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

% ***Judgment delivered on: 09.09.2024***

\+ W.P.(C) 12362/2021

M/S FRESH PET PRIVATE LIMITED .....Petitioner

Through: Ms. Vibhooti Malhotra, Mr. Bhuvnesh Satija and Mr. Udit Sharma, Advocates.

versus

PRINCIPAL COMMISSIONER
OF INCOME TAX, DELHI – 1 ....Respondent

Through: Mr. Ojaswa Pathak, Adv., Mr. Vikramaditya Singh and Ms. Zehra Khan, JSCs for Mr. Debesh Panda, SSC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The writ petitioner has approached this Court seeking to invoke our jurisdiction under Article 226 of the Constitution impugning an order dated 30 September 2021 negating its request for a rectification of the Form 3 which was issued under the **Direct Tax Vivad Se Vishwas Act, 2020**[1] observing that in the absence of any apparent mistake, no rectification was warranted.

2. The petitioner was principally seeking a revision of Form 3 and which had taken note of the fact that a set off/carry forward of losses and unabsorbed depreciation had not been claimed in Schedule D of

[1] VSV Act

the application which had been made by the petitioner for settlement under the VSV Act. However, Form 3, it was pointed out to us, had itself noted that the set off and carry forward would be open to be claimed as permissible in law.

3. It is the case of the writ petitioner that since the order of assessment had itself provisioned for the carry forward of unabsorbed depreciation as well as business loss, the same could have neither been ignored nor refused acknowledgment while drawing up the Form 3. It is asserted that the action of the respondents goes against the very grain of the VSV Act and which is concerned with settlement of disputes pertaining to a tax liability and according closure thereto.

4. For the purposes of examining the challenge which stands raised it would be appropriate to take notice of the following salient facts. The writ petition is concerned with the settlement of a tax dispute pertaining to **Assessment Year**[2] 2012-13. The Return of Income as furnished for that AY was originally processed under Section 143(3) of the **Income Tax Act, 1961**[3] pursuant to an order dated 31 March 2015 in terms of which an addition of INR 3,00,00,000/- came to be made. That liability came to be affirmed by the **Commissioner of Income Tax (Appeals)**[4] in terms of its order of 25 June 2019.

5. In the meanwhile, the VSV Act came to be enforced with effect from 17 March 2020. Seeking to derive benefit therefrom, the petitioner submitted a declaration in terms contemplated under Section 3 of the VSV Act on 31 March 2021. It is the case of the petitioner

[2] AY
[3] Act
[4] CIT(A)

that Schedule D was inadvertently left blank notwithstanding the relief which had been accorded by the AO itself.

6. On 09 April 2021, Form 3 came to be issued. In terms of the aforesaid certificate, the tax arrears as payable was computed on INR 97,35,000/- if paid on or before 30 April 2021. Form 3 also quantified the amount which the petitioner would be liable to deposit in case a payment was effected after 30 April 2021 and the same was specified to be INR 1,07,08,500/- Form 3 also incorporated the following recitals insofar as Schedule D thereof was concerned:-

> "The assessee has not filed Schedule D and has not claimed set off of losses. The set off of losses and carry forward of losses may be allowed as per law. The Form 3 is liable to be cancelled/ rectified in case the error emanates from incorrect information in Form 1/ form 2."

7. As noticed hereinabove, that the petitioner asserts that it was on account of a sheer inadvertent mistake and oversight that it had overlooked filling in the requisite details in Schedule D. In view of the above, it is stated to have moved an application for what was claimed to be a mistake apparent on the face of the record and thus rectifiable. It is that application dated 16 April 2021 which has come to be rejected in terms of the order impugned.

8. Appearing for the writ petitioner Ms. Malhotra, learned counsel, contended that from a reading of the assessment order it would be ex facie apparent that the **Assessing Officer**[5] itself had accepted the claim of the writ petitioner for the carry forward of unabsorbed depreciation as well as business losses. In view of the above, it was her submission that the denial of carry forward of depreciation and

[5] AO

loss is wholly unjustified.

