Before Augustine George Masih & Ashok Kumar Verma,JJ.

LONGOWALIA YARNS LTD. — *Petitioner*

versus

UNION OF INDIA AND OTHERS — *Respondents*

CWP No. 22405 of 2020

December 23, 2020

Tax matter — Interpretation of statute — Challenge to vires of S.9 (a) (i) of the Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act) to the extent the upper limit of disputed tax at Rs.5 Crore for the assessees to take benefit of the Scheme under the Act –Inequitable and arbitrary – Causing hardship - Action under S.153A of the IT Act was initiated against the petitioner for six assessment years preceding the search operation under S.132 of the Act – In terms of S.9 (a) (i) of the VSV Act the petitioner not eligible for benefit in respect of assessment years 2012-13 and 2013-14 wherein the amount of disputed tax exceeded Rs.5 Crores – Challenge to this upper limit of Rs.5 Crores on the ground of being arbitrary and violative of Article 14 of the Constitution, and against the very purpose of the Scheme — There is no equity in tax – When language of the taxing provision is plain, the Court cannot concern itself with intention of the legislature – **In** ***the light of law laid down, challenge to S.9 (a) (i) of the Act to the extent it fixes the upper limit of disputed tax cannot be sustained as it is, admittedly, within the legislative domain of the Parliament – The plea of hardship cannot be taken as a relevant ground in pronouncing on validity of a Statute - Petition dismissed.***

Held that in Income Tax Officer, Tuticorin vs. T.S. Devinatha Nadar etc., 1968 AIR (SC) 623, the Hon'ble Supreme Court has held that whether a levy is just or unjust, whether it is equitable or not is wholly irrelevant in considering the validity of the levy. There is no equity in a tax. The general scope and purview of the Statute, and at the remedy sought to be applied need to be looked at and considered in the light of what the legislature contemplated. It was also observed that when the language of the taxing provision is plain, the Court cannot concern itself with the intention of the legislature. With regard to the hardship, which was sought to be pressed into service by the petitioner, it was held to be not relevant in construing taxing Statutes which are to be construed strictly.

(Para 21)

Held that in the light of the above law, which has been laid down by the Hon'ble Supreme Court in various judgments, when testing the challenge which has been posed by the petitioner in the present writ petition, to Section 9 (a) (i) to the extent that it fixes the upper limit of disputed tax at Rs. 5 Crore for the assessees to take benefit of the scheme under the VSV Act, 2020 cannot be sustained as it is, admittedly, within the legislative domain of the Parliament. The intent and purpose is clear as far as the provisions of the Statute are concerned which is further culled out from the extracts of the speech of the Finance Minister which has been reproduced in the writ petition. Legislature, in its wisdom, has fixed the limit up to which, if an assessee is in arrears of a disputed tax for a particular assessment year where the dispute is pending at any stage could avail of the said benefit.

(Para 23)

Held that there is no constitutional infirmity in doing so nor is the Court concerned with the wisdom of the legislature. The plea of hardship as taken by the petitioner cannot be taken as a relevant ground in pronouncing on the validity of a Statute. Wide latitude is available to the legislature in the classification for the purpose of taxation and exemption including granting benefit(s) as it enjoys a wide range of flexibility to adjust its system of taxation based on diverse considerations of executive pragmatism. Advantages and disadvantages to individual assessees can be accidental and inevitable which are inherent in every taxing Statute as some line has to be drawn somewhere. Therefore, fixation of a particular monetary limit for entitling an assessee the benefit of the scheme by the legislature can neither be termed as arbitrary nor discriminatory rather it is within its domain which cannot be said to be in violation of Article 14 of the Constitution of India.

(Para 24)

Ajay Vohra, Sr. Advocate, with
Rohit Jain, Advocate, and
Aniket D. Aggarwal, Advocate, and
Vishal Gupta, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

(1) This writ petition has been filed praying for a writ declaring Sub-Clause (i) of Clause (a) of Section 9 of the Direct Tax Vivad Se Vishwas Act, 2020 [Act No. 3 of 2020] (hereinafter referred to as 'VSV

Act, 2020') (Annexure P-1) to the extent that the same excludes the applicability of the provisions of this Act in respect of tax arrears relating to assessment years wherein the disputed tax determined under the assessments framed on the basis of search initiated under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act') exceeds Rs.5 crores from the scheme under the VSV Act, 2020 being manifestly arbitrary, unreasonable, mala- fide and devoid of any rational/intelligible basis and thus, unconstitutional being violative of Article 14 of the Constitution of India. A writ in the nature of mandamus has also been prayed for granting liberty to the petitioner-Company to file the declaration under Sub-Section (1) of Section 4 of the VSV Act, 2020 before the Designated Authority for availing the benefit of the scheme under the VSV Act in respect of assessments framed for the assessment years 2012-13 and 2013-14 pursuant to the search carried out under Section 132 of the IT Act.

(2) Facts as pleaded are that assessment under Section 143(3) for the assessment year 2011-12 was framed in the case of the petitioner vide order dated 28.03.2014 making addition of Rs.11,50,00,000/- under Section 68 of the IT Act, thereby assessing the total income of the petitioner at Rs.12,89,69,120/- and served a notice of demand in pursuant thereto. Petitioner preferred an appeal under Section 246A of the IT Act before the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT (A)'] which is pending.

(3) On 04.09.2014, search operation under Section 132 of the IT Act was conducted in the Longowalia Group of Cases which covered the case of the petitioner as well. Proceedings, in pursuance to the said search, action under Section 153A of the IT Act were initiated in the case of the petitioner for six assessment years preceding the year of search, viz., assessment years 2009-10 to 2014-15. This led to the additions to the returned income for the assessment years 2011-12, 2012-13, 2013-14 and 2015-16 vide assessment orders dated 30.12.2016. Details thereof are as follows:-

Asstt. Year	**Income returned in the ITR filed in response to notice under section 153A (Rs.)**	**Additions made under section 153A (Rs.)**	**Income assessed under section 153A (Rs.)**	**Disputed Tax (incl. Surcharge & Cess)/ Tax Payable under section 153A (Rs.)**

2011-12	1,39,69,116	Addition under section 68 [already made under section 143(3) vide order dated 28.03.2014]	11,50,00,000	13,12,69,120	13,76,456 (incl. interest payable under section 234A /B/C/) [The amount relates to only that portion of tax which was payable in respect of addition made in assessment framed under section 153A]
		Addition under section 69C	23,00,000		
2012-13	Nil	Addition under section 68	20,21,00,000	20,61,42,000	6,68,82,772
		Addition under section 69C	40,42,000		
2013-14	Nil	Addition under section 68	19,09,50,000	19,47,69,000	6,31,92,802
		Addition under section 69C	38,19,000		
2015-16	Nil	Addition based on Notional Gross Profit Rate	3,74,34,716	3,74,34,716	1,21,45,694

(4) Petitioner aggrieved by these assessments preferred appeals under Section 246A of the IT Act before CIT(A), which are pending.

(5) During the pendency of these appeals, VSV Act, 2020 was enacted with an object to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. In terms of Section 3 of the said Act, the assessee (referred to as the 'declarant') could settle the pending disputes in respect of their tax arrears, where an appeal had been filed by the assessee by filing a declaration before the Designated Authority and making the payments as were given thereunder. For the purpose of resolving and settling litigation, Rules were also framed known as 'Direct Tax Vivad Se Vishwas Rules, 2020 (hereinafter referred to as 'VSV Rules, 2020').

(6) Petitioner being keen to settle and accord a quietus to the tax disputes in respect of the tax arrears arising on account of assessments framed under Section 143(3)/153A of the IT Act for the assessment years 2011-12, 2012-13, 2013-14 and 2015-16 explored further and found that in terms of sub-clause (i) of clause (a) of Section 9 of the VSV Act, 2020, petitioner would not be eligible for availing the benefit

of the said Act in respect of the assessment years 2012-13 and 2013-14 as for those assessment years, the amount of disputed tax determined under the assessments framed exceeded Rs.5 Crores, which is Rs.6,68,82,772/- and Rs.6,31,92.802/- respectively.

