IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.08.2023
Pronounced On	11.03.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.10389, 10393, 10395 & 10600 of 2021
and
W.M.P.Nos.10974, 10976, 10979, 10980, 10981, 10982, 11212 & 17157 of 2022

W.P.No.10389 of 2021:-

Ansaldo Energia SPA,
Represented by its Authorised Signatory,
Via Nicola Lorenzi,
8, 16152 Genova,
Italy ... Petitioner

Vs.

1. The Deputy Commissioner of Income Tax,
International Taxation – 1,
16, Greams Road,
Thousand Lights West,
Chennai – 600 006.

2. The Commissioner of Income Tax,
International Transaction,
16, Greams Road,
Thousand Lights West,
Chennai – 600 006. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the first respondent herein to issue Form 3 and accept the Form-4 thereon setting out the refundable due to the petitioner as Rs.3,25,75,388/- for the Assessment Year 1999-2000, in terms of the Rectification Order dated 29.01.2021 issued by the first respondent.

For Petitioner : Mr.Srinath Sridevan
learned Senior Counsel
for Ms.Jyotsna Sivakumar
(in all W.Ps.)

For Respondents : Mr.B.Ramana Kumar
learned Senior Standing Counsel
for Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

COMMON ORDER

The petitioner herein has filed these writ petitions for the following relief for the following Assessment Years:-

W.P.No.10389 of 2021	**W.P.No.10393 of 2021**	**W.P.No.10395 of 2021**	**W.P.No.10600 of 2021**
Assessment Year			
1999-2000	**2001-2002**	**2002-2003**	**2000-2001**
For a Writ of Mandamus directing the respondent to issue Form 3 and accept the Form-4 filed under **Direct Tax Vivad Se Vishwas Act, 2020*** setting out the refundable amount due to the petitioner as follows:-			
Rs.3,25,75,388/-	**Rs.4,17,77,082/-**	**Rs.18,49,55,219/-**	**Rs.6,14,06,367/-**
in terms of the Rectification order dated 29.01.2021 issued by the 1st respondent.			

*DTVSV Act, 2020 for short.

2. I have considered the arguments advanced by the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

3. The petitioner opted to settle the disputes under Direct Tax Vivad Se Vishwas Act, 2020(No.3 of 2020) [hereinafter referred to as DTVSV Act, 2020] by filing declarations in Form-1 on 31.01.2021 for ten Assessment Years starting from Assessment Year 1999 - 2000 upto Assessment Year 2008 - 2009 before the Designated Authority in terms of Section 4(1) of the DTVSV Act, 2020 r/w Rule 3 of the Direct Tax Vivad Se Vishwas Rules 2020 (hereinafter referred to as the DTVSV Rules, 2020).

4. The Parliament had enacted The DTVSV Act, 2020 to give a reprieve to those income tax assesse's who had "**tax arrears"** of "**disputed tax"** as defined in the said Act. DTVSV Act, 2020 received the assent of the President on the 17th March, 2020.

5. The Designated Authority acknowledged the receipt of Form-1 in terms of Rule 3(4) of the aforesaid Rule. Form-3 under Section 5(1) of the Act r/w 4(1) of the Rule was also issued to the petitioner on 11.03.2021 and on various other dates. In Form-3, for the Assessment Year 1999 – 2000 to Assessment Year 2002-2003, the Designated Authority has also quantified the amount refundable to the petitioner under Section 7 of the DTVSV Act, 2020.

6. Under the Act, the petitioner was required to pay the amounts quantified in Form-3 within 15 days from the date of receipt of Form-3 in terms of the provisions of DTVSV Act, 2020 and DTVSV Rules, 2020.

7. An intimation was to be issued under Rule 5 in Form-4 by the assessee after payment of the amounts specified in Form-3. Thereafter, Order under Rule 7 in Form-5 was to be passed by the Designated Authority in terms of Section 5(2) of the DTVSV Act, 2020. The provisions of both the Act and the Rules are unambiguous and clear. They brook for no interpretation.