9. In order to examine the correctness of the aforenoted submission, we deem it apposite to extract the following passages from the order of assessment dated 31 March 2015:

> "**3.17** During the year, the assessee company has received share application money of Rs. 3,00,00,000/- from two companies, which has been credited in the books of account of the assesee company. It has been discussed on foregoing paragraphs that the share application money so received is not a genuine investment and it is a form of accommodation entries. No evidence of creditworthiness and genuineness of transactions with regard to these amounts have been furnished by the assessee. Even the activities of the investor companies with regard to the investment made do not appear to be genuine as observed in various paragraphs herein above. During the course of assessment proceedings, none of such entities could be produced by the assessee company. Even, the director of the assessee company didn't appear to explain the nature & sources of share application money. Further, the ratio of the case laws cited herein above is squarely applicable in case of the assessee company. The assessee has not been able to offer any satisfactory explanation about nature and sources of the said sum of Rs. 3,00,00,000/-. In view of the detailed discussions made herein above and considering all the facts and circumstances of the case, I hold that sum of Rs. 3,00,00,000/- shall be charged to income tax, u/s 68 of the Income Tax Act, 1961, as income of the assesseee company of the previous year relevant to the assessment year 2012-13. This income is assessed as income from undisclosed sources during the year. ***Penalty u/s 271(1)(c) is also initiated on this account, since M am satisfied that the asseseee company has concealed the particulars of its income.***
>
> **(Addition of Rs. 3,00,00,000/-)**
>
> **xxxx xxxx xxxx**
>
> **5.** The assessment of the assess company for assessment year 2012-13 is accordingly completed with above observations. The computation of income is given as under: -

	Profit/loss before tax as per profit & loss account	=	(-) Rs. 2,25,10,990/-
Add:	Depreciation disallowed (as per Income Tax Act)	=	Rs. 1,70,45,140/-
		=	(-) Rs. 54,65,850/-
Add:	Disallowance as per para 4	=	Rs. 7,217/-
	Business loss of the current year	=	(-) Rs. 54,58,633/-
Add:	Income from undisclosed sources	=	Rs. 3,00,00,000/-

	as per para 3.17		
			Rs. 2,45,41,367/-
Less:	Depreciation as per Income Tax Act including unabsorbed depreciation u/s 32(2) pertaining to earlier years merged in the current year depreciation	=	Rs. 2,45,41,367/-
			Rs. Nil

A.Y. 2010-11	2,41,81,837
A.Y. 2011-12	2,06,35,109
A.Y. 2012-13	1,82,46,601
Total	6,30,63,547

Out of total depreciation of Rs.6,30,63,547/- upto the year under consideration, depreciation of Rs.2,45,41,367/- has been set off. Remaining amount of unabsorbed depreciation is allowed to be carried forward.

Total Income	=	Nil
Unabsorbed depreciation upto the year under consideration to be carried forward	=	Rs.3,85,22,180/-
Business loss to be carried forward pertaining to A.Y. 2010-11	=	Rs.33,10,767
Business loss to be carried forward pertaining to A.Y. 2011-12	=	Rs.38,06,369

6. The assessment is completed at total income of Rs. Nil/-. Unabsorbed depreciation of Rs.3,85,22,180/- and business loss of Rs.33,10,767/- pertaining to A.Y. 2010-11 & Rs.38,06,369 pertaining to A.Y. 2011-12 as worked out above is hereby allowed to be carried forward. The notice of demand is issued accordingly alongwith a copy of this order. Credit of prepaid taxes after verification is given. Calculation of the tax and other statutory liabilities consequent upon this order of assessment is appended to the notice of demand u/s 156. Penalty u/s 27(1)(c)is also initiated on the additions made in Para 3.17, since I am satisfied that the assessee company has concealed the particulars of its income."

10. Ms. Malhotra contended that the VSV Act itself is concerned with the settlement of disputes with respect to tax which is asserted to be payable and, consequently, the respondents have taken a wholly untenable and erroneous view in the matter. Learned counsel drew our attention firstly to Section 2(o) which defines the expression "tax

arrear" as follows:-

> "(*o*) "tax arrear" means,—
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> (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
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> (*ii*) disputed interest; or
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> (*iii*) disputed penalty; or
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> (*iv*) disputed fee,
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> as determined under the provisions of the Income-tax Act.
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> [*Explanation*.—For the removal of doubts, it is hereby clarified that the expression "tax arrear" shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income Tax Act.]"

