3) read with Section 147 of the Act.

7. In a nutshell, the objections of the Revenue are that there is no appeal preferred by the Petitioner against the Assessment Order passed under Section 143(3) of the Act, and therefore, she is not entitled to get the benefit of the Scheme. Further, it is submitted that there has been a delay in filing the present Petition and that the Scheme has now lapsed, and therefore, no relief ought to be granted to the Petitioner.

8. The challenge of the Petitioner and the objections of the Revenue will have to be considered in the factual background, which are as follows:-

- i) The Petitioner filed her return of income on 15.03.2014. On the same day the Petitioner's husband also filed his return of income. The Petitioner and her husband are governed by the provisions of Section 5 A of the Act. Both the returns of income were processed under Section 143(1) of the Act. On 05.03.2015, the survey under Section 133(A)(1) was

conducted in the business premises of the Petitioner's husband. Thereafter, on 27.03.2015, the 2nd Respondent passed an Assessment Order in the assessment of the Petitioner's husband. The 2nd Respondent did not pass an Assessment Order in the assessment of the Petitioner. Subsequently, on 19.06.2015 the Assessment of the Petitioner's husband was reopened under Section 147 of the Act. In this background, consequent to the survey under Section 133(A)(1), the Petitioner's Assessment was also reopened under Section 147 of the Act, and thus an Order under Section 143(3) read with Section 147 of the Act was passed in the case of the Petitioner and her husband on 30.12.2016. On 16.06.2017, the 2nd Respondent passed an order under Section 271 (1)(C) read with Section 274 of the Act imposing the penalty on the Petitioner and her husband. (facts as mentioned in the Assessment Order dated 30.12.2016 passed u/s 143(3) read with Section 147 of the Act).

- ii) The Petitioner's husband filed an Appeal against the order of Assessment passed under Section 143(3) as

well as the order under Section 271(1) (C) read with Section 274 of the Act. During the Pendency of the Appeal filed by the Petitioner's husband, the Scheme was introduced. Therefore, the Petitioner's husband applied for availing the benefit of the Scheme by filing Form 1 and Form 2. These forms were filed by the Petitioner's husband on 17.03.2021.

- iii) The Appeal filed by the Petitioner's husband on 10.09.2015 was in respect of the entire additions made in the return of income of the Petitioner's husband and the Petitioner. Therefore, the Petitioner did not prefer to file a separate appeal against the order passed under Section 143(3) read with Section 147 of the Act. Consequently, the Petitioner only filed an Appeal against the penalty order which was passed under Section 271(1) (C) read with Section 274 of the Act.
- iv) The Petitioner also filed Forms 1 and 2 on 17.03.2021 to avail of the benefit of the Scheme.
- v) The Application filed by the Petitioner's husband under the Scheme was accepted, and the 1st

Respondent issued Form 3 to the Petitioner's husband on 28.08.2021. Subsequently, on 29.10.2021, the 1st Respondent issued Form 5 to the Petitioner's husband. The 3rd Respondent, by orders dated 08.09.2022 and 26.10.2022, dismissed the Appeals filed by the Petitioner's husband as infructuous.

vi) On 17.03.2021, the Application filed by the Petitioner under the Scheme came to be dismissed by the above-quoted impugned order, which is the subject matter of the present Writ Petition.

9. We have heard Mr. Karpe, the Learned Counsel for the Petitioner and Ms Susan Linhares, the Learned Standing Counsel appearing on behalf of the Revenue. Perused the record and the written submissions filed on record.
10. The Petitioner and her husband are married under the communion of assets and are governed by the Portuguese Civil Code applicable to the State of Goa. In view thereof, Section 5A of the Act is applicable to the Petitioner and her husband. Therefore, the income of the Petitioner's husband is apportioned (50%) to the Petitioner. The husband of the Petitioner is having a proprietary concern i. e. Bombi &

Sons. Therefore, the entire income was earned by the husband of the Petitioner. There is no dispute that the Petitioner and her husband are governed by the provisions of Section 5A of the Act. In fact, Petitioner's husband was assessed under the same Assessment Order and on the same disputed income, which is governed by the provisions of Section 5A of the Act. Admittedly, the Petitioner's husband has been granted the benefit of the Scheme, and the Application of the Petitioner is rejected by the impugned order.

