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

% **Judgment reserved on: 16 April 2024**
Judgment pronounced on: 16 May 2024

\+ W.P.(C) 4222/2021

PT BUKAKA TEKNIK UTAMA ..... Petitioner

Through: Mr.Ved Jain, Mr.Nischay, Kantoor and Ms. Soniya Dodeja, Advs.

versus

COMMISSIONER OF INCOME TAX (IT), DELHI - 2

..... Respondent

Through: Mr.Indruj Rai, Sr.SC with Mr.Sanjeev Menon, Jr.SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. This petition, at the instance of the assessee, raises a singular issue i.e., whether the assessee would be eligible to avail the benefits of settlement under the provisions of Direct Tax Vivad se Vishwas Act, 2020 [**'DTVSV Act'**], particularly when the assessee's appeal before Commissioner of Income Tax (Appeals) ['**CIT(A)**'] was dismissed on the ground of delay and admittedly when the limitation to file an appeal

before Income Tax Appellate Tribunal ['**ITAT**'] had not expired on the specified date i.e, 31.01.2020 as provided under the DTVSV Act.

2. At the outset, a sojourn in the factual matrix of the present case would be helpful to appreciate the controversy at hand. The assessee is an Indonesian-based entity and for the Assessment Year ['**AY**'] 2010-11, filed its Income Tax Return [**'ITR'**] on 27.08.2011, declaring a total income of ₹6,27,250/-. Thereafter, the assessee's case was picked up for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 ['**Act**'] was issued on 28.09.2011.

3. Subsequently, on 28.03.2013 a draft assessment order was passed under Section 144C(1) of the Act, whereby, the Assessing Officer ['**AO**'] proposed to assess the income of the assessee at ₹1,69,68,213/-. Thereafter, the final assessment order was passed on 24.05.2013, whereby, the income of the assessee was assessed at ₹1,69,68,210/-.

4. Aggrieved by the aforenoted assessment order, the assessee preferred an appeal before the CIT(A) which came to be dismissed on 01.01.2020 on the ground of four years delay. This order of CIT(A) however, is under challenge before the ITAT.

5. In the interregnum, on 17.03.2020, the DTVSV Act came into force and on 23.12.2020, the assessee filed Forms 1 and 2 as per the provisions of the DTVSV Act. The said application was rejected by the Revenue on the pretext that as on the specified date, no appeal was pending, hence, the assessee was ineligible to reap the benefits under the DTVSV Act.

6. The assessee's subsequent attempts to seek settlement benefits also met with the same fate. However, for the sake of brevity, the details thereto are not mentioned. Aggrieved by the impugned action of the Revenue, the assessee has approached this Court seeking following reliefs:-

> "A. Issue a writ in the nature of Certiorari/Mandamus or any other like writ, order of direction, directing the Respondent No. 1 to accept the Revised Form 1 and 2 submitted by the Petitioner on 29.01.2021 as per the provision of Direct Tax Vivad se Vishwas Act, 2020 for settlement of dispute pending before appellate forum as valid;
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> AND
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> B. Issue a writ in the nature of Mandamus or any other writ, order or direction, as deemed fit and proper in the facts and circumstances of the present case."

7. Mr. Nischay Kantoor, learned counsel appearing on behalf of the assessee submitted that the impugned action of the Revenue is wholly arbitrary and completely *dehors* the beneficial objectives of the DTVSV Act. He argued that as per the provisions of Section 2(1)(a)(ii) read with Section 2(1)(n) of DTVSV Act, an assessee in whose case an order has been passed by CIT(A) and the limitation for filing an appeal against the said order has not expired as on specified date, such cases are covered within the meaning of 'appellant'.

8. To substantiate his arguments, he has also drawn sustenance from the Central Board of Direct Taxes [**"CBDT**"] Circular No. 09/2020 dated 22.04.2020, whereby, it was clarified that in matters wherein the due date for filing the appeal falls after the specified date i.e. on 31.01.2020 and no appeal was filed, the assessee will still be eligible to avail the benefits

under the DTVSV Act. Learned counsel further argued that as on 31.01.2020, the time limit for filing the appeal before the ITAT had not expired as per Section 253 of the Act and also as per the provisions of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, as the time limit for filing the appeal was extended up to 31.03.2021 in view of the COVID-19 pandemic.