8. The petitioner has adjusted the refundable amounts from Assessment Year 2004-2005 and Assessment Year 2005-2006 towards the amounts payable by the petitioner under these Assessment viz., 1999-2000 to 2002-2003 Years in Form-1 filed under DTVSV Act, 2020 and DTVSV Rules, 2020. Form-3 issued to the petitioner to the Designated Authority has also accepted the adjustments and has ordered refund of amounts to the petitioner.

9. However, the Designated Authority has declined to recognize interest under Section 244-A of the Income Tax Act, 1961 (hereinafter referred to as IT Act, 1961) to the petitioner on delayed payments/adjustments made.

10. There were multiple proceedings in the background. Main issue relating to availability of the benefit of Section 44BBB of the IT Act, 1961 was still at large before the Hon'ble Supreme Court in C.A.No.4537 of 2014 for Assessment Year 2000-2001 and in C.A.No.4358 of 2014 for the Assessment Year 1999-2000. Both these proceedings have given rise to collateral proceedings for various Assessment Years which have

culminated in order dated 29.01.2021 under Section 154 of the IT Act, 1961 ordering refund and interest under Section 244-A of the IT Act, 1961. Both these appeals were withdrawn on 26.07.2023 in view of the application filed under DTVSV Act, 2020 on 31.01.2021.

11. For the Assessment Year 1999 - 2000 and Assessment Year 2000 - 2001, the tax payable by the petitioner were adjusted out of refunds due to the petitioner for the Assessment Year 2004-2005 & Assessment Year 2005-2006. For the following Assessment Years, penalty were also imposed on the petitioner which were said to have been appealed before CIT(A) in the following Appeals :-

Assessment Year	**Appeal Number**	**Disputed Penalty (Rs.)**
1999-2000	I.T.A.No.1949/ CHNY-2006	3,35,82,870/-
2000-2001	I.T.A.No.1950/ CHNY-2006	7,83,93,502/-
2001-2002	I.T.A.No.48/2005-06	2,05,29,631/-

12. For the rest of the Assessment Years, appeals were said to be pending before the Income Tax Appellate Tribunal ("ITAT"). They would have been withdrawn as the petitioner availed the benefit of DTVSV Act, 2020.

13. While these appeals were still pending before the Hon'ble Supreme Court for the Assessment Year 1999-2000 and Assessment Year 2000-2001, the Assistant Director of Income Tax, International Taxation-I passed three separate orders all dated 25.07.2012 under Section 254 of the IT Act, 1961 for the Assessment Years 2000-2001 to 2002-2003 to give effect to order of the Tribunal dated 11.05.2007 in ITA.No.411/Mds/2006 for the Assessment Years 2000-2001. Similarly, for 1999-2000, a similar order was passed on 31.03.2011 by Deputy Director of Income Tax. Details of these Orders under Section 254 of the IT Act, 1961 are as under :-

Sl.No.	**Date**	**Assessment Year**	**Refund ordered under Section 254 of the Income Tax Act, 1961. (in Rupees)**
1.	31.03.2011	1999-2000	26,74,054/-
2.	25.07.2012	2000-2001	23,09,677/-
3.	25.07.2012	2001-2002	3,59,95,666/-
4.	25.07.2012	2002-2003	10,53,09,974/-

14. For the period in dispute i.e. Assessment Years 1999–2000 to Assessment Year 2002–2003, the Deputy Commissioner of Income Tax, International Taxation had later issued Orders dated 29.01.2021 under Section 154 of the IT Act, 1961 and ordered refund of the amounts after adjusting the tax liability from the refunds due for the Assessment Years 2004-2005 & 2005-2006 under Section 245 of the IT Act, 1961.

15. In these orders, Deputy Commissioner of Income Tax, International Taxation had also ordered interest under Section 244-A of the IT Act, 1961 for the Assessment Year 1999-2000 to 2002-2003 as detailed below:-

Assessment Year	1999-2000	2000-2001	2001-2002	2002-2003
Tax Payable	1,91,27,094	6,10,72,478	17,97,89,216	7,32,13,999
Tax Refundable after adjustment of TDS, Tax paid and refund adjusted	1,40,98,933*	2,66,63,268*	1,96,26,212*	8,15,79,272*
Further Interest under 244 A	1,00,80,737	1,29,64,267	2,21,50,870	10,33,75,947
Total Refundable	2,47,79,670	3,95,94,980	4,17,77,082	18,49,55,219

[*Along with Interest under Section 244-A]

16. In Form-3 issued to the petitioner for theAssessment Year 1999–2000 to Assessment Year 2002–2003, the Designated Authority has not ordered interest under Section 244-A of the IT Act, 1961 presumably in view of Explanation to Section 7 of the DTVSV Act, 2020.

17. It is the stand of the petitioner that the petitioner was not only entitled to refunds of amounts after adjustment under Section 245 of the IT Act, 1961 from and out of refunds due to the petitioner for the Assessment Year 2001-2002, Assessment Year 2002-2003 but also out of refunds due to the petitioner for the Assessment Year 2004-2005 and Assessment Year 2005-2006. It is further stand of the petitioner that the petitioner was also entitled to further interest under Section 244-A of the IT Act, 1961 on belated payment/adjustments made on 29.01.2021.

18. For reference, Section 245 and Section 244 A of the IT Act, 1961 are reproduced below:-

Section 245 of the IT Act, 1961	***Section 244-A of the IT Act, 1961***
<u>Set off of refunds against tax remaining payable</u>	***<u>Interest on Refunds</u>:-***
Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this Section".	*(1)Where refund of any amount becomes due to the assessee under this Act he shall, subject to the provisions of this sections, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-* *(a) Where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the Assessment Year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period* *i. from the 1st day of April of the Assessment Year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of Section 139; or* *ii. from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i):* *[Provided that where refund arises as a result of an order passed by the Assessing Officer in consequence of an application made by the assessee under sub-section (20) of section 155,*

	such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the date of such application to the date on which the refund is granted. *(aa)where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:* *Provided that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;]* *(b) in any other case, such interest shall be calculated at the rate of one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the "tax or penalty to the date on which the refund is granted.* ***Explanation:*** *For the purposes of this clause, "date of payment of tax or penalty" date on and from which the amount of tax or penalty specialty me notice of demand issued under section 156 is paid in excess of such demand.* *(1A) In a case where a refund arises as a result of giving effect to an order*

	under section 250 or section 254 or section 260. or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted:] *[**Provided** that where proceedings for assessment or reassessment are pending in respect of an assessee, in computing the period for determining the additional interest payable to such assessee under this sub-section, the period beginning from the date on which such refund is withheld by the Assessing Officer in accordance with and subject to provisions of sub-section (2) of section 245 and ending with the date on which such assessment or reassessment is made, shall be excluded]* *(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which-*

	(a)claim for refund is made in the prescribed form; or *(b)tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262 to the date on which the refund is granted.]* *(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee [or the deductor, as the case may be,] whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or [Principal Commissioner or] Commissioner whose decision thereon shall be final.* *(3) Where, as a result of an order under sub-section (3) of section 115WE or 3ction 115WF or section 115WG or] [sub-section (3) of section 143 or section 144or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed*

	form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly. *(4) The provisions of this section shall apply in respect of assessments for the Assessment Year commencing on the 1st day of April, 1989, and subsequent Assessment Years :]* *Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.]"*

19. In Form-3, the amount of interest under Section 244-A of the IT Act, 1961 has not been ordered in view of Section 7 of the DTVSV Act, 2020.

20. Section 7 of the DTVSV Act, 2020 reads as under:-

Section 7:-	*Any amount paid in pursuance of a declaration made under Section 4 shall not be refundable under any circumstances.*
Explanation:-	*For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under Sub-Section (1) of Section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under Section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under Section 244A of the Income-tax Act."*

21. Tax payable and refundable as per the petitioner in Form-1 and the Department in Form-3 under the DTVSV Act, 2020 are as under:-

Assessment Year	As per the petitioner		As per Income Tax Authority			
	Tax arrears (Rs.)	**Amount Refundable (Rs.)**	**Tax arrear (Rs.)**	**Amount payable under DTVSV on or before 30.04.2021**	**Amount payable under DTVSV after 30.04.2021**	**Amount Refundable (Rs.)**
1999-2000	3,35,82,870	3,25,75,389	1,91,27,094	1,77,97,806	1,95,77,587	**1,88,83,989**
2000-2001	7,83,93,502	6,14,06,367	5,13,56,716	5,13,56,716	5,64,92,387	**4,41,25,531**
2001-2002	2,05,29,631	4,69,09,490	15,50,90,573	15,50,90,573	17,05,99,630	**2,77,86,748**
2002-2003	0	18,49,55,218	5,61,12,304	5,61,12,304	6,17,23,534	**8,15,79,272**

22. The amounts quantified as "tax arrears" and "payable" by the petitioner in Form-1 are the penalty for the above mentioned Assessment Years. The tax liability determined by the Designated Authority is correct in Form-3 which was partly adjusted out of TDS and partly out of refunds due to the petitioner for the Assessment Year 2004-2005 and 2005-2006.

23. The petitioner claims to have deposited a sum of **Rs.15,84,14,906**/- on **11.11.2021** for the Assessment Years 2003-2004 to 2006-2007 respectively pursuant to the order dated **08.11.2021** of this Court.

24. A Memo was filed on 31.08.2021 by the petitioner followed by another Memo dated 21.08.2023. Relevant portion of the Memo dated 31.08.2021 reads as under:-

> 1. *The main Writ Petition is filed, seeking correction of the Form 3 (under the DTVST Act, 2020) issued by the second respondent herein, in respect of Assessment Year 1999-2000, 2000-2001, 2001-2002 and 2002-2003 so as to recognize the petitioner's right to interest on declared refunds due from the Department, determined in the Final Order passed under the Income Tax Act, 1961.*
>
> 2. *The petitioner has also submitted Form 1 under DTVSV Act, 2020, for AY 2003-2004, 2004-2005, 2005-2006 and 2006-2007, in respect of which a sum of Rs.14,40,13,551/- is payable as per the Form 3 issued by the second respondent, pursuant to the Form 1 filed.*
>
> 3. *The Respondent's Counter Affidavit admits a refund of Rs.18,19,46,506/- payable by the Department to the Petitioner for AY 1999-2000, 2000-2001, 2001-2002, 2002-2003 **even excluding the interest**.*
>
> 4. *The petitioner is agreeable to adjust / not claim the refund for AY 1999-2000, 2000-2001, 2001-2002, 2002-2003 to the tune of Rs.14,40,13,551/- towards payment for AY 2003-2004, 2004-2005, 2005-2006 and 2006-2007 provided that the Respondents accepts that the payments due under the existing Form 3 dated 04.03.2021 for AY 2003-*

2004, 2005-2006, 2006-2007 and Form 3 dated 08.03.2021 for AY 2004-2005, are validly discharged thereby, and no further sums claimed there against.

5. *This does not occasion any financial loss to the Department, and enables closure of all litigations between the Parties, <u>save and except the dispute over interest, which will remain res integra in these Writs</u>.*

6. *Accordingly, it is prayed that the above be passed as an interim direction in the above Writ Petitions."*

25. The payments made are irrelevant for the relief sought for in these writ petitions.

26. The petitioner thus wants of the amount of refunds ordered in Form-3 for Assessment Year 1999-2000 to 2002-2003 to be re-calculated along with interest under Section 244-A of IT Act, 1961 quantified in order dated 29.01.2021 by the Deputy Commissioner of Income Tax, International Taxation under Section 154 of the IT Act, 1961 which was not recognized in Form-3 issued for the Assessment Years Assessment Years 1999-2000 to 2002-2003 for being adjusted towards the tax liability of the petitioner for the Assessment Years 2003-2004 to 2006-

2007 under DTVSV Act, 2020.

27. The learned Senior Counsel for the petitioner has drawn attention to decisions of this Court in the following cases:-

i. W.P.No.16022, etc., batch of 2021, dated 13.04.2022;
ii. W.P.No.15762 of 2021, dated 29.11.2021.

