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

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Date of Decision : 12.12.2024+ **W.P.(C) 932/2024 & CM APPL. 3891/2024****S A N GARMENTS MANUFACTURING PRIVATE LIMITED**

.....Petitioner

Through: Mr. R. Santhanam and Mr. Rishabh
Ostwal, Advocates

versus

PR COMMISSIONER OF INCOME TAX 7 AND ANR

.....Respondent

Through: Mr. Puneet Rai, SSC with Mr.
Ashvini Kumar and Mr. Rishabh
Nangia, JSCs and Mr. Nikhil Jain,
Advocate**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****VIBHU BAKHRU, ACJ. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning Form No.3 dated 29.01.2021 (hereafter the *impugned certificate*) issued by respondent no.1 (Principal Commissioner of Income Tax-7). The petitioner had filed the return of its income for the Assessment Year (AY) 2012-13, declaring an income of ₹13,57,73,250/-. The said return was accepted. However, by a notice dated 29.03.2019, issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*), the said assessment was sought to be reopened under Section 147 of the Act.



2. The Assessing Officer (AO) passed an assessment order under Section 147 read with Section 143(3) of the Act determining the petitioner's income for the AY 2012-13 at ₹16,73,57,840/- after making an addition of ₹3,07,39,590/- as undisclosed expenditure under Section 69C of the Act.

3. Aggrieved by the said reassessment order dated 17.12.2019, the petitioner preferred an appeal before the learned Commissioner of Income Tax (Appeals) under Section 246A of the Act.

4. While the said appeal was pending, the Parliament enacted the Direct Tax Vivad Se Vishwas Act, 2020 (hereafter *DTVSV Act*). The petitioner qualified as an '*appellant*' under Section 2(1)(a) of the DTVSV Act and accordingly, made a declaration under Section 4(1) of the DTVSV Act seeking to settle the '*tax arrear*'.

5. It is also relevant to refer to the meaning of the term '*tax arrear*' as defined under Section 2(1)(o) of the DTVSV Act. The same is reproduced below:

“(o) “tax arrear” means,— (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 (ii) disputed interest; or (iii) disputed penalty; or (iv) disputed fee, as determined under the provisions of the Income-tax Act. 1 [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.]”

6. The '*tax arrear*' was required to be resolved in terms of Section 3 of



the DTVSV Act. It is relevant to refer to the said Section. The same is set out below:-

“3. Amount payable by defendant — Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, 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 31 st day of March, 2020.	Amount payable under this Act on or after the 1 st day of April, 2020 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 disputed tax and penalty leviable or levied on such disputed tax.	Amount of the disputed tax.	The aggregate of the amount of disputed tax and ten per cent of disputed tax. Provided that where the ten per cent of the 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 the 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



			<i>payable.</i>
(c)	<i>where the tax arrear relates to disputed interest or disputed penalty or disputed fee</i>	<i>twenty-five per cent of disputed interest or disputed penalty or disputed fee.</i>	<i>thirty per cent of disputed interest or disputed penalty or disputed fee:</i>

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.”

7. It is also material to note the provisions of sub-sections (1) and (2) of Section 4 of the DTVSV Act which expressly provide that upon filing of the declaration, any appeal which is pending either before the Income Tax Appellate Tribunal or the Commissioner of Income Tax (Appeals) in respect of ‘disputed income’, ‘disputed interest’, ‘disputed penalty’ or ‘disputed fee’



or ‘tax arrear’, shall be deemed to have been withdrawn. Sub-sections (1) and (2) of Section 4 of the DTVSV Act are set out below:

“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.”

8. Section 5(2) of the DTVSV Act mandates that the Designated Authority shall, within a period of 15 days from the date of receipt of the declaration, determine the amount as payable by the declarant. Section 5 of the DTVSV Act is reproduced below:-

“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.”

9. It is also relevant to refer to Rule 7 of the DTVSV Rules. Thus, Rule 7 of the DTVSV Rules expressly provides that the order of the designated authority under sub-Section (2) of Section 5 with respect to the payment of amount made by the declarant as per the certificate granted under sub-section (1) of section 5, shall be in Form No. 5.

10. In terms of Section 5 of the DTVSV Act, the Designated Authority (respondent no.1) issued a certificate in Form No. 3 dated 16.10.2020 determining the balance amount payable as ₹69,56,571/-. Thereafter, the Designated Authority issued a certificate in Form No. 5, in terms of Rule 7 of the Direct Tax Vivad Se Viswas Rules, 2020 (hereafter *DTVSV Rules*), under Section 5(2) read with Section 6 of the DTVSV Act. The said certificate clearly recorded that a sum of ₹59,73,812/- had been paid by the declarant towards full and final settlement of the ‘*tax arrear*’, as determined.

11. It is also relevant to refer to Section 6 of the DTVSV Act which reads thus:

“6. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. — Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any



penalty; or change any interest under the Income-tax Act in respect of tax arrear.”

12. It is clear from the above that once a declarant is issued a certificate (Form No.5) in terms of Section 5 of the DTVSV Act, and the declarant deposits the determined amount, the Designated Authority is proscribed from initiating any action or proceedings in respect of ‘tax arrear’. The dispute stands settled.

13. In view of the above, all disputes regarding the tax arrear stood settled with the issuance of a certificate as contemplated under Section 5 of the DTVSV Act.

14. The petitioner is aggrieved by the issuance of the fresh Form No.3 dated 29.01.2021, which is a modified version of the earlier Form No.3 dated 16.10.2020. Thus, effectively the Designated Authority seeks to reopen a concluded settlement.

15. On a pointed query from this court as to under which provisions the said action has been taken, Mr. Rai fairly states that there is no provision under the DTVSV Act that empowers a Designated Authority to reopen a concluded settlement. As noted above, a plain reading of the provisions of the DTVSV Act indicates that once a final certificate is issued under Section 5(1) of the Act, all disputes with regard to the ‘tax arrear’ stand concluded. It is apparent that the issuance of the impugned certificate is without authority of law.

16. In view of the above, the impugned certificate dated 29.01.2021 is set aside.



17. The petition is allowed in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 12, 2024

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[Click here to check corrigendum, if any](#)