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

+ W.P.(C) 3973/2021

MUFG BANK LTD

..... Petitioner

Through : Mr. Percy Pardiwalla, Senior Advocate along
with Mr. Nikhil Ranjan and Mr.Hiten
Chande, Advocates.

versus

COMMISSIONER OF
INCOME TAX 2 & ANR.

..... Respondents

Through : Mr. Zoheb Hossain, Senior Standing Counsel
for Revenue along with Mr.Vipul Aggarwal
and Mr.Parth Semwal, Junior Standing
Counsel for Revenue.

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Reserved On : 20th October, 2022

Date of Decision : 25th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

PRIMARY ISSUE

1. The primary issue that arises for consideration in the present case is whether an assessee is free to settle any appeal under the Direct Tax Vivad se Vishwas Act, 2020 (“DTVSV Act”) and is not required to settle all the pending appeals filed by the respondents-revenue for an assessment year.

RELEVANT FACTS

2. The relevant facts of the present case are that the Petitioner is a banking company incorporated under the laws of Japan and carries on the banking business in India through branches in various cities. The return of income filed by the petitioner was selected for scrutiny assessment and a final assessment order dated 29th October, 2010 under Section 143 read with Section 144C of the Income Tax Act, 1961 (for short 'Act') was passed by the Assessing Officer for the Assessment Year 2007-08 making various adjustments to the total income of the Petitioner.

3. The Petitioner challenged the assessment order by filing an appeal before the Tribunal which was disposed of vide order dated 19th September, 2014 deciding the various issues as under:

- a. Salary to expatriate employees – allowed in favour of petitioner-assessee.
- b. Deferred Guarantee Commission – allowed in favour of petitioner-assessee.
- c. Interest received by HO/overseas branches – allowed in favour of petitioner-assessee.
- d. Deduction for interest paid to HO/overseas branches – allowed in favour of petitioner-assessee.
- e. Interest received from HO/overseas branches – decided against the petitioner-assessee.
- f. Applicability of Section 115JB to foreign banks – allowed in favour of petitioner-assessee.
- g. Taxability of ECB Interest – remanded back.
- h. Rate of tax – decided against the petitioner-assessee

4. The Petitioner challenged the order of the Tribunal on issues (e), (g) & (h) above and the Respondent-Department challenged the order of the Tribunal on issues (a), (b), (c), (d), (f) & (g) above by filing an appeal before this Court. By an

order dated 13th March, 2015 the appeal of the Petitioner was admitted by this Court on issues (e) & (h) and the remand by the Tribunal on issue (g) was modified. And, by an order dated 08th April, 2016, the appeal of the Respondent-Department on issues (a), (b), (c), (d), (f) & (g) was dismissed by this Court.

5. On 28th July, 2016, the Assessing Officer passed an assessment order in the remand proceeding holding that the ECB interest earned by the Petitioner is taxable under the Act and levied interest under Section 234B and 234D of the Act. The Petitioner challenged the assessment order dated 28th July, 2016 by filing an appeal before the Tribunal.

6. On 01st December, 2017, the Supreme Court issued notice in the Special Leave Petition (“SLP”) filed by the Respondent-Department wherein the order of this Court dated 08th April, 2016, dismissing the Respondent-Department’s appeal, was challenged on issues (a) & (f).

7. On 16th September, 2019, the Tribunal passed an order allowing the appeal of the Petitioner against the order dated 28th July, 2016 passed in remand proceeding and deleted the addition made by the Assessing Officer on account of ECB interest and levy of interest under Section 234D of the Act.

8. On 17th March, 2020, the DTVSV Act was passed by the Parliament which allowed the assessee to settle any dispute pending before the Tribunal, High Court, Supreme Court or before any authorities under the Act.

9. On 08th December, 2020, the Petitioner filed an application under DTVSV Act to settle the deemed appeal of the Department against the order of the Tribunal dated 16th September, 2019.

10. On 14th December, 2020, the Respondent-Department issued a show-cause notice proposing to reject the application filed by the Petitioner as the Petitioner was not settling the Respondent-Department’s SLP pending in the Supreme Court for the

same assessment year. On 16th December, 2020, the Petitioner filed its response and submitted that there is no compulsion to settle the dispute pending in the Supreme Court for Assessment Year 2007-08 as under the DTVSV Act, an applicant could settle one of various litigations that was pending with an appellate authority and it was not necessary to settle all the appeals for a particular assessment year.