11. Section 5A of the Act creates a statutory fiction. It treats income as a single community income. The income belongs to the material community, and the assessment is mechanically apportioned. Once the assessment itself is challenged and settled for one spouse, the dispute cannot survive independently for the other. The department cannot split a single community income dispute into two for settlement purposes.
12. In paragraph 9 of the affidavit in reply filed on behalf of the Revenue, it is expressly stated that :-

*“The petitioner filed appeal only against the penalty order
passed u/s 271(1)(c) r.w.s 274 dated 16/06/2017, before*

*the CIT(A), Panaji-1 vide appeal filing acknowledgement no
901864001210717 of the Form 35”*

13. Therefore, it is an admitted position that the Appeal filed by the Petitioner against the Penalty Order is pending.
14. The scheme, being a beneficial settlement legislation, the Courts have repeatedly adopted an approach that interprets it to advance the cause of settlement of disputes. It cannot be interpreted to defeat the very object and purpose of the scheme. ***(See Marcrotech Developers Limited Vs. Principal Commissioner of Income Tax [(2021) 434 ITR 131 (Bombay)]; Dongfang Electric Corporation Ltd Vs. Designated Authority [(2021) 438 ITR 660 (Telangana)]; MUFG Bank Limited Vs. Commissioner of Income Tax – II & Anr [(2023) 450 ITR 597]).*** To avail of the scheme’s benefits, there must be a pending dispute. The definition of ‘dispute’ provided under Rule 2 (b) of the Direct Tax “Vivad Se Vishwas Scheme”, 2020 includes an Appeal. The definition of ‘dispute’ ought to be interpreted widely. It is not restricted to Appeals against Assessment Orders, as sought to be argued on behalf of the Revenue. The definition includes any Appeal, including the Appeal challenging the penalty order. In the present case, admittedly, the Appeal filed by the Petitioner challenging the Penalty

Order is pending. Therefore, the Petitioner meets the first requirement of a pending Appeal. There is a pending dispute pertaining to the penalty in respect of the Petitioner which undoubtedly bring her within the ambit of the scheme.

15. Therefore, the impugned order is factually wrong and contrary to the provisions of the scheme itself. Further, when the benefit of the scheme was granted to the Petitioner's husband, the department could not have denied the same to the Petitioner when, admittedly, the provisions of section 5A of the Act are equally applicable to both. We agree with the submission of Mr. Karpe, the Learned Counsel for the Petitioner, that when the provisions of Section 5A are admittedly applicable, there was no need for the Petitioner to file a separate Appeal challenging the Assessment Order.
16. The Petitioner has also pleaded that due to COVID, there was a delay in the proceedings. We accept the statements made by the Petitioner and therefore reject the objection raised by the Revenue about the delay in the proceedings. The Revenue's objection that the Scheme has now lapsed is also not a good ground because Forms 1 and 2 were filed by the Petitioner when the Scheme was in subsistence. Therefore, we agree with the submission of the Learned Counsel for the Petitioner that this

is a fit case to exercise jurisdiction under Article 226 of the Constitution of India.

17. In view of the facts and circumstances of the case, we pass the following:-

ORDER

- i) The impugned order dated 17th March 2021, being Exhibit B hereto, is hereby set aside.
- ii) The 1st Respondent is ordered and directed to consider Forms 1 and 2 filed by the Petitioner within the framework of the Scheme for the Assessment Year 2012–13, within a period of four weeks from today; and pass appropriate order within a period of two weeks thereafter including issuing of Form 3 in her favour.
- iii) The Petitioner shall pay the determined amount of the tax arrears, as mentioned in Form 3, within a period of two weeks from the date of issuance of Form 3, and the 1st Respondent shall issue Form 5 within a period of two weeks thereafter.

18. The Rule is made absolute in the above terms, and the **Writ Petition**
is disposed of. However, there shall be no order as to costs.

[AMIT S. JAMSANDEKAR, J.]

[SUMAN SHYAM,J.]