9. He further submitted that the factum of CIT(A) dismissing the appeal of the assessee on the ground of delay would have no bearing over the rejection of Forms 1 and 2 as the disputed tax arrears still existed as on 31.01.2020. In support of his contentions, he placed reliance on the decisions of ***Raja Kulkarni v. State of Bombay,***[1] ***MUFG Bank Ltd. v. CIT,***[2] ***Medeor Hospital Ltd. v. Pr. CIT,***[3] ***Commissioner of Income Tax v. Shatrusailya Digvijaysingh Jadeja,***[4] ***Mela Ram & Sons v. CIT,*** [5] ***Sadruddin Tejani v. ITO***[6]***.***

10. *Per contra,* Mr. Indruj Rai, learned senior standing counsel appearing on behalf of Revenue vehemently opposed the submissions. He argued that as per the provisions of the DTVSV Act, in order to avail the benefit of the *"Vivaad se Vishwas"* scheme, the appeal had to remain pending as on the specified date i.e. on 31.01.2020. However, according to him, no appeal was pending in the assessee's case as the CIT(A) disposed of the condonation of delay application on 01.01.2020. He

[1] (1953) 2 SCC 552.
[2] 2022 SCC OnLine Del 4096.
[3] 2022 SCC OnLine Del 3553.
[4] (2005) 7 SCC 294.
[5] 1956 SCC OnLine SC 8.
[6] 2021 SCC OnLine Bom 567.

further argued that as on the specified date as per the provisions of Section 2(1)(j)(B) of the DTVSV Act, no disputed tax arrears existed as CIT(A) decided only the question of delay and not the question of tax arrears. In order to substantiate his arguments, he placed reliance on the decisions of ***Raja Mechanical Co. (P) Ltd. v. CCE***[7] and ***CCT v. Glaxo Smith Kline Consumer Health Care Ltd.***[8].

11. We have heard the learned counsels appearing for parties and perused the record.

12. Before advancing to the merits of the case, we find it apposite to refer to the legislative intent and underlying objective that the DTVSV Act strives to achieve.

13. A fiscal statute for any State holds an elementary importance for an inclusive national growth. It not only aims at economic development of the country but also caters to the efficient tax planning by the citizens. The fiscal policy of the State treats the legislature and the citizens as the wheels of a same cart that is moving in the direction of economic liberalisation and financial sustainability. However, due to unnecessary and time consuming litigation combat between the Government and the assesses, the aim of fiscal policy often gets dwindled and ultimately results in deprivation of tax arrears. Owing to this futile exercise, on the one hand the Government is not able to collect timely tax, while on the other hand, the time, energy and resources of the litigants also get consumed.

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[7] (2012) 12 SCC 613.

[8] (2020) 15 SCC 681.

14. The Supreme Court has also time and again lamented on the reasons for docket explosion. The Supreme Court in the case of ***CIT v. S.R.M.B. Dairy Farming (P) Ltd.***[9] expressed its concern on the reasons for pending litigation and made the following pertinent observations:-

> "2. The propensity of Government Departments and public authorities to keep litigating through different tiers of judicial scrutiny is one of the reasons for docket explosion. The Income Tax Department of the Government of India is one of the major litigants. There are two departmental scrutiny at the level of the Assessing Officer and the Commissioner of Income Tax (Appeals) and thereafter an independent judicial scrutiny at the Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT') level followed by the legal issue which can be inquired into by the High Courts. The last tier is, of course, the jurisdiction under Article 136 of the Constitution of India before the Supreme Court.
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> 3. Mindful of the phenomenon of the docket explosion and the rising litigation in the country, the Union of India in order to ensure the conduct of responsible litigation framed what is today known as the National Litigation Policy, to bring down the pendency of cases and get meaningful issues decided from the judicial forums rather than multiple tiers of scrutiny just for the sake of it. The Government, being a litigant in well over 50 per cent of the cases, has to take a lead in not being a compulsive litigant."

Objectives of the DTVSV Act

15. The DTVSV Act, which came to be passed on 17.03.2020, aimed at putting an end to the never-ending litigation process and putting disputed tax arrears into the coffers of the Government. As the name "*Vivaad se Vishwas*" signifies, the cardinal objective that the legislature

[9] (2016) 12 SCC 239.

intended to achieve was to put a quietus to litigation misery with the help of an amicable settlement. While introducing the Bill in the Parliament, the Finance Minister made the following speech, which lucidly captures the legislative intent behind the introduction of the DTVSV Act. The relevant extracts of the Finance Minister's speech read as under:-

