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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on : 11.05.2022

% *Judgement pronounced on : 06.07.2022*

\+ **W.P.(C) 2760/2020 & CM No.41060/2021**

B-EARTH & SPIRE (INDIA) PVT. LTD. ..... Petitioner

Through: Mr Tarun Gulati, Sr. Adv. with Mr Rony O John, Mr Piyush and Mr Arshdeep Singh, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur, Mr Jatin Kumar Gaur and Mr Akshay Saxena, Advs. for R-2 to 4.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical court hearing/ hybrid hearing (as per request)]

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Preface:

1. This writ petition is principally directed against the statement dated

12.02.2020 issued by respondent no. 4 in the prescribed form i.e., SVLDRS-3 [hereafter referred to as the "impugned statement".] The petitioner seeks a declaration that the impugned statement is ultra vires section 66B of the Finance Act 1994 [hereafter referred to as "1994 Act"] and the provisions contained in Chapter V of the Finance Act 2019 [hereafter referred to as "2019 Act".] Besides this, a declaration is also sought to the effect that the impugned statement violates the provisions of Articles 14, 19 (1) (g), 265 and 300A of the Constitution.

1.1. In addition, thereto, a declaration is sought by the petitioner that it is entitled to the benefits available under section 124 of the 2019 Act and that the tax dues payable by it are limited to the amount that remains unpaid after setting off amounts already paid towards tax.

1.2. Consequential reliefs, such as issuance of a direction to quash the impugned statement and/or to have respondent no. 4 modify the said statement in accordance with the provisions of section 128 of the 2019 Act, read with rule 6(6) of the Sabka Vishwas (Legal Disputes Resolution) Scheme Rules, 2019 [hereafter referred to as "SVLDRS Rules"] have also been prayed for.

2. The long and short of several reliefs claimed by the petitioner is that it is not being allowed to adjust the amounts deposited by it towards service tax and cess [hereafter will be collectively referred to as "tax liability"] payable for the period spanning between 01.10.2016 and 30.06.2017 [hereafter referred to as the "relevant period".]

2.1. Concededly, the tax liability that was due and payable by the petitioner for this period is pegged at Rs. 5,55,34,486/-. The petitioner claims that it has deposited *via* 9 challans Rs 6,12,98,662/-, over a period spanning

between 17.04.2017 and 25.09.2018. It is also asserted by the petitioner that out of this amount, Rs 1,19,43,137 has been adjusted *vis-à-vis* tax payable for the period spanning between 01.04.2016 and 30.09.2016. Thus, according to the petitioner, the remaining amount that needs to be adjusted in the relevant period, out of the tax payable, is Rs 4,93,55,525/-.

2.2. It is, however, conceded by the petitioner that, inadvertently, while making a declaration of the tax payable in the prescribed form [i.e., SVLDRS-1], it has referred 8 challans, as against the 9 challans alluded to hereinabove.

2.3. Furthermore, the petitioner has averred that, besides paying a part of the tax dues in cash (as indicated above), it has also utilized CENVAT Credit amounting to Rs 55,43,384/- towards its output liability *qua* the relevant period.

3. It is in this context that the petitioner seeks to assail the impugned statement whereby the designated committee has pegged the petitioner's estimated tax liability at Rs 5,55,34,486/-. In other words, the petitioner's grievance is that the tax dues paid have not been adjusted.

Background:

4. Before one proceeds further, it would be relevant to give a synoptic view as to how the Sabka Vishwas (Legal Disputes Resolution) Scheme 2019 [hereafter referred to as the "scheme"] was framed in the first instance.

4.1. The 2019 Act, after it was enacted, received the assent of the President of India on 01.08.2019. Pertinently, it is Chapter V of the 2019 Act that adverts to the aforementioned scheme.

4.2. The declarants who would be eligible under the scheme are those who are referred to in section 125 of the 2019 Act. Insofar as the reliefs are

concerned, it is dependent upon the category in which the declarant falls; the categories are alluded to in section 124 of the 2019 Act.

