

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

IN THE CASE OF M/s. LIFECCELL INTERNATIONAL PRIVATE LIMITED
ITA NO. 3334/CHNY/2019
AY: 2016-17

ACIT, Corporate Circle, 4(1),
Chennai.

M/s. Lifecell International
Private Limited,
No. 26, Vandalur Kelambakkam
Main Road, Keelakkottaiyur,
Chennai. **[PAN: AAECA-7997-B]**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/Appellant by : Shri. Clement Ramesh Kumar, CIT(DR)
प्रत्यर्थी की ओर से/Respondent by : Shri. Ajit Kumar Choradia, CA

सुनवाई की तारीख/Date of Hearing : 10.10.2022

घोषणा की तारीख/Date of Pronouncement : 02.11.2022

**INTERIEM ORDER ON THE APPLICATION OF THE REVENUE FOR
MAINTAINABILITY OF APPEAL:**

In this case, the Revenue has filed a petition on maintainability of appeal filed by the assessee in ITA No. 3334/Chny/2019 in light of declaration filed by the assessee u/s. 4(1) of the Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter referred to as "DTVSVS Act, 2020) and subsequent Form no. 3 (certificate) issued by the designated authority as

per provisions of section 5(1) of the DTVSVS Act, 2020. The relevant contents of petition filed by the Revenue are as under:

"In this case, the Designated Authority i.e., the Principal Commissioner of Income-tax- 4, Chennai has already issued Form-3 (certificate) as per the provisions of section 5(1) of the DTVSVS Act 2020. Sec. 5(1) of the DTVSVS is extracted as under:

"5(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 dec/arant 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. *As per section 4(2) of the DTVSVS Act 2020 upon 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income or disputed interest or disputed penalty or disputed fee and tax arrear shall be **deemed** to have been withdrawn from the date on which certificate under subsection (1) of section 5 is issued by the designated authority. Section 4(2) of the DTVSVS Act 2020 is as under:*

"4(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. *In view of the express provision of section 4(2), the appeal pending before Hon'ble Tribunal is deemed to have been withdrawn by the assessee on the day on which the Form-3 is issued u/s 5(1) of DTVSVS Act 2020. **Once the appeal is deemed to have been withdrawn, then there is no question of pursuing the appeal by the assessee.***

4.4. *Sec. 4(3) of DTVSVS Act 2020 states that "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 along with the intimation of payment to the designated authority under sub-section (2) of section 5. In view of this provision, once having opted for the VSV scheme and Form-3 issued, there is no option for the assessee except to withdraw the appeal. Even if the assessee does not want to withdraw, it is deemed to have been withdrawn u/s 4(2) of DTVSVS Act 2020.*

5. Further, Sec. 4(7) of DTVSVS Act 2020 states that "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". **Hence, this Hon'ble Tribunal cannot proceed to decide the appeal filed by the assessee.**

6. Sections 10 and 11 of Vivad se Vishwas Act empower the Central Government/Central Board of Direct Taxes to issue directions or orders in public interest or to remove difficulties. In order to facilitate the taxpayers, clarifications under the said sections in form of answers to frequently asked questions (FAQs) were issued vide Circular No. 9/2020 dated 22nd April, 2020 (covering FAQ 1-55) and Circular No. 21/2020 dated 4th December, 2020 (covering FAQ Nos. 56-89). The above legal position is expounded in the form of FAQs in the above Circulars. However, it is submitted that FA s and Circulars issued b the Department are onl claricator in nature and cannot override the express provisions of DTVSVS Act 2020.

7. The attention of Hon'ble Members is drawn to the answers to Questions 43 and 47 of the FAQs contained in Circular 9 of 2020.

7.1 Question No. 43 and its answer Circular 9 of 2020 are extracted here under:

Question No.	43	Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the Vivad se Vishwas by DA at the stage of determination of amount payable under section 5(1) or, amount determined by DA is at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payable, then whether the appeals
Answer:		<p><i>Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA under section 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellate forum and submit proof of withdrawal with intimation of payment to the DA as per the same section. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed.</i></p> <p><i>Similarly in case of arbitration, conciliation or mediation, proof of withdrawal of arbitration/conciliation/mediation is to be enclosed along with intimation of payment to the DA. (emphasis supplied)</i></p>

From the above answer to Q.No. 43, it is clear that even though there is no requirement to withdraw the appeal before the grant of certificate (Form-3) the

DA under section 5, the assessee has to withdraw the appeal once the Form-3 is issued by the DA. Even if the assessee does not withdraw the appeal it is deemed to have been withdrawn by the provisions of sec. 4(2) of DTVSVS Act 2020 extracted at para 2 above. **Since the appeal in the instant case is deemed to have been withdrawn, then there is no question of pursuing the appeal by the assessee.**

7.2 Question No. 47 and its answer Circular 9 of 2020 are extracted here under:

Question No.	47.	Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before ITAT, High Court or Supreme Court?
Answer:		No. As per section 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

The answer to the above question reiterates the clarification given by the concerned PCIT-4, Chennai (pages 4, 13 &14 of Paper Book submitted by the Revenue).