11. Ms. Malhotra then took us through the salient provisions which are made in Sections 3, 4 & 5 of the VSV Act and which are reproduced hereinbelow:

> **"3. Amount payable by declarant.—**Subject to the provisions of this Act, where a declarant files [1][under the provisions of this Act on or before the such date* as may be notified], a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:—

Sl. No.	**Nature of tax arrear**	**Amount payable under this Act on or before the [2][31st day of December, 2020 or such later date as may be notified]**	**Amount payable under this Act on or after the [3][1st day of January, 2021 or such later date as may be notified] but on or before the last date.**
(a)	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such	amount of the disputed tax.	the aggregate of the amount of disputed tax and ten per cent. of disputed tax: Provided that where the

	disputed tax and penalty leviable or levied on such disputed tax.		ten per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.
(b)	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.	the aggregate of the amount of disputed tax and twenty-five per cent. of the disputed tax: Provided that where the twenty-five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act	the aggregate of the amount of disputed tax and thirty-five per cent. of disputed tax: Provided that where the thirty- five per cent. of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.
(c)	where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	twenty-five per cent. of disputed interest or disputed penalty or disputed fee.	thirty per cent. of disputed interest or disputed penalty or disputed fee:

Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of

the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.

4. Filing of declaration and particulars to be furnished.—(1) The declaration referred to in Section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of Section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of Section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of Section 5.

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of Section 5 and furnish proof of

such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of Section 5.

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,—

(*a*) any material particular furnished in the declaration is found to be false at any stage;

(*b*) the declarant violates any of the conditions referred to in this Act;

(*c*) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5), and in such cases, all the proceedings and claims which were withdrawn under Section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of Section 5 by the designated authority or the payment of sum determined under that section.

5. Time and manner of payment.—(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.

> (3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.
>
> *Explanation*.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute."

12. According to learned counsel, the VSV Act is itself concerned with the settlement of "disputed" tax and penalty leviable thereon. According to learned counsel, once the assessment order itself had provisioned for the set off and carry forward of business losses and depreciation, there would exist no justification for the same being denied by the Designated Authority while determining the amount payable by an applicant. Ms. Malhotra contended that an applicant under the VSV Act cannot be placed in a position more disadvantageous than where it would have stood if the original orders of adjudication had prevailed. It was her submission that the benefits otherwise extended to an assessee cannot possibly be denied nor can an assessee be deprived of those parts of the assessment which were in its favour. This since according to learned counsel, that part of the assessment cannot be viewed or construed to be "disputed".

13. Ms. Malhotra also invited our attention to the clarifications issued by the **Central Board of Direct Taxes**[6] in terms of a Circular dated 22 April 2020 and where Question 46 was answered in the

[6] CBDT

following terms:-

> ***"Whether DA can amend his order to rectify any patent errors?***
>
> Yes, the DA shall be able to amend his order under section 5 to rectify any apparent errors."

It was in light of the above that Ms. Malhotra submitted that nothing fettered the power of the Designated Authority to rectify the Form 3 which had been framed.

14. Appearing for the respondents, Mr. Pathak learned counsel, contended that the petitioner admittedly failed to provide any particulars and make appropriate declarations in Schedule D. Taking us through the disclosures and declarations made in Form 1, learned counsel sought to highlight the fact that the prayer for a set off and carry forward of unabsorbed depreciation and business loss was never sought. In view of the aforesaid, it was contended that Form 3 suffered from no manifest or patent error which could have been rectified. It was further submitted that the determination of the amount payable by a declarant is accorded finality as would be apparent from a conjoint reading of sub-sections (1) and (3) of Section 5. Learned counsel laid stress on the conclusivity which stands conferred upon the amount that comes to be determined under Section 5(1). It was in the aforesaid context that learned counsel submitted that the Designated Authority could not have possibly exercised the power to rectify once Form 3 had been generated.

15. Learned counsel also drew our attention to the provisions contained in the Circular dated 04 December 2020 and where while dealing with a power to rectify, the CBDT had clarified that although a declaration could be revised by an applicant as many number of

times as chosen, no corrections, amendments or modifications would be permissible once a certificate under Section 5(1) of the VSV Act comes to be issued. Our attention in this respect was specifically drawn to Question 89 and which is extracted hereinbelow:-

> *"**Once declaration is filed by assessee u/s 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?***
>
> Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of Vivad se Vishwas"

16. Having examined the rival submissions which were addressed, we firstly deem it apposite to take note of the **Statement of Object and Reasons**[7] of the VSV Act and which would shed light on the legislative intent underlying the promulgation of the statute. The SOR is extracted hereinbelow:-

> **"STATEMENT OF OBJECTS AND REASONS**
>
> Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.
>
> 2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.
>
> 3. It is, therefore, proposed to introduce The Direct Tax Vivad se Vishwas Bill, 2020 for dispute resolution related to direct taxes,

[7] SOR

which, inter alia, provides for the following, namely:-

(a) The provisions of the Bill shall be applicable to appeals filed by taxpayers or the Government, which are pending with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source;

(c) in appeals related to disputed tax, the declarant shall only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent. of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31st day of March, 2020. If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent. of the disputed penalty, disputed interest or disputed fee, as the case may be.

4. The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government."

17. As is manifest from the above, the legislation had taken into consideration the enormous amount of time and resources which were getting consumed on account of tax disputes and thus clearly acting as a burden not only upon the Government but also the tax payers. It was noted that those disputes were also hindering the timely collection of revenue. The VSV Act thus came to be promulgated in order to address those concerns and to subserve the larger public interest of

settling disputes and to free the Union from the burden of pursuing litigation. It thus sought to address and balance the interest of the assessee as well as the Revenue and formulated appropriate measures aimed at a swift resolution of pending tax disputes. In order to subserve those principal objectives and bring a closure to disputes pending at different hierarchical levels, the legislation defined "disputed tax" in Section 2(j) in the following terms:-

> "(*j*) "disputed tax", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961(43 of 1961), as computed hereunder:—
>
> (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;
>
> (B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;
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> (C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;
>
> (D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under Section 144-C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;
>
> (E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of Section 144-C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before

the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) in a case where an application for revision under Section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under Section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under Section 115-JAA or Section 115-D of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

[*Explanation*.—For the removal of doubts, it is hereby clarified that the expression "disputed tax", in relation to an assessment year or financial year, as the case may be, shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income Tax Act.]"

18. As is apparent from the aforesaid definition of "disputed tax", the VSV Act sought to resolve disputes pending at various levels including those engaging the attention of an appellate forum, a Dispute Resolution Panel or even where a dispute be pending before a Commissioner in revision. The VSV Act defined the expression "tax arrears" to mean the aggregate amount of disputed tax, interest, penalty or fee together with interest chargeable or charged on the same. Both the concept of "disputed tax" and "tax arrears" as embodied in the legislation are of critical importance as would be

evident from the discussion which ensues.

19. In terms of Section 3, an applicant desirous of resolution of a tax dispute stands enabled to submit a declaration before the Designated Authority setting out the nature of the tax arrears as well as the amount payable in connection therewith. In terms of Section 4 the moment an applicant comes to submit a declaration, all appeals pending either before the **Income Tax Appellate Tribunal**[8] or the Commissioner of Income Tax (Appeals) at its behest are deemed to have been withdrawn from the date when a certificate under Section 5(1) comes to be issued by the Designated Authority. A declarant is also enjoined to withdraw all appeals pending either before any appellate forum as well as any writ petitions pending before the High Court or the Supreme Court in respect of the tax arrears immediately after the issuance of a certification under Section 5(1) and furnish proof of withdrawal thereof along with the intimation of payment spoken of in Section 5(2).