4.3 The available reliefs are interconnected with the scope of the expression "tax dues" as found in section 123 of the 2019 Act, when applied to various categories of declarants.

4.4. The estimated tax liability statement [as in the instant case] is issued by the designated committee in the exercise of powers under section 127 of the 2019 Act. A verification is made by the designated committee in exercise of powers vested in it under section 126 of the 2019 Act, after a declaration is made of the tax dues in the form prescribed under section 125 (2) of the said Act.

4.5. Importantly, the proviso appended to section 126 (1) of the 2019 Act states that no verification shall be made in case the declarant has made voluntary disclosure of the amount of duty payable.

4.6. Thus, the scope and effect of this provision are at the heart of the dispute that has arisen between the parties before us.

4.7. Going further, once the aforementioned steps are taken, which include payment by the declarant of the estimated tax liability crystallized by the designated committee, a discharge certificate is issued under section 127(8) of the 2019 Act, which, in effect, ringfences the declarant against further liability including reopening of proceedings concerning the matter at hand and period in issue (See section 129 of the 2019 Act)

4.8. Importantly, where a declarant has made a voluntary disclosure of tax dues, and any material particular, furnished by the declarant, is found to be false within one year of the issuance of the discharge certificate, then, under section 129(2) (c) of the 2019 Act, a presumption is drawn that the

declaration was never made and proceedings under the applicable indirect tax enactment are required to be instituted.

4.9. Interestingly, under sub-section (2) of section 130 of the 2019 Act, it is provided that if any pre-deposit or other deposit already made, exceeds the amount payable as indicated by the designated committee, the surplus shall not be refunded.

5. It is relevant to note that the Central Government i.e., respondent no. 1, *via* two separate notices of even date i.e., 21.08.2019, brought both the scheme as well as the SVLDRS Rules into force, with effect from 01.09.2019.

6. With the scheme and the SVLDRS Rules being brought into force, the petitioner uploaded a declaration in the prescribed form i.e., SVLDRS-1, on 27.12.2019, as per the provisions of section 125 of the 2019 Act read with Rule 3 of the SVLDRS Rules, in the category provided for voluntary disclosure of tax dues.

6.1. In this form, the petitioner adverted to the total tax liability concerning the relevant period and the fact that a substantial part of the same i.e., nearly 88%, had been paid *via* 8 challans (although, as noticed above, it has made deposits through 9 challans.)

6.2. The petitioner was served with a notice dated 13.01.2020, in terms of Section 127 of the 2019 Act read with rule 6 of the SVLDRS Rules. The said notice accorded a personal hearing to the petitioner's authorized representative on 21.01.2020, so that disagreement, if any, concerning the estimated tax liability could be placed before the designated committee.

6.3. It appears that the petitioner requested for grant of a short accommodation *via* a communication sent in the prescribed form i.e.,

SVLDRS-2A, on 21.01.2020. The request made was that the hearing, be fixed for 27.01.2020. It is averred by the petitioner that in the said form, a reference was made to the fact that it had already pre-deposited a substantial part of the tax liability for the relevant period. The figures and the details concerning the same were outlined in the application.

6.4. This aspect, it appears, was reiterated on behalf of the petitioner at the hearing held on 27.01.2020, as also in the written submissions dated 07.02.2020 filed with respondent no. 3/Principal Commissioner, Central Goods and Service Tax (CGST). In the written submissions preferred by the petitioner, a request was made that its authorized representative be granted another opportunity to supplement what was stated therein.

6.5. The designated committee, evidently, did not agree with the petitioner's plea that the amounts that had been deposited towards its tax liability required adjustment against the estimated tax liability crystallized by it in the impugned statement.

6.6. The record, however, shows that the petitioner did not give up hope, and in fact, sought modification of the impugned statement issued by respondent no. 4, on the ground that there was an error apparent on the face of the record insofar as determination of tax liability was concerned; in this regard, the provisions of section 128 of the 2019 Act was invoked. The application filed in this context is dated 19.02.2020. It appears that respondent no. 4 had not passed any orders on the application for modification, till such time the petitioner had moved this Court.