11. On 29th January, 2021, the application was rejected by the Respondent-Department on the ground that the Petitioner is settling part of the appeal and ought to have also settled the Respondent-Department's SLP pending in the Supreme Court for the same assessment year. In this regard, the Respondents relied on FAQ Nos.7, 11, 14 and 36 issued by the CBDT vide Circular No.7/2020 dated 22nd April, 2020 which are reproduced hereinbelow:-

“Question No. 7.If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the Vivad se Vishwas with respect to such additions?”

Answer: If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail Vivad se Vishwas. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax Ryour attle At a Ticcluding surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).

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Question No.11 In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating to assessment made in respect of undisclosed foreign income):

- (i) Whether assessee is eligible to the Vivad se Vishwas itself?*
- (ii) If eligible, whether quantification of disputed tax can exclude/ignore non-qualifying tax arrears?*

Answer: If the tax arrears include tax on issues that are excluded from the Vivad se Vishwas, such cases are not eligible to file declaration under Vivad se Vishwas. There is no provision under Vivad se Vishwas to settle part of a pending dispute in relation to an appeal or writ or SLP for an assessment year. For one pending appeal, all the issues are required to be settled and if any one of the issues makes the declaration invalid, no declaration can be filed.

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Question No.14. Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?

Answer: Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.”

12. Accordingly, the present writ petitions were filed by the Petitioner challenging the aforesaid rejection of the application filed under DTVSV Act vide order dated 29th January, 2021.

ARGUMENTS ON BEHALF OF THE PETITIONER

13. Learned senior counsel for the Petitioner submitted that the DTVSV Act treats an appeal and an SLP for the same assessment year as a separate dispute for the purpose of settlement under the Act. He stated that this position is evident from the provisions of Section 2(1)(j) read with Section 2(1)(a) of DTVSV Act, which

consider each appeal as a separate dispute for the purpose of computing disputed tax under the Act. He pointed out that the definition of “dispute” under Rule – 2(b) of the Direct Tax Vivad se Vishwas Rules, 2020 (for short ‘DTVSV Rules’) considers an appeal or an SLP as a separate dispute for the purpose of Rules 9, 10 and 11 in relation to computation of disputed tax in certain situations. He also emphasised that Sections 3 and 4 of the DTVSV Act allows an assessee to file a declaration for any appeal or an SLP which is pending before an appellate authority and does not require the assessee to file a declaration for all the appeals pending for an assessment year and after the settlement of the dispute, only such appeal is to be withdrawn for which the application was made by an assessee. In support of his contention, he relied on Circular No.9/2020 dated 22nd April, 2020 issued by CBDT. The relevant portion of the said Sections, Rules and Circular referred to hereinabove are reproduced hereinbelow:-

“2. Definitions.-(1) In this Act, unless the context otherwise requires,-

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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:-

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- (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;

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3. Amount payable by declarant.—Subject to the provisions of this Act, where a declarant files [under the provisions of this Act on or before 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 [31 st day of December, 2020 or such later date as may be notified]	Amount payable under this Act on or after [1 st 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 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 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.....

Rules

2. *Definitions,--In these rules, unless the context otherwise requires,-*
xxx xxx xxx
(b) *“dispute” means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, or application filed under section 264 of the Income-tax Act;*

FAQ No.36

Question No. 36. In a case ITAT has passed order giving relief on two issues and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department will file appeal or not?

Answer: The Vivad se Vishwas allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. Vivad se Vishwas also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.

FAQ No.40

Question No.40. Where there are two appeals filed for an assessment year – one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?

Answer: The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

*The Circular No.9/2020 issued by the CBDT is binding on the Department and the Department is not empowered to detract from the beneficial circular issued by the CBDT. In this regard, reliance is placed on the judgment of the Supreme Court in *KP Verghese Vs. ITO (131 ITR 597)*, *UCO Bank vs CIT (237 ITR 889)* and *UOI Vs. Azadi Bachao Andolan (263 ITR 706)*.”*