> "Sir, in the past our Government has taken several measures to reduce tax litigations. In the last Budget, Sub Ka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums, i.e., Commissioner (Appeals), the Income-tax Appellate Tribunal, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax, Sub Ka Vishwas for reducing litigations even in the direct taxes.
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> **Under the proposed Vivad Se Vishwas Scheme, a taxpayer would be required to pay only the amount of disputed taxes and will get complete waiver of interest and penalty provided he pays, by March 31, 2020. Those who avail the scheme after March 31, 2020, will have to pay some additional amount. The scheme will remain open till June 30, 2020.**
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> **Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.**
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> **I hope the taxpayers will make use of this opportunity to get relief from vexatious litigation process."**

16. As it is evident, due to the pendency of the litigation between the assesses and the Government, the tax arrears gets entangled in the litigation and ultimately take a lot of time to meet its fate. With an underlying objective of mitigating the miseries of litigants going through the cumbersome process of adversarial litigation practice, *"Vivaad se*

Vishwas" scheme was launched. To end any confusion and to substantiate further, we also advert to the Statement of Objects and Reasons necessitating enactment of the DTVSV Act, which read as under:

> "Over the years 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 November 30, 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. 11.3 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.
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> 2. Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. More over, 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.
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> 3. It is, therefore, proposed to introduce Direct Tax Vivad Se Vishwas Bill, 2020 for dispute resolution related to direct taxes, which, inter alia, provides for the following, namely :
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> (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 January 31, 2020 irrespective of whether demand in such cases is pending or has been paid ;
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> (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 31st day of March, 2020 and for the payments made after 31st day of March, 2020, but on or before a date notified by the Central Government, the amount payable shall be increased by 10 per cent. of the 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 31st day of March, 2020. If the payment is made after 31st day of March, 2020, but on or before the date notified by the 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. Therefore, a conjoint reading of the speech of the mover of the aforesaid Bill as well as the Statement of Objects and Reasons as extracted above crystallizes the fact that the legislature was conscious of the pending disputes relating to tax arrears and in order to bring finality to protracted litigation, the DTVSV Act was introduced in a form of beneficial legislation and to ensure the timely collection of revenue.

18. After examining the underlying objective and legislative intent of the DTVSV Act, we now proceed to refer to certain provisions of the DTVSV Act.

Salient features of the DTVSV Act

19. Section 2 of the DTVSV Act talks about certain definitions which shall be kept in mind while referring to the provisions of the aforesaid Act. Section 2(1)(a) defines the appellant and classifies categories of appellants who can derive the benefits of the settlement scheme. The categories of the such appellants as per Section 2(1)(a) of the DTVSV Act are namely; i) where an appeal is pending as on the specified date of 31.01.2020, ii) where an order has been passed as on the specified date but the time limit for filing the appeal was not expired, iii) where the objections have been filed before the Dispute Resolution Panel ['**DRP**'] and the DRP has not issued any directions, iv) where the DRP has issued directions but the Assessing Officer ['**AO**'] has not passed the order and lastly v) where the revision has been preferred under Section 264 of the Act and such revision is pending as on the specified date.

20. Furthermore, the definition of 'disputed income' as per Section 2(1)(g) of the DTVSV Act means a whole or part of the total income as is relatable to 'disputed tax' for the relevant AY. In addition to that, Section 2(1)(j) of the DTVSV Act is of elementary importance, whereby, the term 'disputed tax' is defined. As per Section 2(1)(j) of the DTVSV Act, disputed tax in relation to a relevant AY, means income tax as payable under the Act, shall be computed in the following manner namely i) where an appeal is pending as on specified date, the tax would be the amount as determined if the appeal would be decided against the appellant, ii) where an order has been passed and time limit for filing an

appeal against that order was not expired, then the tax amount shall be the amount as determined after giving effect to order so passed, iii) where the order has been passed by the AO and time limit for filing the appeal was not expired, then tax payable shall be amount so determined by the AO, iv) where objections are pending before DRP, then the tax amount shall be the amount so determined if the DRP would have decided against the appellant, v) where DRP has passed the directions and the AO has not passed the order under Section 144C(13) of the Act, the tax amount shall be the amount so determined if the AO would have passed the order under Section 144C(13) of the Act and lastly vi) where revision application preferred under Section 264 of the Act was pending, then the tax amount shall be the amount so determined if such revision application would not be accepted.