7. The record shows that the instant writ petition came up for hearing before a coordinate bench of this Court on 13.03.2020, when, while issuing notice, the operation of the impugned statement was stayed, subject to the

petitioner depositing the balance amount mentioned therein with the Registry of this Court on or before 20.03.2020. This interim direction was issued with the caveat that its compliance would not prejudice the rights and contentions of the parties.

7.1. We are told that the petitioner has complied with the condition stipulated in the interim order dated 13.03.2020.

Submissions on behalf of the petitioner/assessee:

8. It is in this backdrop that submissions have been advanced by Mr Tarun Gulati, learned senior counsel, on behalf of the petitioner. Likewise, on behalf of the contesting respondents [i.e., respondents no. 2 to 4], arguments have been advanced by Mr Harpreet Singh, senior standing counsel.

9. Briefly put, Mr Gulati has argued on the following lines:

(i) Since there was no separate field provided in the prescribed form i.e., SVLDRS-1, the petitioner indicated the balance amount payable [i.e., Rs 62,87,113/-] by it towards the tax liability *qua* the relevant period (after adjusting the amounts already deposited) under the heading 'Amount of Tax Dues less Tax Relief as per your calculation'.

(ii) The respondents cannot seek to recover from the petitioner amounts which already stand paid towards the tax liability. Such a step would result in the collection of amounts which do not fall within the scope and ambit of the charging section i.e., section 66B of the 1994 Act.

(iii) The scheme does not envisage collection and/or recovery of amounts that are not due. The impugned statement, thus, in effect, violates Article 265 of the Constitution.

(iv) Since the eligibility of the petitioner, as a declarant under the voluntary disclosure category is not in dispute, the provisions of the scheme should be

construed liberally, so that the petitioner can avail of the benefits envisaged under it. (See judgment dated 05.08.2020 passed W.P.(C.) 4763/2020 titled ***Vaishali Sharma v Union of India***.)

(v) The interpretation propounded by the contesting respondents concerning the provisions of the scheme would lead to an absurd result i.e., would require the petitioner to pay the amounts already deposited by it towards its tax liability *qua* the relevant period. Such an interpretation deserves to be rejected. (See ***State of Haryana v Hindustan Construction Co. Ltd.*** (2017) 9 SCC 463.)

(vi) The tax dues under section 123 of the 2019 Act can only be the net amount ascertainable after deducting the dues already paid by the declarant, emerges on a perusal of paragraph 2 (iv) of the circular dated 25.09.2019 issued by respondent no. 2. Furthermore, the fact that the circular dated 25.09.2019 applies to all categories is established upon a plain reading of the circular dated 29.10.2019, which has also been issued by respondent no. 2. (See judgment dated 14.01.2021 passed in WPC 10843/2020 titled ***B-Earth and Spire v Union of India***)

(vii) The absence of a verification process concerning declarants who fall in the voluntary disclosure category cannot lead to a situation where amounts already deposited by such a declarant need not be adjusted towards the tax liability determined by the designated committee. Since a declarant falling under the voluntary disclosure category is bound by the declaration made in the prescribed form, misdeclaration would trigger consequences contemplated under section 129 (2) (c) of the 2019 Act, which includes prosecution. Therefore, the 2019 Act, in any event, provides for a *post-facto* verification and not, as is portrayed by the contesting respondents, that no

verification is envisaged *vis-a-*vis declarants falling under the voluntary disclosure category.