(7) The relevant extract of sub-clause (i) of clause (a) of Section 9 of the VSV Act, to the extent impugned in the present writ petition reads as follows:-

> "Act not to apply in certain cases.
>
> 9. The provisions of this Act shall not apply-
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> (a) in respect of tax arrear,-
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> (i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of Section 143 or Section 144 or Section 153A or Section 153C of the Income-Tax Act on the basis of search initiated under Section 132 or Section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees."

(8) In the light of the above monetary limit of Rs.5 crores, petitioner is unable to take the benefit of the scheme under the VSV Act, 2020 and this limit, as fixed in the said Act, is arbitrary, without any rational or intelligible basis which excludes the assessees who are keen and desirous to settle their pending income-tax disputes. Excluding the assessees whose disputed tax exceeds Rs.5 crores leading to their exclusion from the scheme under the VSV Act, 2020 on this ground alone is wholly arbitrary, unreasonable, mala-fide and devoid of any rational is unconstitutional, being ultra vires Article 14 of the Constitution of India.

(9) The grounds, which have been pressed into service by the petitioner-Company for asserting their plea of violation of Article 14, are that the objective of the scheme enacted in the form of the VSV Act, 2020 was to reduce and dispense with the income tax litigation pending/deemed to be pending at all appellate forums as on 31.01.2020 by making payment of the disputed tax on or before 31.03.2020 (now extended up to 31.03.2021) and with some additional payments after 31.03.2020 (now extended after 31.03.2021). The extract of the speech of the Ministers of Finance in the Parliament on 01.02.2020 has been relied upon to assert that all taxpayers are encouraged to avail of the benefit under the said scheme to settle their pending litigation. Further amendments and a corrigendum was issued clarifying and enlarging the

scope to the various assesses to take the benefit of the scheme, details whereof have also been given in the writ petition.

(10) Petitioner has also referred to the other clauses of Section 9 to contend that the intention on the part of the legislature was to bar the benefit of the scheme on availing of the said benefit where prosecutions were instituted unless the said prosecutions were compounded before filing of the declaration. On the basis of these aspects, it is asserted that the sole object, purpose and endeavour of the dispute resolution scheme under the VSV Act, 2020 is to cover within its fold, maximum situations and cases of pending income-tax litigation with a view to encourage taxpayers to accord a quietus to their pending income-tax disputes before all appellate forums except for those which were barred under certain clauses of Section 9 of the VSV Act, 2020. The intent, in any case, was not to exclude cases which were merely based upon quantitative monetary assessment as in the case of the petitioner by excluding the cases of assessees where the disputed tax exceeded Rs.5 crore for a particular assessment year. This exclusion would amount to otherwise eligible and bona-fide category of assessees which would lead to manifest arbitrariness, unreasonableness and devoid of any rational/intelligible basis leading to violation of Article 14 of the Constitution of India. Similarly placed assessees have, therefore, been discriminated against by creating mini/micro classifications which bear no nexus with the object and purpose of the enactment causing irrational hardship, prejudice to the bona-fide assessees interested in settling their taxation disputes.

(11) Learned senior counsel for the petitioner has, in the above background of facts and statutory provisions, proceeded to support the case of the petitioner by placing reliance upon the judgment of the Supreme Court in the State of Maharashtra and another vs. Indian Hotel and Restaurants Association and others, (2013) 8 Supreme Court Cases 519, highlighting therein that in the absence of the intelligible differentia and nexus with the object sought to be achieved, the same would be violative of Article 14 of the Constitution. Referring to the judgment in the case of ***State of J&K*** versus ***Shri Triloki Nath Khosa***[1], he emphasized upon the non-acceptance by the Court of the micro/mini classification made by the Government which is against the scheme of reasonable classification. In the case of ***B.Prabhakar Rao and others***

[1] (1974) 1 SCC 19

versus ***State of A.P. and others***[2], it was highlighted by the learned senior counsel that under- inclusion of persons deserving the same treatment by classifying them as a separate group is unsustainable and in violation of Article 14 of the Constitution. As regards the power of the Court to strike down 'exclusionary' portion of legislation on being unreasonable, reference has been made to the judgment of the Supreme Court in ***Sankar Mukherjee and others*** versus ***Union of India and others***[3]. He asserts that the similarly placed persons cannot be discriminated against having the same position with regard to the subject matter of legislation and if that was a position, the same needs to be struck down being violative of Article 14. Reference in support has been made to the judgment of the Supreme Court in ***Mohd. Shujat Ali and others*** versus ***Union of India and others***[4].