14. Learned senior counsel for the petitioner further submitted that the issue of taxability of ECB interest and levy of interest under Section 234D of the Act, which is a subject matter of the deemed appeal of the Respondent-Department, was arising from the fresh assessment proceeding carried out pursuant to the order of the Tribunal dated 19th September, 2014 and, therefore, was a separate proceeding from the original assessment proceeding carried out by the Respondent-Department. Consequently, according to him, the contention of the Respondent-Department that the Petitioner was required to settle the Departmental appeals in both the proceedings is incorrect and without any basis. In support of his submission, he placed reliance on the Judgments of this Court in *Nokia India (P.) Ltd. vs. Deputy Commissioner of Income-tax, [2018] 407 ITR 20 (Delhi)*, *JCB India Ltd. vs. Deputy Commissioner of Income-tax, [2017] 398 ITR 189(Delhi)* and Judgments of other High Courts in *Kooka Sidhwa & Co. vs. Commissioner of Income-tax, [1964] 54 ITR 54 (Calcutta)*, *Caltex Oil Refining (India) Ltd. vs. Commissioner of Income-tax, [1993] 202 ITR 375 (Bombay)*, *Dimension Data Asia Pacific PTE*

Ltd. vs. Deputy Commissioner of Income-tax, [2018] 96 taxmann.com 182 (Bombay).

ARGUMENTS ON BEHALF OF THE RESPONDENTS

15. *Per contra*, Mr. Zoheb Hossain, learned counsel for the respondents-revenue stated that the DTVSV Act treats one assessment year as a whole and therefore if issues arise out of one assessment year, then the assessee is required to settle all such issues relating to such assessment year which cannot be dissected at the choice of the assessee. He submitted that the unit for settlement of dispute under the DTVSV Act is an assessment year and not an appeal or writ petition or a special leave petition. He emphasised that the submissions of the Department were based on the jurisdictional requirement of Section 2(j) of the DTVSV Act that there must be disputed tax *qua* an assessment year and not *qua* the issues relating to an assessment year.

16. He submitted that in terms of FAQ 11 of the Circular No. 9 of 2020, an assessee cannot settle part of a pending dispute for a single assessment year. Further, according to him FAQ 14 of Circular 9 of 2020 stipulated that the Petitioner must settle all the issues arising out of an assessment and picking and choosing of issues was impermissible. The only exception was that when one appeal is filed by the assessee and other by the revenue, the assessee can settle his appeal/deemed appeal or departments' appeal/deemed appeal, in terms of FAQ 36 and 40 of the aforesaid Circular.

17. He submitted that when the matter was at the stage when first order of ITAT was passed, the assessee could have settled the issues with respect to which the matter was remanded back, provided he settled the other issues with respect to which the appeal or deemed appeal (Assessee's or Revenue's) was pending.

According to him it was inconceivable that when some issues were pending before the file of the Assessing Officer and some were before an appellate body, the assessee was required to settle all issues; however after passing of the fresh assessment order, when some issues are before one appellate body and some before another, the assessee could choose to settle only one set of issues.

18. Mr. Zoheb Hossain, learned counsel for the respondents-revenue, further submitted that even assuming without admitting that there is any ambiguity in the scheme of the DTVSV Act, the law being meant for amnesty must be construed strictly and any interpretation must lean in favour of the Revenue. In support of his submission he placed reliance on the judgment of the Supreme Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company and Ors. (2018) 9 SCC 1*** wherein it has been held as under:-

“66. To sum up, we answer the reference holding as under:

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.”

19. He contended that in the present case, the Petitioner had only chosen to settle part of the issues pending for the Assessment Year 2007-08 and was therefore not eligible to settle its case under the DTVSV Act. He emphasised that the Petitioner for the same Assessment Year i.e. 2007-08, had sought to settle the Revenue's deemed appeal before this Court and had not sought settlement of the Revenue's pending SLP before the Supreme Court. Therefore, according to him, the declaration filed by the petitioner had been rightly rejected.

20. Mr. Zoheb Hossain, learned counsel for the respondents-revenue, stated that the reliance placed by the Petitioner upon FAQ 19 was misplaced, as the same merely gave an option to the assessee in a specific situation wherein two assessment orders are passed, one under Section 143(3) of the Act and the other under Section 147/143(3). He pointed out that in the present batch of matters, the appeals pending at different forums originated from the same first assessment order dated 29th October, 2010 that was subsequently set aside by the ITAT vide order dated 19th September, 2014.

21. He further submitted that FAQ 36, provided for deemed appeals, and allows an assessee to seek settlement of either his appeal or the department's appeal or both, when actual appeals may not have been filed.

22. He also submitted that FAQ 40 applied to cases where one appeal was filed by revenue and another by the assessee. He stated that the same was not applicable to the present case where both the pending appeals had been filed by the revenue.