Submissions on behalf of the respondents/revenue:

10. In opposition, Mr Singh made the following submissions:

(i) The petitioner, having made a declaration under the voluntary disclosure category; the designated committee correctly estimated the tax liability for the relevant period based on the statement made therein. Under this category, there is no provision for adjusting amounts pre-deposited towards tax liability. The adjustment of pre-deposits made by declarants is provided in other categories such as those cases that are at the stage of appellate proceedings (under the indirect tax enactment) or those which are under enquiry, investigation or are subject to audit or where tax payable is in arrears. Given this position, the petitioner's request for adjustment of amounts pre-deposited towards tax dues was not accepted by the designated committee. These aspects, according to him, emerge upon a plain reading of clause (d) of section 123 and sub-section (2) of section 124 of the 2019 Act. For the sake of convenience, the sections are extracted below:

> *"123 For the purposes of the Scheme, "tax dues" means-*
> *....*
> *(d) Where the amount has been voluntarily disclosed by the declarant, then the total amount of duty stated in the declaration"*
>
> ***xxx xxx. xxx***
>
> *"124…*
> *(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax*

enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant"

(ii) It is precisely for this reason that the proviso appended to section 126(1) of the 2019 Act states that no verification shall be made by the designated committee, concerning the amount of duty disclosed by the declarant falling under the voluntary disclosure category. The petitioner, thus, cannot traverse beyond the provisions of the scheme. The proviso to section 126 makes this amply clear :

"126 (1) The designated committee shall verify the correctness of the declaration by the declarant under section 125 in such manner as may be prescribed:
Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the declarant"

(iii) The petitioner cannot be allowed to avail of the benefits under the scheme by adjusting amounts deposited towards tax liability before the scheme came into force. At this stage, the deposits made towards tax liability cannot be taken cognizance of for claiming benefits under the scheme.

(iv) It is well established that in the event of an ambiguity in beneficial legislation, the provisions in issue should be interpreted in a manner that favours the revenue as against the assessee. (See judgement dated 30.07.2018 passed in Civil Appeal no. 3327/2007 in ***Commissioner of Customs (Import), Mumbai v M/s Dilip Kumar and Company & Ors***. (2018) 9 SCC 1)

Analysis and Reasons

11. A perusal of the record would show that the following facts are not in dispute:

(i) Firstly, the petitioner is an eligible declarant under the voluntary disclosure category, as envisaged under section 125 of the 2019 Act. Sub-section (1) of section 125 states that all persons shall be eligible to make a declaration under the scheme except those falling in categories stipulated in clauses (a) to (h).

(ii) Secondly, the petitioner did make a declaration in the prescribed form [i.e., SVLDRS-1] on 27.12.2019 and it referred to the fact that Rs 62,87,113/- was payable, as per its calculation. This amount was shown in the said form, under the heading 'Amount of Tax Dues less Tax Relief as per your calculation'. The form also adverts to the relevant period and the tax dues arising in the said period i.e., Rs 5,55,34,486/-. This figure was, however, shown under the heading 'Tax Dues less Tax Relief', as, according to the petitioner, there was no other field available wherein the actual tax dues payable for the relevant period could be set forth. A perusal of the said form also reveals that the petitioner referred to the tax challan numbers *via* which a cumulative amount of Rs 4,92,47,372/- had been paid by the petitioner. These details were provided under the heading 'Reason for disagreement' set forth in the said form.

(iii) Thirdly, the application submitted, *albeit* after the notice dated 13.01.2020 was issued by respondent no. 4, whereby the date of hearing was set out as 27.01.2020, clearly indicates that the petitioner disagreed with the estimated tax liability reflected in the notice dated 13.01.2020 issued by respondent no. 2 in form SVLDRS-2. Furthermore, in that very application, which was submitted in form SVLDRS-2A, the petitioner, in no uncertain

terms, indicated that it was desirous of filing written submissions and it did not wish to waive the right of personal hearing. Significantly, in support of its disagreement with the tax liability indicated in the notice dated 13.01.2020 it had appended the challans whereby tax had been deposited.

(iv) Fourthly, in the written submissions filed on 07.02.2020, similar assertions were made by the petitioner.

(v) Fifthly, after the impugned statement dated 12.02.2020 was issued by respondent no. 4, the petitioner applied for modification via application dated 19.02.2020, wherein, the petitioner reasserted the facts concerning pre-deposit of tax liability.

12. Therefore the position that emerges, is that, while there is no dispute about the fact that the petitioner falls under the voluntary disclosure category and that it has deposited before the scheme kicked in i.e., 01.09.2019, amounts towards tax liability, which included the relevant period, the contesting respondents i.e., respondent nos. 2 to 4, refused to take cognizance of the same, as the designated committee under the proviso appended to sub-section (1) of section 126 is not empowered to verify the declaration made concerning the 'amount of duty' set forth by the declarant in the prescribed form i.e., SVLDRS-1. The submission of the contesting respondents is that the petitioner cannot go beyond the purview of the scheme, and if the argument of the petitioner is accepted, that there is an ambiguity in the scheme, since it is akin to a beneficial legislation, the provisions of the scheme ought to be interpreted in a manner that favours the revenue, as against the declarant.

12.1. As noticed above, in support of this plea, reliance has been placed on behalf of the contesting respondents, on clause (d) of section 123, which

defines the expression "tax dues" [in the context of a declarant falling in the voluntary disclosure category], as the total amount of duty indicated in the declaration. Therefore, the argument is that the scheme makes it explicitly clear on a bare reading of clause (e) of sub-section (1) of section 124 that no relief will be available concerning tax dues, where tax dues are payable by a declarant falling under the voluntary disclosure category unlike declarants falling under other categories. A quick perusal of section 124 (1) clauses (a) to (d) would show that in respect of other categories, depending on the amount of duty payable, a certain amount of rebate is extended.

12.2. To buttress this submission, on behalf of the contesting respondents, reference was also made to section 124(2) of the 2019 Act, wherein amounts paid as pre-deposit could be adjusted for arriving at the reliefs outlined in sub-section (1) of the very same provision, in cases where such amount i.e., pre-deposit had been made at the stage of appellate proceedings (under the indirect tax enactment) or during enquiry, investigation or audit. In other words, the argument was, that since under sub-section (2) of section 124, there was no reference to the declarant taking recourse to the voluntary disclosure category, the legislature did not intend to extend the benefit of amounts pre-deposited towards tax liability.

13. In our view, the submissions advanced on behalf of the contesting respondents are flawed for the reasons mentioned below.

13.1. But before we give our reasons, certain principles concerning interpretation of tax/revenue statutes are required to be culled out. First, tax and equity are strangers. Second, if the language of the statute is plain and unambiguous, the intent of the legislature is to be ascertained from the words used therein. Third, in case literal construction of a statute leads to a

manifestly unjust or unreasonable result, the same needs to be avoided. Although, consequences that arise on account of strict construction of a taxing statute cannot alter its meaning, nevertheless, it can assist in discerning the meaning of the words used in the statute. In other words, the statute is to be construed in a manner that absurdity and mischief is avoided, as unreasonable results can never be the intendment of the legislature. Fourth, where a taxing statute is impregnated with ambiguity, the benefit of doubt enures in favour of the assessee. However, where ambiguity is found in exemption notification(s), the benefit is to be extended to the revenue. Thus, an exemption notification is required to be construed strictly, but once it is found that the assessee falls within the four corners of the exemption notification, it should be given full play i.e., interpreted liberally (See ***K.P. Verghese v Income Tax Officer, Ernakulam and Anr.*** (1981) 4 SCC 173***, Commissioner of Customs (Import), Mumbai v Dilip Kumar and Company and Ors.*** (2018) 9 SCC 1***, Commissioner of Income Tax, Central, Calcutta v National Taj Traders*** AIR 1980 SC 485.)

13.2. With this foreground, let us examine the provisions of the 2019 Act in the backdrop of the facts obtaining in the instant case.

13.3. Section 123 of the 2019 Act which defines the expression "tax dues" vis-a-vis the scheme, insofar as the declarant falling in the voluntary disclosure category, reads thus:

> "*(d)where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration*."