21. For the sake of clarity, the aforenoted Sections of the DTVSV Act are reproduced herein for reference:-

> "2. Definitions.—(1) In this Act, unless the context otherwise requires,—
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> (*a*)"appellant" means—
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> (i) a person in whose case an appeal or a writ petition or Special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;
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> **(ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that**

date;

(iii) a person who has filed his objections before the Dispute Resolution Panel under Section 144-C of the Income-tax Act, 1961(43 of 1961) and the Dispute Resolution Panel has not issued any direction on or before the specified date;

(iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of Section 144-C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;

(v) a person who has filed an application for revision under Section 264 of the Income-tax Act and such application is pending as on the specified date;";

[Explanation.—For the removal of doubts, it is hereby clarified that the expression "appellant" shall not include and shall be deemed never to have been included a person in whose case a writ petition or special leave petition or any other proceeding has been filed either by him or by the income-tax authority or by both before an appellate forum, arising out of an order of the Settlement Commission under Chapter XIX-A of the Income Tax Act, and such petition or appeal is either pending or is disposed of.]

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g) **"disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax**

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(*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;

(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 subsection (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.]

22. Furthermore, once the declaration is filed under Section 3 of the DTVSV Act, the designated authority shall decide the application of the assessee within 15 days and determine the amount so payable as per the provisions of the DTVSV Act. As per the DTVSV Act, the designated authority shall grant certificate to the assessee containing particulars of the tax arrears and the amount payable after such determination. Once the certificate is granted, the assessee shall pay the tax arrears and intimate the details of such payment to the designated authority and consequently file Form 4, Thereafter, the designated authority shall pass an order declaring that the assessee has paid the amount. Once the order has been passed then as per Section 5(3) of the DTVSV Act, pending disputes as covered by such an order shall be conclusive and shall not be reopened. Moreover, Section 6 of the DTVSV Act also gives immunity to the appellant in certain cases from the initiation of proceedings against any offence under the Act with respect to tax arrears.

Analysis

23. As the facts of the case would suggest that assailing the assessment order dated 24.05.2013, the assessee approached the CIT(A) on 23.02.2018. On 01.01.2020, the CIT(A) rejected the appeal for being beyond the prescribed limitation period. Thereafter, in order to avail the benefits under the provisions of the DTVSV Act, the assessee on 23.12.2020, filed Forms 1 and 2. However, on 14.01.2021, the Revenue rejected the assessee's request on the score that as on 31.01.2020 i.e., the specified date under the DTVSV Act, no appeal was pending.

24. It is relevant to point out that as per Section 2(1)(a) of the DTVSV Act, as already noted above pending appeal is not the only criterion for availing the benefits. As per Section 2(1)(a)(ii) of the DTVSV Act, even if the order has been passed and the time limit for filing an appeal or special leave petition against such order has not expired, still the assessee can avail the benefits under the provisions of the DTVSV Act and the amount of tax payable in such cases shall be amount as determined by the order so passed.

25. Notably, in the present case, it is not doubted by the Revenue that the time limit for filing the appeal against the CIT(A) order before the ITAT had not expired as on the specified date i.e., 31.01.2020 and furthermore, on 16.06.2020, the assessee had filed the appeal before the ITAT.

26. However, it is the contention of the Revenue that since the CIT(A) had passed the order only on the aspect of condonation of delay and not

on tax computation, therefore, as per Section 2(1)(a)(ii) of the DTVSV Act, there is no disputed tax demand after giving effect to the CIT(A) order.

27. It is to be noted that *vide* interim order dated 22.04.2021, this Court had given liberty to the assessee to file Form-4 as prescribed under the provisions of the DTVSV Act. For the sake of clarity, the interim order dated 22.04.2021 is reproduced herein:-

> "1. Mr. Zoheb Hossain, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that a counter affidavit in the matter was filed with the Registry of this Court, and that the Registry, in this behalf, has allocated the said filing, the following diary no.: E-374534/2021.
> 2. Mr. Ved Jain, who appears on behalf of the petitioner/assessee, affirms that he has received a copy of the counter affidavit.
> 3. The counter affidavit is, however, not on record. Mr. Hossain will ensure that the counter affidavit is placed on record. Liberty is granted to Mr. Jain to file a rejoinder qua the same.
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> **4. Since the matter requires consideration, the petitioner/assessee is given liberty to file Form-4, as prescribed, under the provisions of the Direct Tax *Vivad Se Vishwas* Act, 2020 [in short the "2020 Act"]. The filing of Form - 4 will, however, be without prejudice to the rights and contentions of the respondent/revenue.**
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> 4.1 Furthermore, the fact that the petitioner/assessee has been permitted to file Form-4, will not create any equity in its favour, if it is otherwise not able to persuade us, to grant the final relief(s), as sought for, in the petition.
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> **4.2 To facilitate the filing of Form-4, the respondent/revenue will issue Form - 3, as prescribed under the provisions of the 2020 Act, *albeit*, without prejudice to its rights and contentions, as noted above.**

4.3 The respondent/revenue will ensure that Form - 3 is uploaded on the petitioner's/assessee's electronic portal on or before 26.04.2021.

5. List the matter on 18.08.2021."

28. As it is evident from the legislative intent as well as the Statement of Objects and Reasons, the aim of the DTVSV Act is to finally put an end to the litigation and set free the tax arrears entangled in the litigation battle. Considering the nature of the legislation to be beneficial and remedial in its form, it should be interpreted in a liberal and purposive manner. While confronted with a similar question over the interpretation of the DTVSV Act, this Court in the case of ***MUFG Bank Ltd.****(supra)* held as follows:-

> **"27.** Every modern legislation is actuated with some policy. While 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.
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> **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]).

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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.

32. In construing a remedial/beneficial statute, it has been held that the courts ought to give to it "the widest operation" which its language will permit. The courts have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment [*Sayad Mir Ujmudin Khan* v. *Zia-ul-nissa Begam*, 1879 SCC OnLine PC 10 : ILR (1879) 3 Bom 422] . The words of such a statute must be so construed as 'to give the most complete remedy which the phraseology will permit,' …."

29. The Supreme Court in the case of ***CST v. Mangal Sen Shyam Lal,***[10] noticed the cardinal importance of the legislative will while interpreting the statutes by the Court and held as under:-

> "27. A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the Court is not

[10] (1975) 4 SCC 35.

> to resile. It has to abide by the maxim ut res magis valiat quam pereat, lest the intention of the legislature may go in vain or be left to evaporate into thin air…"

30. On the touchstone of the principles as noted above, it is imperative to test the contention of the Revenue that since the CIT(A) had passed the order only on the aspect of the condonation of delay and not on tax computation, therefore, as per the Section 2(1)(a)(ii) there is no disputed tax demand after giving effect to the CIT(A) order.

31. At this stage, it is quintessential to refer to the Frequently Asked Question ['**FAQ**'] 23 and its response appended thereto, which stands incorporated in the CBDT Circular no. 7/2020, dated 04.03.2020. For the sake of convenience, the said FAQ and the response thereto are extracted hereinafter:

> "FAQ. 23 of Circular No. 7 dated 04.03.2020
> Question: If the due date of filing appeal is after 31.1.2020 the appeal has not been filed, will such case be eligible for Vivad se Vishwas?
> Answer: Yes"

32. Thus, it is crystal clear that in all the aforementioned exigencies as enshrined in Section 2(1)(a) of the DTVSV Act, the assessee would be eligible to apply under the provisions of the DTVSV Act. It is noteworthy that as per the provisions of the DTVSV Act, *inter alia*, what is required is that either an appeal should be pending or the time limit for filing an appeal should not have expired as on the specified date and the disputed tax arrears should exist. The fact remains that the limitation to avail the remedy to appeal against the CIT(A) order was not exhausted as

on the specified date and thus, the Revenue cannot pre-suppose that the assessee would not succeed in the appeal before ITAT under any circumstances.

33. It is of no significance whether the pending appeal merits consideration or is filed against an order, whereby, the dismissal was on the ground of being barred by limitation. These qualifications attached to a pending litigation have no bearing over the assessee for availing the benefits of the DTVSV Act. In the case of ***Medeor Hospital*** *(supra)* this Court also held that once the provisions of the DTVSV Act contemplate the condition of appeal being pending in order to avail the settlement benefits, then there is no requirement to add the qualifications to the pending appeal. The relevant paragraphs of the said decision are reproduced herein for reference:-

> "12…Court's reasoning
> It is settled law that when a section contemplates pendency of an appeal there is no need to introduce the qualification that it should be valid or competent.
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> ***
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> 14. Section 2(1)(a) and section 2(1)(n) of the Vivad Se Vishwas Act are reproduced hereinbelow :
>
> "2(1) In this Act, unless the context otherwise requires—
> (a) 'appellant' means—
> (i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the Income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date ;
> (n) 'specified date' means the 31st day of January, 2020 ;
>
> 15. In the opinion of this court, when a section contemplates pendency of an appeal, what is required is that an appeal should be pending and

> in such a case there is no need to introduce the qualification that it should be valid or competent. In Raja Kulkarni v. State of Bombay reported in AIR 1954 SC 73, the Supreme Court has held that "whether an appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the court".