REJOINDER ARGUMENTS

23. In rejoinder, learned senior counsel for the Petitioner submitted that the interpretation of the Department that the assessee was required to settle all the Departmental appeals for an assessment year was wholly incorrect and not supported by any provision of the DTVSV Act. He stated that the absurdity of the interpretation sought to be placed by the Respondent on the DTVSV Act was evident from the fact that the Respondents did not have any grievance with the Petitioner not settling its own appeal pending before this Court for the A.Y. 2007-08 but, nevertheless, required the Petitioner to settle all the Departmental appeals pending for A.Y. 2007-08. According to him, the interpretation placed by the Respondents on the provisions of the Act was without any basis and wholly

arbitrary. He submitted that on the contrary, the provisions of the DTVSV Act and DTVSV Rules treated each appeal as a separate appeal and gave an option to the assessee to settle any appeal under the provisions of the DTVSV Act. He stated that the contention of the Petitioner was further supported by the Circular No.9/2020 dated 22nd April, 2020 FAQ No.19, 36, & 40, which clarified that an assessee had an option to settle the appeal arising from the same order and for the same assessment year. Therefore, he emphasised that the interpretation placed by the Department was contrary to intention of the legislature which was evident from the plain language of the law.

24. Learned senior counsel for the Petitioner further submitted that FAQ No.7 of the Circular was applicable when the assessment order was to be passed by the Assessing Officer and an application was filed by the assessee under the DTVSV Act. He stated that in the instant case, FAQ No.7 was not applicable as the application was filed by the Petitioner in respect of the deemed appeal of the Department arising from the order dated 16th September, 2019 passed by the Tribunal.

25. He also stated that FAQ No.11 of the Circular was applicable when the tax arrears includes non-qualifying tax arrears on issues specified under section 9 of the DTVSV Act. He emphasised that, in the instant case, the application filed by the Petitioner did not include tax arrears on any of the issues specified under section 9 of the DTVSV Act. He further submitted that FAQ No.14 of the Circular stated that an assessee was not allowed to pick and choose issues for settlement of an appeal and is required to settle all the issues with respect to one order. In the instant case, the application filed by the Petitioner covered all the issues arising from the order of the Tribunal dated 16th September, 2019. Therefore, according to him, the reliance placed by the Department on the aforesaid FAQs was incorrect and bad in law.

COURT'S REASONING

RULE OF INTERPRETATION TO BE APPLIED

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 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: *Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company and Ors* (supra)].

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 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...**”*

(emphasis supplied)

30. The Finance Minister of the Union of India in her Budget Speech 2020-2021 outlined the objective of 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 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain open till 30th June, 2020..... **I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process...**”*

From the aforesaid, it is apparent that DTVSV Act, 2020 is a beneficial/remedial piece of legislation enacted by the 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.

31. 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 enactment¹.” The words of such a statute must be so construed as “to give the most complete remedy which the phraseology will permit,”² so as “to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved.”³ Consequently, the appropriate principles of interpretation to be applied having regard to the entire conspectus of facts are the principles of purposive and liberal interpretation.

THE JUDGMENT OF DILIP KUMAR (SUPRA) WHICH DEALS WITH INTERPRETATION OF EXEMPTION NOTIFICATION, HAS NO APPLICATION.

32. The judgment of the Supreme Court in *Commissioner of Customs vs. Dilip Kumar & Co.* (supra) is clearly inapplicable to the facts of the present case. In the case of the *Dilip Kumar* (supra), the assessee imported a consignment of Vitamin E50 Powder (feed grade) and claimed the benefit of concessional duty at 5% instead

¹ Sayad Mir Ujmuiddin Khan v. Ziaulnisa Begum, (1879) ILR 3 Bom 422.

² Gover's, Re, Coal Economising Gas Co., (1875) 1 Ch D 182, referred to in In re, Hindu Women's Right to Property Act, AIR 1941 PC 72 and Antico v. Health Fielding Aust. Pty. Ltd., (1997) 71 ALJR 1210.