13.4. The expression "tax dues" involves a combination of two words "tax" and "dues" - while the term/word "tax" is commonly understood as meaning

imposition of a governmental charge on persons, properties, entities, and transactions to yield public revenue[1]. The word "dues" would be something which is owed or payable (in the context of present matter, tax) constituting a debt[2]. Therefore, when the words tax and dues are read conjointly, it could only mean imposition of charge which is owed and payable and thus, by necessary implication, would exclude tax liability which is already discharged and/or paid.

13.5. Therefore, the expression "total amount of duty" in clause (d) of section 123 of the 2019 Act, in our opinion, could only mean the total amount of outstanding duty payable by a declarant making voluntary disclosure, as it could never have been intended by the legislature that the revenue would collect and/or recover tax liability which has already been discharged by the declarant.

13.6. In this context. the observations of Chief Justice Lord Russel in ***Kruse v Johnson*** [(1898) 2 QB 91 at page 99-100] being apposite are extracted hereafter.

> *'Notwithstanding what Cockburn C.J. said in* ***Bailey v Williamson (1)****,* ***an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonableness in what sense?*** *If, for instance, they were found to be partial and unequal in their operation as between different classes;* ***if they were manifestly unjust;*** *if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those* ***subject to them***

[1] Black's Law Dictionary, 9th edition; page no.1594
[2] *Id;* page no.574.

> ***as could find no justification in the minds of reasonable men, the Court might well say "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.***"[Emphasis is ours]

13.7. It is, for this reason, the proviso appended to sub-section (1) of section 126 of the 2019 Act, as noticed above, states that the designated committee will not make a verification in respect of a declaration made by a declarant falling under the voluntary disclosure category. The scheme, to our minds, makes such a provision, as it seeks to make a distinction between a declarant who wishes to recant or make peace with the revenue on his own, concerning tax dues, as against one who takes recourse to the scheme after the elements of contestation have kicked in.

13.8. Therefore, the scheme provides that a declaration filed under the voluntary disclosure category is to be accepted without verification, unless proved wrong. In case, material particulars contained are found to be false, the consequences provided in section 129(2) (c) of the 2019 Act get triggered *vis-à-vis* a declarant falling under the voluntary disclosure category, which includes the institution of proceedings under the applicable indirect tax enactment. In this context, the circular dated 29.10.2019, which has been relied upon by the petitioner, in paragraph 2 (ii) states the following:

> *"(ii) Under voluntary disclosure, the Scheme makes two exclusions: (a) not being subjected to an enquiry or investigation or audit; or (b) having already filed a return but not paid the duty declared therein [Section 125(f)(i) and (ii)]. Some of the formations have reported difficulty in verifying these conditions as the proceedings may have been initiated by another formation. Though the Scheme provides*

that no verification will be carried out in cases of voluntary disclosure, they felt that there may still be a requirement to determine the eligibility to avail the Scheme. It is clarified that such declarations may be accepted without recourse to determination of eligibility as ***the Scheme provides ample safeguards for taking suitable action in case of false declaration of any material particular*** *[Section 129 (2) (c)]"*

13.9. As noticed above, because the category concerning voluntary disclosure facially involves no contestation concerning tax dues, no tax relief is available to such declarants as envisaged under clause (a) to (d) of sub-section (1) of section 124 of the 2019 Act, unlike those declarants falling under other categories.

13.10. Thus, as alluded to above, the expression "total amount of duty" which is mentioned in clause (d) of section 123 of the 2019 Act, could only mean outstanding duty. Any other interpretation, in our view, would render the provision manifestly unjust, arbitrary, unfair and unreasonable.[3] Such an interpretation would not only violate Article 14 but also Article 265 of the Constitution, which prohibits the collection of tax without the authority of law.

13.11. This interpretation aligns with paragraph 2 (iv) of the circular dated 25.09.2019 and paragraph 2 (ii) of the circular dated 29.10.2019 (extracted above.)