34. At this juncture, it would be relevant to refer to the decision of the Supreme Court in the case of ***Shatrusailya Digvijaysingh Jadeja*** *(supra)* wherein the Court was dealing with a similar scheme called Kar Vivad Samadhan Scheme, introduced *vide* the Finance [No. 2] Act 1998, on the ground that the Revision/Appeal filed by the concerned assessee was time-barred or was not valid. In the said case, the Supreme Court considered the object of the said Scheme and observed as under:

> "13. In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. As stated above, the said Scheme was a complete Code by itself. Its object was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT Act/WT Act. Keeping in mind the above object, we have to examine section 95(i)(c) of the Scheme, which was different from appeals under section 246, revisions under section 264, appeals under section 260A etc. of the IT Act and similar provisions under the W.T. Act. Under the I.T. Act, there is a difference between appeals, revisions and references. However, those differences were obliterated and appeals, revisions and references were put on par under section 95(i)(c) of the Scheme. The object behind section 95(i)(c) in putting on par appeals,

references and revisions was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and, therefore, the rulings on the scope of appeals and revisions under the IT Act or on Voluntary Disclosure Scheme, will not apply to this case.

15. In the case of Dr. Mrs. Renuka Delta (supra), this Court has held on interpretation of section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration under section 88 of the Scheme, it is not for the DA to hold that the appeal/revision was "sham", "ineffective" or "infructuous" as it has.

16. In the case of Raja Kulkarni v. The State of Bombay reported in MANU/SC/0132/1953 : AIR 1954 SC 73, this Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court."

35. The Supreme Court in the case of ***Renuka Datla (Dr) v. CIT,***[11] again while dealing with the Kar Vivad Samadhan Scheme has also held that once the legislation contemplates the appeal to be pending, the authority cannot add qualifications to the appeal. The Court observed as under:-

"19. However, not all "tax arrears" under Section 87(*m*) are entitled to the benefit of the Scheme. If no appeal etc. is pending *in respect of* the

[11] (2023) 2 SCC 19.

tax arrears, the benefit of the Scheme is not available under Section 95(*i*)(*c*). If an appeal etc. is pending, it is not for the designated authority to question the possible outcome of the appeals, nor for the High Court to hold that the appeal was "sham", "ineffective" or "infructuous" as it has. In any event, the High Court erred in holding that the entire demand raised on 31-12-1998 had been consented to by the appellant. In computing the demand on 31-12-1998 the Assessing Officer included not only those items which had been remitted by CIT(A) for redetermination, and which were conceded to by the appellant, but also the items which had been confirmed by CIT(A) which had not been conceded and were the subject-matter of appeal before the Tribunal. Thus the question of imposition of interest under Sections 234-A, 234-B and 234-C and the determination in respect of Items (*iii*) and (*vii*) referred to above, even according to the High Court's view, was the subject-matter of appeal. In the facts of the case therefore, it cannot be said that there was no appeal pending in respect of the tax arrears pertaining to those items within the meaning of Section 95(*i*)(*c*)."

36. It is significant to refer the order dated 16.02.2024, passed by us in W.P.(C) No. 5831/2021 titled ***Kajal Real Estate and Consultants Private Limited v. PCIT New Delhi & Ors.,*** wherein, we have also noted that the pre-requisite to avail the benefits of the DTVSV Act is that appeal had to be either pending or the time limit for assailing the order had not expired. The relevant paragraphs of the aforenoted order are reproduced herein:-

"9. As is manifest from the aforesaid discussion, the CBDT had clearly provided that the provisions of the VSV Act would also extend to those disputes which emanated from orders passed under the Act and which could be appealed against and the limitation for preferment of those appeals having not come to an end prior to the specified date.

10. Undisputedly, the period of limitation for the preferment of a revision could not be said to have come to an end on 31 January 2020 bearing in mind the provisions of the Taxation and Other Laws

(Relaxation of Certain Provisions) Ordinance, 2020 and the orders passed on Suo Moto 3/2020. The limitation for filing a revision in terms of the aforesaid thus travelled beyond the specified date of 31 January 2020.