³ Raghuraj Singh v. Hari Kishan, AIR 1944 PC 35, B. Shah v. Presiding Officer, Labour Court, AIR 1978 SC 12 : (1977) 4 SCC 384; Krishnayya v. Seshachalam, AIR 1965 SC 639: (1965) 1 SCR 195; Associated Cement Co. v. Their Workmen, AIR 1960 SC 56: (1960) 1 SCR 703; Dahya Lala v. Rasul Mohamed, AIR 1964 SC 1320: 1963 (3) SCR 1; Central Rly. Workshop, Jhansi v. Vishwanath, AIR 1970 SC 488: (1969) 3 SCC 95; Surendra Kumar Verma v. Central Government Industrial Tribunal-cum Labour Court, (1980) 4 SCC 443: AIR 1981 SC 422; B.P. Khemka Pvt. Ltd. v. Birendrakumar Bhomick, (1987) 2 SCC 407: AIR 1987 SC 1010; D. (a minor) v. Berkshire County Council, (1987) 1 All ER 20 (HL), U.P. Drugs & Pharmaceuticals Co. Ltd. v. Ramanuj, (2003) 8 SCC 334: AIR 2003 SC 3337, Rajesh Burman v. Mitul Chatterjee, (2009) 1 SCC 398 paras 25 and 31 & Edukanti Kistamma v. So. Venkatarreddy, (2010) 1 SCC 756: AIR 2010 SC 313.

of standard 30% which was leviable. According to the assessee, the goods were classifiable under Chapter 2309.90 "prawn feed" in terms of Notification No. 20 of 1999. The benefit of the notification was denied to the assessee on the ground that the goods imported by the assessee contained chemical ingredient for animal feed and not animal feed/ prawn feed as such. Therefore, the question before the Supreme Court was whether the assessee who is seeking exemption from taxation under the provisions of the Act is covered by the said exemption notification. It was in this context that the Supreme Court held that the exemption notification is required to be construed strictly and any ambiguity in the exemption notification must enure to the benefit of the revenue. As already held hereinabove, the DTVSV Act is neither an amnesty act nor an exemption scheme as it does not provide for any exemption or benefit solely to the taxpayer.

33. In fact, while interpreting "Kar Vivad Samadhan Scheme", the Supreme Court in *Commissioner of Income Tax, Rajkot Versus Shatrusailya Digvijaysingh Jadeja, (2005) 7 SCC 294* held that the object of the said Scheme was to settle tax arrears locked in litigation at a substantial discount and it provided that any tax arrears could be settled by paying the prescribed amount of tax arrears, and it offered benefits and immunities from penalty and prosecution. The Supreme Court held that the "Kar Vivad Samadhan Scheme" was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier VDI Scheme. It further held that the object of "Kar Vivad Samadhan Scheme" was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT Act/Wealth Tax Act and the object 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 VDI Scheme will not apply. Consequently, the judgment of the

Supreme Court in *Dilip Kumar* (supra) which deals with interpretation of exemption notification, has no application to the present case.

THE UNIT FOR SETTLEMENT OF DISPUTE UNDER THE DTVSV ACT, 2020 IS AN APPEAL, WRIT PETITION OR SLP AND NOT THE ASSESSMENT YEAR.

34. This Court is further of the view that under the DTVSV Act, 2020 each appeal, writ petition or SLP is treated as a separate dispute which is evident from Section 2(1)(j) read with Section 2(1)(a) of the Act. The said Sections provide that disputed tax for each appeal, writ petition or SLP is to be computed and, the disputed tax payable by the declarant is the amount as if such appeal, writ petition or SLP were to be decided against the assessee. Section 2(1)(a) of the Act use the words “an appeal” and Section 2(1)(j) of the Act uses the word “any appeal” both of which indicate that the unit for settlement of dispute under the provisions of DTVSV Act is an appeal or a writ petition or a SLP. The aforesaid position is further confirmed by the definition of “dispute” in Rule 2(b) of the DTVSV Rules, 2020 which defines each appeal, writ petition or SLP as a separate dispute for the purpose of computing disputed tax under Rules 9, 10 and 11 of the DTVSV Rules. This is also evident from the statutory Form No.5 issued by the designated authority prescribed under the Rules where the Column No.3 records the detail of the ‘Details of dispute settled (Appeal Reference Number)’.

35. The submission of the revenue that under the DTVSV Act the unit of settlement is an assessment year is contrary to its own stand as the Department has no grievance with the petitioner not settling the appeal filed by it for the same assessment year, but requires the petitioner to settle all the Departmental appeals for an assessment year. In fact, the aforesaid position is not borne out from any provision of the DTVSV Act or the Rules. Consequently, the unit for settlement of

dispute under the DTVSV Act, 2020 is an appeal, writ petition or SLP and not the assessment year as had been canvassed by the revenue.