Prayer

8. In view of the above legal position, it is prayed that, the Hon'ble Bench may kindly,-

(i) hold that the appeal filed by the assessee before your Honours is deemed to have been withdrawn in view of the provisions of section 4(2) of the DTVSVS Act 2020

(ii) direct the assessee to pay the amount forthwith as determined by DA as required by section 5(2) of the DTVSVS Act, 2020."

2. The Ld. CIT(DR), Mr. Clement Ramesh Kumar, referring to provisions of sub-section (2) of section 4 of the DTVSVS Act, 2020 submitted that upon filing a declaration, any appeal before the Income-Tax Appellate Tribunal or CIT(A), in respect of the disputed income shall be deemed to have been

withdrawn from the date on which certificate under sub-section (1) of section 5 of the DTVSVS Act, 2020 is issued by the designated authority. The Ld. CIT(DR) further referring to sub-section (7) of section 4 of the DTVSVS Act, 2020 submitted that 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 of the DTVSVS Act, 2020 by the designated authority or the payment of sum determined under that section and thus, Hon'ble tribunal cannot proceed to decide the appeal filed by the assessee. The Ld. CIT(DR) further referring to section 10 & 11 of DTVSVS Act, 2020 and FAQs, more particularly question no. 43 and its answer and question no. 47 and its answer in Circular 9 of 2020 submitted that, the law has been explained by the CBDT and as per which the moment designated authority issues certificate u/s. 5(1) of the DTVSVS Act, 2020, then any appeal pending before the Appellate Tribunal shall deemed to have been withdrawn. Therefore, he, submitted that since, the assessee has filed declaration u/s. 4(1) of the DTVSVS Act, 2020 and the designated authority has issued Form no. 3 u/s. 5(1) of the DTVSVS Act, 2020, the appeal filed by the assessee is deemed to have been withdrawn and thus, the pending appeal before Tribunal cannot be pursued by the assessee.

3. The Id. Counsel for the assessee Shri. Ajit Kumar Choradia, CA, referring to provisions of section 4(6) of the DTVSVS Act, 2020 submitted that as per sub-section (6), the declaration under sub-section (1) shall be presumed never to have been made, if, the declarant violates any of the conditions referred to in this Act, which means, if assessee violates any of the conditions including non-payment of tax, then all the proceedings and claims which were withdrawn u/s. 4 of the DTVSVS Act, 2020 and all the consequence under the Income-tax Act against the declarant shall be deemed to have been revived. In this case, although the assessee has filed declaration u/s. 4(1) of the DTVSVS Act, 2020 and designated authority had issued Form no. 3 u/s. 5(1) of the DTVSVS Act, 2020, but due to difference in taxes payable by the assessee on account of non-consideration of certain issues by the designated authority, the assessee is decided to opt out of the VSVS Scheme, and thus, the moment declarant violates any of the conditions, it is presumed that the declaration filed under section 4(1) of the DTVSVS Act, 2020 shall be presumed never to have been made and thus, there is no merit in petition filed by the Revenue on maintainability of appeal filed by the assessee.

4. We have heard both the parties and considered petition filed by the Revenue in light of various provisions of the DTVSVS Act, 2020 and we find that as per sub-section (1) of section 5 of the DTVSVS Act, 2020, the designated authority shall, within a period of 15 days from the date of receipt of the declaration, by an 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. The provisions of section 4(2) deals with deemed withdrawal of appeal and as per said provisions, upon filing the declaration any appeal pending before the Income-Tax Appellate Tribunal in respect of the disputed income or the tax shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 of the DTVSVS Act, 2020 issued by the designated authority. The Revenue contends that appeal filed by the assessee is not maintainable, because of provisions of section 4(2) of the DTVSVS Act, 2020. The Revenue had also taken support from sub-section (7) of section 4 of the DTVSVS Act, 2020 and contended that no appellate forum including Tribunal 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 of the DTVSVS

Act, 2020 by the designated authority or the payment of sum determined under that section. The assessee contends that appeal filed by the assessee is maintainable in view of sub-section (6) of section 4 of the DTVSVS Act, 2020. The assessee had also negated arguments of the Ld. CIT(DR) on sub-section (7) of section 4 of the DTVSVS Act, 2020.