11. In our considered opinion, once the respondents had taken the principled position that the VSV Act would apply even in those matters where the limitation period for filing of appeals had not expired on the specified date, there can be no valid justification to either countenance or draw a distinction between an appeal and a revision. The acceptance of such a distinction would be wholly illogical quite apart from being manifestly arbitrary and violative of Article 14 of the Constitution. The respondents, having accepted the directive of the CBDT insofar as appeals are concerned, cannot be permitted to justifiably take the position that the same would not extend to revisions. Once the CBDT had clarified that cases where the limitation for filing of appeals had not expired on 31 January 2020 would also be covered, it would be wholly unfair to hold that the same principle would not apply to a revision.

12. More importantly, the clarificatory directive of the Board must be interpreted and understood in light of the underlying legislative policy of the VSV Act of providing an avenue for settlement of disputes coupled with the insurmountable challenges which were faced by people during the pandemic. If the clarification were to be viewed in that light it becomes apparent that the core theme of the Board directive was to extend the beneficial reach of the VSV Act even to those cases where assessees' still retained the right to question an adverse order or decision on the specified date and where the law itself conferred upon them a right to raise such a challenge. There thus exists no justification to restrict the ambit of the clarification merely to appeals and exclude other avenues of redress which were otherwise available to be pursued on the specified date."

37. It is evidently clear from the abovenoted judicial pronouncements that the designated authority cannot go beyond the purview of the

DTVSV Act and attach qualifications to conditions which are already meticulously provided in the provisions of the DTVSV Act.

38. At this juncture, it is also relevant to point out the dictum laid down by the Supreme Court in the case of ***Mela Ram & Sons*** *(supra)* which has also been heavily relied upon by the assessee. The relevant paragraphs of the said decision are reproduced herein for reference:-

> **"10.** Then, the next question is whether it is an order passed under Section 31 of the Act. That section is the only provision relating to the hearing and disposal of appeals, and if an order dismissing an appeal as barred by limitation is one passed in appeal, it must fall within Section 31. And as Section 33 confers a right of appeal against all orders passed under Section 31, it must also be appealable. But then, it is contended that in an appeal against assessment the only order that could be passed under Section 31(3)(*a*) is one which confirms, reduces, enhances or annuls the assessment, that such an order could be made only on a consideration of the merits of the appeal, and that an order dismissing it on the ground of limitation is not within the section. That was the view taken in *Dewan Chand* v. *CIT* [(1951) 20 ITR 621]. But there is practically a unanimity of opinion among all the other High Courts that to fall within the section it is not necessary that the order should expressly address itself to and decide on the merits of the assessment, and that it is sufficient that the effect of the order is to confirm assessment as when the appeal is dismissed on a preliminary point. In *CIT* v. *Shahzadi Begum* [(1952) 21 ITR 1, 11] Satyanarayana Rao, J. said:
>
> > "If the appeal is dismissed as incompetent or is rejected as it was filed out of time and no sufficient cause was established, it results in an affirmation of the order appealed against."
>
> **11.** In *Gour Mohan Mullick* v. *Commissioner of Agricultural Income Tax* [(1952) 22 ITR 131, 144] construing Sections 34, 35 and 36 of the Bengal Agricultural Income Tax Act which are in terms identical with those of Sections 30, 31 and 33 of the Indian Income Tax Act,

Chakravarti, J. observed:

> "I would base that view on the ground that *the order*, *in effect*, *confirmed the assessment* or, at any rate, disposed of the appeal and was thus an order under Section 35, because what that section really contemplates is a disposal or conclusion of the appeal and the forms of orders specified in it are not exhaustive. An appellate order may not, directly and by itself, confirm, or reduce or enhance or annul an assessment and may yet dispose of the appeal. If it does so, it is immaterial whether the ground is a finding that the appeal is barred by limitation or a finding that the case is not a fit one for extension of time or both."

This reasoning is also the basis of the decisions of the Bombay and Allahabad High Courts which hold that an order rejecting an appeal on the ground of limitation after it had been admitted is one under Section 31, though there is no consideration of the merits of the assessment. Thus, in *K.K. Porbunderwalla* v. *CIT* [(1952) 21 ITR 63, 66] Chagla, C.J. observed:

> "…although the Appellate Assistant Commissioner did not hear the appeal on merits and held that the appeal was barred by limitation his order was under Section 31 and *the effect of that order* was to confirm the assessment which had been made by the Income Tax Officer."

In *Special Manager of Court of Wards* v. *CIT* [(1950) 18 ITR 204, 212] the Allahabad High Court stated that the view was "possible that even though the period of limitation is prescribed under Section 30 and the power to grant extension is also given in that section the power is really exercised under Section 31 as the Appellate Assistant Commissioner when he decides not to extend the period of limitation may be said in a sense to have confirmed the assessment."