(12) Learned senior counsel has further asserted that the manifest arbitrariness is a valid ground for striking down legislation being violative of Article 14 of the Constitution, in support of which, reference has been made to the case of ***Shayara Bano*** versus ***Union of India and others***[5]. Reference has also been made by him to the order passed by the Division Bench of the Delhi High Court dated 05.08.2020 in WP (C) No. 4763 of 2020 titled as ***Vaishali Sharma*** versus ***Union of India and others***, where the Court has opined that a liberal interpretation has to be given to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as its intent is to unload the baggage relating to legacy disputes under the Central Excise and Service Tax and to allow the businesses to make a fresh beginning. He accordingly, asserts that a liberal interpretation has to be given to the Statute so that the very purpose of the Statute, which has been enacted, succeeds and, therefore, being violative of Article 14 of the Constitution of India, the prayer made in the writ petition deserves to be accepted.

(13) We have considered the submissions made by the learned senior counsel for the petitioner but do not find ourselves in a position to accept the same.

(14) The issue, which has been raised by the petitioner, relates to the fixing of the upper monetary limit i.e. Rs.5 crores up to which if the aggregate amount of disputed tax does not exceed, an assessee would be

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[2] 1985 Supp SCC 432
[3] 1990 Supp SCC 668
[4] (1975) 3 SCC 76
[5] (2017) 9 SCC 1

eligible for claiming the benefit under the scheme, which limit as fixed, according to the petitioner, is not sustainable being violation of Article 14 of the Constitution as the same is not only arbitrary and unreasonable but devoid of any rational, intelligible basis as also against the very purpose of the scheme under the VSV Act, 2020 which had been floated i.e. to encourage the resolution of the dispute so as to bring a quietus to the pending income-tax disputes before all forums by covering them within the fold of the scheme leading to reduction in direct tax litigation pending at all levels.

(15) The principles, as have been laid down in the various judgments, which have been referred to by the learned counsel for the petitioner relating to the violation of Article 14 of the Constitution leading to the holding by the Courts the challenged legislations to be violation of Article 14 of the Constitution, cannot be disputed with. The general principles laid down therein are salutary and, therefore, need to be pressed into service to test the legislation on the said touchstone.

(16) The basic principles, which have been laid down by the Hon'ble Supreme Court with regard to the scope and effect of Article 14, has been narrowed down to two conditions which need to be fulfilled to pass the test of permissible classification (i) classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differential must have rational relation to the object sought to be achieved by the Statute in question.

(17) Apart from these we cannot loose sight that there is a presumption in favour of the constitutionality of an enactment and the burden is upon the person who attacks it to show that there has been a clear violation of the constitutional provisions and principles.

(18) In ***Karnataka Bank Ltd***. versus ***State of A.P***.[6], in para-19, the Hon'ble Supreme Court, while dealing with the challenge to constitutionality of law, has held as follows:-

> "19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law

[6] (2008) 2 SCC 254

> is to resolve it in favour of its validity'.Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or un-wisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it."

(19) That apart, legislation in the field of taxation enjoys a greater latitude for classification. This proposition of law stands settled in various judgments such as ***Gopal Narain*** versus ***State of U.P***.[7], ***Ganga Sugar Corpn. Ltd.*** versus ***State of U.P***.[8] and ***State of W.B.*** versus ***E.I.T.A. India Ltd***.[9].

(20) A Constitution Bench of the Hon'ble Supreme Court in ***R.K. Garg*** versus ***Union of India***[10] has clearly stated that laws relating to economic activities need to be looked at and viewed with greater latitude than laws touching civil rights. It further went on to propound the principles while dealing the constitutional validity of a taxation law enacted by Parliament or State Legislature which need to be taken note of by the Court. The said principles are:-

> (i) there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature,
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> (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,
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> (iii)the Court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the need of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence,
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> (iv)hardship is not relevant in pronouncing on the

[7] AIR 1964 SC 370
[8] (1980) 1 SCC 223
[9] (2003) 5 SCC 239
[10] (1981) 4 SCC 675

constitutional validity of a fiscal statute or economic law, and

(v) in the field of taxation, the legislature enjoys greater latitude for classification."

(21) In ***Income Tax Officer, Tuticorin*** versus ***T.S. Devinatha Nadar etc***.[11], the Hon'ble Supreme Court has held that whether a levy is just or unjust, whether it is equitable or not is wholly irrelevant in considering the validity of the levy. There is no equity in a tax. The general scope and purview of the Statute, and at the remedy sought to be applied need to be looked at and considered in the light of what the legislature contemplated. It was also observed that when the language of the taxing provision is plain, the Court cannot concern itself with the intention of the legislature. With regard to the hardship, which was sought to be pressed into service by the petitioner, it was held to be not relevant in construing taxing Statutes which are to be construed strictly.

(22) Kar Vivad Samadhan Scheme, 1998, which was of the similar nature as in the present case, was introduced by the Finance (No. 2) Act, which scheme was floated to minimize the litigation and to realize the arrears of tax by way of settlement in an expeditious manner both direct and indirect tax. The intention was to incentivise the declarants to settle the tax arrears leading to de-clogging the system and to enable the Government to realize its reasonable dues. The said scheme was considered by the Hon'ble Supreme Court in ***UOI and others*** versus ***NIT DIP Textile Processors Pvt. Ltd. and another***[12], where the challenge was posed to the cut off date prescribed by Section 87 (m) (ii) (b) being arbitrary and discriminatory and thus, violative of Article 14 of the Constitution. The grievance of the assessee was that the date fixed is arbitrary and deprives benefit to those assessees who were issued demand notice or show cause notice after the cut off date i.e. 31.03.1998. Hon'ble Supreme Court, after considering the principles, concluded that the mere fact that the line dividing the classes is placed at one point rather than another will not impair the validity of the classification. Various judgments on the subject were discussed especially in the light of Article 14 of the Constitution relating to the taxation laws and concluded the position in law in paras 66 and 67 as follows:-

"66. To sum up, Article 14 does not prohibit reasonable

[11] 1968 AIR (SC) 623
[12] (2012) 1 SCC 226

> classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The taxation laws are no exception to the application of this principle of equality enshrined in Article 14 of the Constitution of India. However, it is well settled that the legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation in view of inherent complexity of fiscal adjustment of diverse elements. The power of the legislature to classify is to wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate.
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> 67. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax-payers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assessees are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line."

(23) In the light of the above law, which has been laid down by the Hon'ble Supreme Court in various judgments, when testing the challenge which has been posed by the petitioner in the present writ

petition, to Section 9 (a) (i) to the extent that it fixes the upper limit of disputed tax at Rs. 5 Crore for the assessees to take benefit of the scheme under the VSV Act, 2020 cannot be sustained as it is, admittedly, within the legislative domain of the Parliament. The intent and purpose is clear as far as the provisions of the Statute are concerned which is further culled out from the extracts of the speech of the Finance Minister which has been reproduced in the writ petition. Legislature, in its wisdom, has fixed the limit up to which, if an assessee is in arrears of a disputed tax for a particular assessment year where the dispute is pending at any stage could avail of the said benefit.

(24) There is no constitutional infirmity in doing so nor is the Court concerned with the wisdom of the legislature. The plea of hardship as taken by the petitioner cannot be taken as a relevant ground in pronouncing on the validity of a Statute. Wide latitude is available to the legislature in the classification for the purpose of taxation and exemption including granting benefit(s) as it enjoys a wide range of flexibility to adjust its system of taxation based on diverse considerations of executive pragmatism. Advantages and disadvantages to individual assessees can be accidental and inevitable which are inherent in every taxing Statute as some line has to be drawn somewhere. Therefore, fixation of a particular monetary limit for entitling an assessee the benefit of the scheme by the legislature can neither be termed as arbitrary nor discriminatory rather it is within its domain which cannot be said to be in violation of Article 14 of the Constitution of India.

(25) In view of the above, we do not find any merit in the present writ petition and, therefore, dismiss the same.

Tribhuvan Dahiya