36. Even assuming that the DTVSV Act is a taxing statute, there is no restriction on an assessee to choose an appeal to be settled under the DTVSV Act as Section 2(1)(j) uses the words “any appeal” which even on a literal interpretation would mean any one or more appeals.

37. Moreover, the issues raised by the Department in the SLP filed before the Supreme Court is in respect of deduction for salary paid to expatriates and the applicability of Section 115JB of the Act. However, this issue is not at all connected with the deemed appeal arising from the order of the Tribunal dated 16th September, 2019 wherein the issue of taxability of ECB interest and levy of interest under Section 234D of the Act is involved. Since, the issues involved in both the appeals are different and unconnected, this Court is of the view that the contention of the Department that the Petitioner ought to have settled the SLP pending in the Supreme Court, along with the deemed appeal of the Department is incorrect and bad in law.

THE RESPONDENTS RELIANCE ON FAQ-7, 27, 11 AND 14 IS MISCONCEIVED AND UNTENABLE IN LAW.

38. The respondents’-revenue reliance on FAQ-7, 27, 11 and 14 is misconceived and untenable in law. The DTVSV Act permits the settlement of a dispute which is pending either in appeal, writ petition or SLP. The assessee cannot settle any issue which may arise in the assessment proceeding pending before the AO. However, FAQ-7 of the Circular dilutes the rigour and by a concession, enables the assessee to make an application under DTVSV Act for the issues remanded to the AO by an appellate authority; the only condition being that the assessee must also settle the

issues which are not remanded back by the appellate authority as the assessee is not allowed to pick and choose the issues for settlement. This cannot be regarded as laying down a principle that the declarant is required to settle all the appeals for an assessment year.

39. FAQ - 27 is consequential to FAQ - 7, as it provides for the manner of computing disputed tax when the declarant files a declaration for settlement of issues which are remanded by an appellate authority to the AO. FAQ - 27 states that in the event the declarant decides to settle the issues remanded by an appellate authority, the declarant is also required to settle the issues which are not set aside by the appellate authority and further provides that the disputed tax for the issues remanded to the AO will be the same amount if the addition was to be repeated by the AO.

40. FAQ-27 has no application in the instant case as the Petitioner had filed a declaration with respect to a deemed appeal of the Department arising from the order of the Tribunal dated 16th September, 2019 and there were no issues pending before the AO for consideration.

41. This Court is of the view that FAQ No. 11 deals with cases where in one appeal a qualifying and a non-qualifying issue arise for consideration. However, the case of the Petitioner does not fall under any clauses of the section 9, which defines non-qualifying tax arrears. Consequently, FAQ-11 has no applicability to the present case.

42. This Court is also of the view that FAQ-14 supports the case of the Petitioner as it allows the assessee to make a declaration for settlement of a dispute with respect to "one" order and does not require the assessee to settle all the disputes arising from different orders for a particular year.

FAQ-19 IN UNEQUIVOCAL TERMS INDICATES THAT THE ASSESSEE HAS AN OPTION TO CHOOSE THE APPEAL TO BE SETTLED UNDER THE DTVSV ACT.

43. In any event, any doubt which one may have with regard to interpretation of DTVSV Act is put to rest by FAQ-19 which gives an option to the assessee to choose appeals for the same assessment year, which are pending before different forums, to be settled under the provisions of DTVSV Act. FAQ-19 is reproduced hereinbelow:-

FAQ No.19

Question No.19. The assessment order under section 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under Vivad se Vishwas?

Answer: The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.

(emphasis supplied)

44. Consequently, the contention of the respondents-revenue that the option is available to the petitioner only in a case where there are cross appeals arising from the same order is incorrect as FAQ-19 in unequivocal terms indicates that the assessee has an option to choose the appeals to be settled under the DTVSV Act and there is no obligation on the petitioner to settle all the appeals filed by the assessee for a particular assessment year.

CONCLUSION

45. Keeping in view the aforesaid, this Court is of the view that an assessee is free to settle any appeal under the DTVSV Act and is not required to settle all the pending appeals filed by the respondent-revenue for an assessment year.

RELIEF

46. Consequently, the impugned order and the impugned reasons being Annexures P-27 and P-30 to the present writ petition are set aside and the respondents-revenue are directed to reconsider the declaration dated 08th December, 2020 filed by the Petitioner for the assessment year 2007-08 under the provisions of DTVSV Act 2020 and issue refund, if any, in accordance with law within eight weeks.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 25, 2022

TS/js/AS