39. Therefore, it becomes evident that once the CIT(A) has rejected the appeal of the assessee whether on merits or on delay aspect, the tax demand as reflected in the assessment order gets confirmed unless it is

set aside or modified by other appellate authority. Thus, the disputed tax arrears still exist as on specified date and consequently, the assessee would be eligible to apply for settlement under the DTVSV Act.

40. Furthermore, it is not the case of the Revenue that the assessee had filed an appeal before the CIT(A) after the announcement of the DTVSV Act merely to seek the benefits of the DTVSV Act as the record would reflect that the appeal was filed way back on 23.02.2018. It is also not the case of the Revenue that the assessee was not eligible for settlement of the dispute on account of any exclusion contained in Section 9 of the DTVSV Act.

41. Taking a cue from the principles mentioned above, it cannot be gainsaid that once the CIT(A) has rejected the appeal of the assessee on the ground of being barred by limitation, the resultant effect of such an order would be confirmation of the assessment order so passed, unless and until such position is changed by the appellate forum. Therefore, upon a conjoint reading of Section 2(1)(a)(ii) and Section 2(1)(j)(B) of the DTVSV Act and applying the provisions in facts of the present case particularly in light of the objectives of the DTVSV Act, it is distinct to point out that the time limit for filing the appeal against the CIT(A) order dated 01.01.2020 was not expired as on specified date and the disputed tax arrears existed on the specified date as resultant effect of the CIT(A) order dated 01.01.2020 leads to confirmation of the assessment order thereby resulting in the disputed tax arrears.

42. Furthermore, the reliance placed by the Revenue on the cases of

Raja Mechanical Co. (P) Ltd. *(supra)* and ***Glaxo Smith Kline Consumer Health Care Ltd.*** *(supra)* is of no relevance in the present factual scenario as the question before us is not with respect to the doctrine of merger rather it is limited only with respect to the resultant effect of the CIT(A) order, wherein, the appeal of the assessee was rejected on account of being barred by time.

43. Moreover, considering the nature of the legislation and the objective that the DTVSV Act strives to achieve, the contention of the Revenue falls flat as if such a view is taken, it would ultimately defeat the beneficial objectives as intended by the legislature. It is germane to point out that the Revenue's contention would have the propensity to deter the taxpayers from availing the benefits under the DTVSV Act, who are otherwise eligible and at the same time, tantamount to creation of another category of ineligible assessees. Taking such a pedantic view as contented by the Revenue, in our opinion would have a deleterious impact and cannot be countenanced in law.

44. Taking into consideration the principles emerging from the decisions in ***B. Shah v. Presiding Officer, Labour Court***,[12] ***Associated Cement Co. v. Their Workmen***[13] and ***Pandey Orsan v. Ram Chander Sahu***,[14] the remedial statute should be interpreted liberally in a manner that words of such legislation shall be construed to give the widest operation which its language permits and to give complete remedy which

[12] AIR 1978 SC 12.
[13] AIR 1960 SC 56.
[14] AIR 1991 SC 195.

its phraseology licences. Such statutes shall be read in a way to effectuate the intended objectives that the legislature envisaged while drafting the statute and to justifiably secure that the relief contemplated by the statute is not denied to the class intended to be relieved. It is also a well-settled principle of law, as already propounded in the cases of ***Visitor, AMU v. K.S. Misra***[15] and ***State of T.N. v. M.K. Kandaswami***[16] that the Court shall avoid such constructions which would render a part of the statutory provision otiose or meaningless.

45. After all, the DTVSV Act aspires to finally free the tax arrears locked in the litigation combat for ages and ultimately ensures timely collection of tax. In the present case, the dispute pertains to AY 2010-11, much water has already flown through the gates and a lot of time, resources and energy have already been consumed in the ongoing litigation combat. Moreover, since the assessee aspires to avail the benefits of the settlement scheme and we have the beneficial legislation in place to finally effectuate such aspirations. Therefore, under the facts of the present case, we do not find any reason to obstruct the assessee from availing the benefits of the DTVSV Act.

46. Accordingly, we confirm the liberty given to the assessee *vide* interim order dated 22.04.2021 and direct the Revenue to proceed with the application of the assessee in accordance with the provisions of the DTVSV Act and other applicable regulations.

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[15] (2007) 8 SCC 593.

[16] 1975 (4) SCC 745.

47. In view of the aforesaid direction, the writ petition is allowed and disposed of, alongwith pending applications, if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MAY 16, 2024/p