20. Upon the submission of that application, the Designated Authority proceeds to examine and evaluate the same and on a culmination of that exercise determine the amount payable by the declarant. At the end of that determination, the Designated Authority grants a certificate to the declarant as per Form 3. Immediately upon issuance of Form 3, the declarant is obliged, by virtue of Section 5(2), to deposit the amounts so determined and submit proof of payment before the said authority. Sub-section (3) of Section 5 provides that the amount determined under Section 5(1) shall be conclusive with respect to all matters stated therein and no issue covered by such a

[8] Tribunal

determination can be reopened in any other proceedings under the Act or under any other law for the time being in force. The VSV Act by virtue of Section 7 further proscribes the declarant from seeking refund of any amount paid pursuant to the declaration submitted under Section 4.

21. However, and when we revert to the facts of the present case, we find that the Form 3 which was drawn had itself preserved the right of the assessee to claim a set off of and carry forward of losses as per law. The fact that the original order of assessment had itself accepted the set off and carry forward of unabsorbed depreciation as well as business losses, is also not disputed. We are thus left to consider whether the mere failure or an inadvertent mistake, as the petitioner has chosen to describe it, to furnish requisite details in Schedule D, would warrant it being deprived of the salutary and beneficial provisions of the VSV Act or for that matter being compelled to pay an amount which exceeds the liability which otherwise stood determined in the original assessment proceedings.

22. The underlying objective of legislative forays seeking to accord amnesty, provide a closure to disputes and provide an avenue to assessees' to bring litigation to an end was lucidly explained by our Court in **MUFG Bank Ltd. vs. Commissioner of Income Tax**[9] as would be apparent from the following observations appearing therein:-

> "**26.** Having heard learned counsel for the parties, this Court is of the view that the primary question that needs to be answered is what is the rule of interpretation that the court must apply while interpreting the Dtvsv Act.
>
> **27.** Every modern legislation is actuated with some policy. While

[9] 2022 SCC OnLine Del 4096

the intent of taxing statutes is to collect taxes, the intent of amnesty acts like Voluntary Disclosure of Income Scheme (for short "VDI Scheme") is to provide an opportunity to the assesses to declare their undisclosed income on fulfilling certain terms and conditions. There are also legislations which are directed to cure some mischief and bring into effect some type of reform by improving the system or by relaxing the rigour of the law or by ameliorating the condition of certain class of persons who according to present day notions may not have been treated fairly in the past. Such welfare, beneficent or social justice oriented legislation are also known as remedial statutes.

28. It is settled law that any ambiguity in a taxing statute enures to the benefit of the assessee, but any ambiguity in the amnesty act or exemption clause in an exemption notification has to be construed in favour of the Revenue and amnesty/exemption has to be given only to those assesses who demonstrate that they satisfy all the conditions precedent for availing the amnesty/exemption. (See: *Commr. of Customs case*[*Commr. of Customs* v. *Dilip Kumar & Co.*, (2018) 9 SCC 1]).

29. For determining whether the Dtvsv Act is a taxing statute or an amnesty act or a beneficial/remedial act, one has to examine what is the objective and intent behind enacting the statute. The relevant portion of the Statement of Objects and Reasons of the Dtvsv Act reads as under:

> "…Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed As a result, a huge amount of disputed tax arrears is locked up in these appeals. As on the 30-11-2019, the amount of disputed direct tax arrears is Rs 9.32 lakh crores. Considering that the actual direct tax collection in the Financial Year 2018-2019 was Rs 11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.
>
> 2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. *This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities*…."

(emphasis supplied)

> **30.** The Finance Minister of the Union of India in her Budget Speech 2020-2021 outlined the objective of the Dtvsv Act as under:
>
> "… *Under the proposed 'Vivad se Vishwas' scheme,* a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31-3-2020. Those who avail this scheme after 31-3-2020 will have to pay some additional amount. The scheme will remain open till 30-6-2020…. *I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process*…."
>
> **31.** From the aforesaid, it is apparent that Dtvsv Act, 2020 is a beneficial/remedial piece of legislation enacted by Parliament to reduce pendency of cases, generate timely Revenue for the Government and provide certainty and savings of resources that would be spent on the long drawn litigation process. It is a statute which provides benefit as it recovers the taxes for the department upfront without having to wait to succeed in the litigation which itself is uncertain. Dtvsv Act also provides a sop to an assessee, as it puts an end to the litigation and the assessee is relieved of payment of interest and penalty if the same were to imposed. The Dtvsv Act also benefits the society as it reduces litigation, acrimony, decongests the courts and relieves the system of unnecessary burden. Consequently, this Court is of the view that Dtvsv Act is neither a taxing statute nor an amnesty act. It is a remedial/beneficial statute."