5. Having heard both the sides and considered relevant provisions of the DTVSVS Act, 2020, we find that as per section 4(2) of the said Act, the moment designated authority issues Form No. 3 (certificate), any appeal pending before the appellate authorities shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 of the DTVSVS Act, 2020 is issued by the designated authority and there is no dispute on this legal position. However, the very same Act, provides amnesty to the Revenue as well as the assessee by way of section 4(6), as per which the declaration under sub-section (1) shall be presumed never to have been made, if any material particulars furnished in the declaration is found to be false at any stage and further, the declarant violates any of the conditions referred to in this Act, and in such cases, the proceedings and claims which were withdrawn u/s. 4 and all the consequences

under the Income-tax Act, 1961 against the declarant shall be deemed to have been revived. In this case, clause (a) of sub-section (6) is not applicable, but as per clause (b) of sub-section (6) of section 4, if the declarant violates any of the conditions referred to in this Act, then pending proceedings shall be deemed to have been revived. That means, if assessee violates any of the conditions including tax determined by the designated authority in Form No. 3 is not paid within the specified period, then it is nothing but violation of conditions referred to in this Act. Therefore, if assessee does not make payment of taxes as determined by the designated authority, then, even if appeal filed by the assessee is dismissed or deemed dismissal of the appeal, then as per sub-section (6) of section 4 of the DTVSVS Act, 2020, all the proceedings and claims which were withdrawn u/s. 4 and all the consequences under the Income-tax Act, 1961 against the declarant shall be deemed to have been revived. Therefore, in our considered view, if a conjoint reading of sub-section (2) and sub-section (6) of section (4), it is clear that the moment designated authority issues Form no. 3, pending appeal shall be deemed to have been withdrawn and further, the moment declarant violates any of the conditions, the appeals which were withdrawn u/s. 4, shall be deemed to have been revived. Therefore, we are of the considered view that in

the present case, the assessee has violated conditions prescribed under DTVSVS Act, 2020 and thus, even if appeal filed by the assessee is dismissed or deemed dismissal of appeal, the same can be revived the moment the Department notices any of the conditions prescribed therein are violated.

6. As regards, arguments of the Ld. CIT(DR) in light of sub-section (7) of section 4 of the DTVSVS Act, 2020, we find that sub-section (7) deals with a situation where the declarant challenges the order passed by the designated authority under sub-section (1) of section 5 on any issue relating to tax arrear and or the payment of sum determined under any section, then no appellate forum or arbitrator or conciliator or mediator shall proceed to decide said dispute. In other words, designated authority determines sum payable by declarant under DTVSVS Act, 2020, then the same becomes final and which cannot be challenged by the declarant before any appellate forum. Therefore, we are of the considered view that the Revenue cannot take shelter under sub-section (7) of section 4 of the DTVSVS Act, 2020. In so far as FAQs referred to in Circular 09 of 2020 issued by CBDT, we find that CBDT in question no. 43 & 47 has clarified the position of the law as

per DTVSVS Act, 2020, and in our considered view, said clarification is only on withdrawal of appeal by the declarant after receipt of Form no. 3 (certificate) and further, the legal position of section 4(7) of the DTVSVS Act, 2020. In our considered view, as per section 4(6) of DTVSVS Act, 2020, the law is very clear, in as much as in case the declarant violates any of the conditions, then all the proceedings and claims which were withdrawn u/s. 4 and all the consequences under the Income-tax Act, 1961 against declarant shall be deemed to have been revived. In the present case, the declarant has violated the conditions of payment of tax as determined by the designated authority in Form no. 3. Therefore, appeal filed by the assessee is deemed to have been revived and thus, we are of the considered view, that since the appeal filed by the assessee is pending before the Tribunal for adjudication, the same needs to be decided on the issues challenged in said appeal and thus, we reject application filed by the Revenue on maintainability of appeal filed by the assessee.

7. As regards, the appeal filed by the assessee, the same need to be heard on the issues involved in the appeal and thus, we treat the

appeal as part heard and post for further hearing on 16.11.2022. The Registry is directed to inform the date of hearing to both the parties.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 02nd November, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |