IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1571 OF 2021

Rishab Steel House
101/102, Rishab House,
30, Ducan Road, M.A. Road,
Mumbai – 400004
PAN:AACFR2807C ... **Petitioner**

Versus

1. **Assistant Commissioner of Income-Tax-15(2), Mumbai,**
Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

2 **Pr. Commissioner of Income-tax-19, Mumbai,**
Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

3 **Central Board of Direct Taxes (CBDT),**
Ministry of Finance, CS Building,
North Block, Parliament Street,
New Delhi – 110001. ... **Respondents**

...

WITH
WRIT PETITION NO. 1519 OF 2021

Rishab Steel House
101/102, Rishab House,
30, Ducan Road, M.A. Road,
Mumbai – 400004
PAN:AACFR2807C ... **Petitioner**

Versus

1. **Dy. Commissioner of Income-Tax-15(2), Mumbai,**

Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

2 Pr. Commissioner of Income-tax-19, Mumbai,
Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

3 Central Board of Direct Taxes (CBDT),
Ministry of Finance, CS Building,
North Block, Parliament Street,
New Delhi – 110001. **… Respondents**

…

WITH

WRIT PETITION NO. 1537 OF 2021

Rishab Steel House
101/102, Rishab House,
30, Ducan Road, M.A. Road,
Mumbai – 400004
PAN:AACFR2807C **… Petitioner**

Versus

1. Income-tax Officer-19(3)(1) Mumbai,
Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

2 Pr. Commissioner of Income-tax-19, Mumbai,
Room No. 206, 1st floor,
Matru Mandir, Tardeo Road,
Mumbai – 400027.

3 Central Board of Direct Taxes (CBDT),
Ministry of Finance, CS Building,
North Block, Parliament Street,
New Delhi – 110001. **… Respondents**

Ms.Rutuja Pawar with Ms.Hetal Laghave for the Petitioner.

Mr.Sham Walve for the Respondent.

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CORAM : K.R.SHRIRAM &
ABHAY AHUJA, JJ

DATED : 25th August, 2021.

WRIT PETITION NO. 1519 OF 2021

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 In view of the short issue involved and since pleadings are completed, Court decided to dispose the Petition at the Admission stage itself.

2 One Nagraj Bhansali carries on business in the name of 'Rishab Steel House' (Petitioner). Petitioner decided to take advantage of the Direct Tax Vivad se Vishwas Act, 2020 (DTVSV Act) to put an end to an Appeal which Petitioner had filed relating to Assessment Year 2006-2007 that was pending in this Court. Petitioner, therefore, filed its form No.1 being a declaration and undertaking under the DTVSV Act. The Appeal that Petitioner wanted to settle was Appeal No. ITXA(L)No.2084 of 2019 filed by Petitioner and pending in this Court. The Department accepted the Form and issued Form No.3 being certificate under sub Section 1 of Section 5 of DTVSV Act r/w DTVSV Rules 2020. As stated in the Form No.3, the Department indicated

the amount payable by Petitioner towards full and final settlement of the tax arrears covered by the declaration for Assessment Year 2006-2007. Respondent has quoted the details of the proceedings for which Petitioner had filed the declaration but in its conclusion arrived at a figure much higher than what Petitioner was liable to pay as per the declaration filed in Form No.1. As per the declaration in Form No.1, the amount payable by Petitioner was Rs.34991/- whereas in Form No.3 Respondent was demanding an amount of Rs.444941/- if paid before 31/03/2021 and Rs.480572/- if paid after 31/03/2021.

3 According to Respondent, as stated in Form No.3 in 'Remarks' column the VSV application is filed against the appeal filed by the department and disputed tax to be calculated as 62.5% as the addition was on the basis of information received related to search action under Section 132. We have to mention that there was an Appeal which Department had filed and was pending in this Court in which the Department has impugned the same order passed by the Income Tax Appellate Tribunal which Petitioner had impugned in its Appeal (L) No. 2084 of 2019. The Department in its Affidavit-in-Reply has clarified they had erroneously calculated 62.5% of the disputed tax considering Petitioner's case as a search case whereas later

realized that it is not a search case and it should be calculated only at 50%, in light of the order passed by this Court in the case of **Bhupendra H. Mehta V/s PCIT-19, Mumbai and Others** dated 27/04/2021. This clarification, if we may say so, does not satisfy the Petitioner's case because according to Petitioner, Petitioner had filed a declaration to settle only the dispute in the Appeal filed by Petitioner and not the Appeal filed by the Department. In the Affidavit-in-Reply, according to Respondent, if a declarant wishes to avail the benefit of DTVSV Act and if there is more than one issue pending at Appellate Forum and both the Appeals are against the same Order of ITAT, Petitioner does not have a choice only to offer to settle the Appeal filed by Petitioner but Petitioner has to settle both the Appeals.

4 Ms. Pawar brought to the notice of the Court Circular No.9 of 2020 dated 22nd April, 2020 issued by Central Board of Direct Taxes clarifying the provisions of DTVSV Act. Question No. 40 and the answer thereto is relevant to the matter in hand and the same reads as under:

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 declarant needs to specify in the declaration Form No.1, 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.*

It is trite that these clarifications are binding on the department and the officer concerned cannot have his own interpretation which is at variance to the clarification given by CBDT Circular. It is clear from the answer to Question No. 40 that Petitioner has an option to settle only the Appeal filed by Petitioner or Appeal filed by the department or both. Only requirement is that the declaration form has to be filed Assessment Year wise and for different Assessment Years separate declarations have to be filed. This is further clarified in the answer because it states "the declarant in the declaration Form No.1 needs to specify whether he wants to settle his appeal, or department's appeal or both for a particular assessment year". Therefore, option is available to the declarant to decide which matter the declarant wants to settle. Nowhere does the Circular mention or even indicate the interpretation given in the Affidavit-in-Reply to the Question No.40 and Answer thereto.

5 We have also to note that in the rejoinder Petitioner has annexed a copy of Order dated 21st July, 2019 passed by Prothonotary and Senior Master by which the department's Appeal being Lodging No. 1861 of 2018 has been rejected under Rule 986. Mr. Walve has no instructions as to whether any restoration application has been filed. At the same time, we would hasten to add that even if department's Appeal was pending, our view expressed above will not be any different.

6 We are, therefore, of the view that Petitioner is entitled to file declaration in respect of his appeal and avail of the benefit of the DTVSTV Scheme without being obliged to include the Department's appeal on the same issue.

7 In the circumstances, this Court's interference is called for. Form 3 issued by designated authority is set aside. The Designated Authority is directed to consider the Declaration made by Petitioner in Form 1 and to issue and upload revised Form No.3 in terms of this Order within a period of two weeks from the date of uploading of this order and within two weeks thereafter Petitioner shall pay the amount as mentioned in the revised Form No.3.

8 The Designated Authority shall issue revised Form No.3 for Assessment Years 2007-2008 and 2010-2011 also in view of the order passed above.

9 We are informed by Mr. Walve that the department will pursue its Appeals independently for the three Assessment Years covered by these Petitions. Department is at liberty to take such steps as advised and the Court will consider the same on its own merits.

10 Petitions disposed with no orders as to costs.

11 In view of the above, Writ Petition No. 1571 of 2021 and Writ Petition No. 1537 of 2021 stand disposed.

(ABHAY AHUJA, J.) **(K.R.SHRIRAM, J.)**

REKHA PRAKASH PATIL Digitally signed by REKHA PRAKASH PATIL Date: 2021.09.04 16:07:01 +0530