13.12. Therefore, the only way, by which clause (d) of section 123 of the 2019 Act can be saved, is by holding that the expression "total amount of duty" would mean that which is payable after adjusting the amount of tax

[3] ***Kruse v Johnson*** (1898) 2 QB 91

liability already discharged/paid by the declarant.

14. The approach adopted by Courts grappling with such situations, is captured, in the following judgments:

14.1. The ***Varghese*** case *(supra)* (which is a locus classicus), required the Court to interpret section 52(2) of the Income Tax Act 1961[hereafter referred to as the "1961 Act"]. The assessee, in that case, had transferred an immovable property to his daughter in law and his children at the same price at which the property was initially purchased by him. There was a gap of seven years between the time when the property was first bought by the assessee and the date on which it was sold by him to his relatives. There was no dispute that the sale transaction was *bona fide* and full value of the consideration received by the assessee had been correctly disclosed by him. The revenue, however, sought to take recourse to section 52(2) of the 1961 Act and thus sought to levy capital gains calculated based on the fair market value of the property obtaining on the date of transfer. Section 52(2), when read literally, permitted the assessing officer to take into account the fair market value of the property, if in his opinion, the difference between a fair market value and the full value of the consideration declared by the assessee, was not less than fifteen percent. It is in this context that the following apposite observations were made by the Court:

> *"**5.** Now on these provisions the question arises what is the true interpretation of Section 52, Sub-section (2)? The argument of the Revenue was and this argument found favour with the majority judges of the Full Bench that on a plain natural construction of the language of Section 52, sub-section (2), the only condition for attracting the applicability of that provision is that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer by an amount of not less than 15 per cent of the value so declared. ……. It ignores several vital considerations which must always be borne in mind*

when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity." We can do no better than repeat the famous words of Judge Learned Hand when he said:

" - -it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

We must not adopt a strictly literal interpretation of Section 52 sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language:

> *"- -the meaning of a sentence may be more than that of the separate words as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create".*

Keeping these observations in mind we may now approach the construction of Section 52 subsection (2).

6. *The primary objection against the literal construction of Section 52, sub-section (2) is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but they can certainly help to fix its meaning. It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. ....."*

14.2. Likewise, the Supreme Court in the case of ***National Taj Traders***

(supra) adopted a similar approach. This was a case where the court was required to interpret the provisions of section 33B of the Income Tax Act, 1922 [in short "1922 Act"], the Commissioner of Income Tax [hereafter referred to as 'CIT'], in this case, sought to reopen the assessment of the assessee for two assessment years on the ground that the assessments made by the assessing officer were erroneous as they were prejudicial to the interests of the revenue. The CIT by an *ex parte* order issued under section 33B of the 1922 Act, cancelled the assessments and directed the assessing officer who had jurisdiction in the matter to make fresh assessments in accordance with the law. The assessee carried the matter, in appeal, to the Income Tax Appellate Tribunal [in short 'Tribunal'.] The Tribunal repelled all contentions of the assessee, save and except the contention that the CIT had passed an order without adhering to the principles of natural justice. Consequently, the Tribunal allowed the appeals and vacated the order of the CIT, and furthermore, went on to remand the matter to him to dispose it after giving due opportunity to the assesssee. At the behest of the revenue, the Tribunal referred the questions of law for consideration by the Calcutta High Court. The High Court framed two questions of law, the first question concerned assumption of jurisdiction by the CIT under section 33B of the 1922 Act, while, the second question involved the operative direction issued by the Tribunal, which, as noticed above, involved setting aside the order passed by the CIT and remanding the matter to him for a fresh decision after affording due opportunity to the assessee.