23. It is the aforenoted principles which would thus govern the interpretation that is liable to be accorded to the VSV Act. When tested on the aforesaid precepts, we come to the firm conclusion that the respondents have not only taken an extremely narrow and pedantic view while refusing to accord relief to the petitioner, their action goes against the fundamental grain of the legislation itself.

24. The VSV Act enables an assessee to seek resolution of disputes pending at various stages of the appellate and review tiers created under the Act on the prescribed date. Those proceedings would undoubtedly be concerned with challenges which an assessee may

have instituted to an original order of assessment and would be logically confined to parts which would have been adverse to it. Those appeals and challenges would necessarily be in respect of either adverse findings or decisions made by the AO and which would have constrained the asssessee to adopt remedial measures. This is further fortified by the manner in which the VSV Act defines and introduces the concept of a disputed tax liability and tax arrears. The statute is fundamentally aimed at settling matters and issues on which the assessee and the Revenue may have been litigating on the relevant date as opposed to those on which parties may have been *ad idem* and which may have never formed part of the ongoing litigation. It was the existing dispute which was sought to be laid to rest under the VSV Act. The statute was never envisaged to be concerned with issues on which there existed no debate or disagreement on the relevant date.

25. Ms. Malhotra, thus appears to be correct in her submission that the VSV Act cannot foist a liability upon a declarant which exceeds that which formed the subject matter of contestation on the relevant date. The provisions of the VSV Act cannot be accorded an interpretation which may lead to an applicant being saddled with a liability far greater than what was determined in the course of assessment and which stood impugned in appeal or revision. The determination under Section 5(1) and which leads to Form 3 being drawn thus cannot be made in ignorance of that part of the assessment order which may have been in favour of the assessee or deprive the assessee of a facility or relief already granted. Learned counsel clearly appears to be correct in her submission that an assessee by applying under the VSV Act cannot be placed in a position worse off than

where it was as a consequence of the order of assessment which stood impugned in pending proceedings.

26. In our considered opinion, it would be wholly unjust to construe the provisions of the VSV Act as contemplating the settlement amount exceeding the tax liability as computed in assessment or denying the declarant relief which already stood extended. This since the order of assessment to that extent would not even have formed subject matter of disputation. The definition of "disputed tax liability" and "tax arrears" clearly lends credence to the submission that the settlement would have to necessarily be confined to that part of the assessment which was adverse to the assessee and which may have formed subject matter of ongoing proceedings.

27. Once the AO itself had accorded the facility of carry forward and set off of unabsorbed depreciation and business losses, the same could not have been denied to the declarant. The failure of the writ petitioner to make the requisite disclosures in Schedule D would neither detract from the relief which had been accorded by the AO nor change the factum of carry forward and set off as forming part of the assessment order. The grant of that facility appears to have been noticed by the Designated Authority and it was perhaps this aspect which convinced it to record that it would be open to the petitioner to seek relief in that respect accordance with law. However, the Designated Authority clearly appears to have lost sight of the fact that unless Form 3 were duly amended and rectified, the spectre of finality which stands statutorily conferred on that determination would have deprived the petitioner of asserting any claim in respect of carry forward and set off. Once it was conceded that those reliefs stood

granted in the original order of assessment itself, the Designated Authority would have been justified in rectifying the mistake which was apparent from the record.

28. We, accordingly, allow the writ petition and quash the impugned order dated 30 September 2021. The Designated Authority is directed to issue a Form 3 afresh bearing in mind the observations rendered hereinabove. Subject to the petitioner complying with the requirements stipulated in Section 5, the matter may be disposed of in accordance with law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 9, 2024 /kk