14.3. Insofar as the first question was concerned, the High Court ruled against the assessee. It was held that the CIT had rightly assumed jurisdiction in the matter. As regards the second question, the High Court

ruled that, while the Tribunal was right in vacating the order of the CIT, it could not have directed him to dispose of the case afresh because the period of limitation prescribed under 33B (2) (b) of the 1922 Act had expired. This provision prohibited revision of the order after expiry of two years from the date when the order was first passed. The Supreme Court ruled that the bar placed on the CIT to pass an order after the expiry of two years extended to a situation where he exercises *suo motu* powers of revision under sub-section (1) of section 33B, although, a literal construction of sub-section (2) (b) of section 33B would suggest that the bar of limitation imposed thereby, was absolute and was not confined to a *suo motu* order. In reaching its conclusion, the court ruled that if literal interpretation could lead to wholly absurd and unreasonable result, the same is to be abjured. The following observations etch out the approach to be adopted by Court in such like situations:

> ***"10.*** *.... In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an, unreasonable result", said Danckwerts L.J. in Artemiou v. Procopiou [1966] 1 Q.B. 878 "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in Luke v. I.R.C.-1968 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges. In the light of these principles we will have to construe Sub-section (2)(b) with reference to the context and other clauses of Section 33B.*

> ***11.*** *.... According to the construction contended for by the assessee and which found favour with the High Court the answer was in the affirmative because Sub-section (2)(b), on its literal construction, was absolute. In our view such literal construction would lead to a manifestly absurd result, because in a given case, like the present one, where the appellate authority (Tribunal) has found (a) the Income Tax Officer's order to be clearly erroneous as being prejudicial to the interests of the revenue and (b) the Commissioner's order unsustainable as being in violation of principles of natural justice how should the appellate authority exercise its appellate powers ? Obviously it could not withhold its hands and refuse to interfere with Commissioner's order altogether for, that would amount to perpetuating the Commissioner's; erroneous order, nor could it merely cancel or set aside the Commissioner's, wrong order without doing anything about the Income Tax Officer's order, for, that would result in perpetuating the Income Tax Officer's order which had been found to be manifestly erroneous as being prejudicial to the revenue. But such result would flow from the view taken by the High Court which has held that the Tribunal acted properly in vacating the Commissioner's order but did not act properly in directing him to dispose of the proceedings afresh after giving opportunity to the assessee. Such manifestly absurd result could never have been intended by the Legislature. ....”*

15. The obvious intent of the legislature in forging the scheme under the 2019 Act is to encourage assessees to make a clean breast of their affairs and resultantly, extend the necessary benefits to the revenue by adding to their financial wherewithal, sans the attendant difficulties and costs that would otherwise have to be incurred to initiate recovery and/or legal proceedings.

16. The only caveat that one needs to enter at this stage (and something that does not arise for consideration in this case), is that if a declarant has made a pre-deposit or other deposits which exceed the amount payable, as indicated in the statement issued by the designated committee, the said amount shall not be refunded as per provisions of sub-section (2) of section 130 of 2019 Act.

16.1. In the instant case, the pre-deposit made by the petitioner is less than

the amount stated in the impugned statement and therefore, in this matter, the petitioner steers clear of the aforesaid provision.

17. Before we conclude, it is important to emphasize that respondents have placed reliance on the judgement rendered by the Supreme Court in ***Dilip Kumar***'s case (*supra*) by ignoring the fact that in this case, we are not called upon to interpret an exemption notification and therefore, the construction of provisions of section 123 (d) cannot enure to the benefit of the revenue. If anything, as discussed above, the judgement supports the case of the petitioner.

Conclusion:

18. Thus, for the foregoing reasons, we are of the opinion that it would suffice if a direction is issued, quashing the impugned statement dated 12.02.2020, and consequentially respondent no. 4 be called upon to issue a fresh statement in the prescribed form i.e., SVLDRS-3, after taking into account the pre-deposit made by the petitioner towards tax liability, as indicated in its declaration made in the form SVLDRS-1.

18.1. It is ordered accordingly.

19. The writ petition is disposed of in the aforesaid terms.

20. However, parties will bear their respective costs.

(RAJIV SHAKDHER)
JUDGE

(POONAM A. BAMBA)
JUDGE

JULY 6, 2022. *Click here to check corrigendum, if any*