28. The learned Senior Counsel for the petitioner has further drawn attention to the decision of the Bombay High Court in the following cases:-

i. ***Mantelone Investment Limited*** *vs.* ***The Commissioner of Income Tax (IT), Mumbai-03 rendered in W.P.No.1246 of 2021, by its order dated 15.06.2021;***
ii. ***UPS Freight Services India Private Limited vs. Deputy Commissioner of Income Tax*** *rendered in [2023] 156 taxmann.com 489(Bombay)*

29. This Court in its order made in W.P.Nos.15762 & 15763 of 2021, dated 29.11.2021 held as under:-

> "*24.There is no dispute that the petitioner has paid the tax for the relevant Assessment Year viz., 2011-12 and therefore, the protective assessment for the year 2014-15 results in excess payment of tax. The petitioner cannot be*

taxed twice on the same income. Ultimately, the purpose of exercising power under the Act is only intended to collect correct and just tax under the provisions of the Income Tax Act, 1961 from an assessee. The Act is not intended either to collect or retain any amount which is not due from an assessee.

25.In this connection, a reference may be made to the decision of the Hon'ble Supreme Court in Unichem Laboratories Ltd vs. Collector of Central Excise, Bombay reported in (2002) 7 SCC 145 wherein the Hon'ble Supreme Court held that it is no part of duty of the department to levy and collect tax which is not due to the department. Relevant passage from the said decision reads as follows:-

> "*12. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law-no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.*"

26.The above passage squarely applies to the facts of the present case as the department has also not disputed the fact that the petitioner has settled the dispute under the Vivad se Vishwas scheme for the Assessment Year 2011-12 as a consequence of which the tax offered and paid by the petitioner during the Assessment Year 2014-15 had become excess.

27.That apart, under Section 237 under Chapter XIX of the Income Tax Act, there is no limitation prescribed for *granting refund of the amount paid in excess as tax. Therefore, I do not find any merits in the submissions made by the learned Senior Standing Counsel appearing on behalf of the respondents. Therefore, these Writ Petitions deserves to be allowed."*

30. The amount payable is specified in the Table to Section 3 of the DTVSV Act, 2020. The amounts that are payable on or before 31st March, 2020 and after the 1st March, 2020 but before the last date under the Act are specified in Column 3 to 4 to the Table to Section 3 of the DTVSV Act, 2020. Section 3(1) of the DTVSV Act, 2020, reads as under:-

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 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 43 of 1961. Amount payable by declarant 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:—*

1	2	3	4
Sl.No.	**Nature of tax arrear**	**Amount payable under this Act on or before the 31st day of March, 2020**	**Amount payable under this Act on or after the 1st 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 dispute 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.
(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-percent of the disputed tax: provided that where the twenty 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 payable under this Act.	The aggregate of the amount of disputed tax and thirty five percent 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 payable.
(c)	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee	Twenty-five percent of disputed interest or disputed penalty or	Thirty per cent of disputed interest or disputed penalty or

		disputed fee.	disputed fee:

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:

31. The expression "**disputed tax"** and "**tax arrear"** has been defined in Section 2 of the said DTVSV Act, 2020 as follows:-

Section 2(j) Direct Tax Vivad Se Vishwas Act, 2020	***Section 2(o) Direct Tax Vivad Se Vishwas Act, 2020***
*"**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, 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*	*"**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.*

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 144C 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 144C 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 sub-section (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 115JAA or section 115D 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.*	

32. Under Section 3 of the DTVSV Act,2020, a declarant was required to file a declaration before the Designated Authority in accordance with Section 4 of the said Act, in respect of "**tax arrear**" as defined in Section 2(o) of DTVSV Act, 2020, before the last date.

33. Since the petitioner had pending appeals both before the Hon'ble Supreme Court and Income Tax Appellate Tribunal for the these

assessment years on the issue relating the taxability of the transaction, the amount payable by the petitioner is the amount of tax due sans the penalty and interest in terms of Sl. No.(a) to Table to Section 3 of DTVSV Act,2020.

34. Thus, the amount quantified as payable under in **Form -1** by the petitioner was not correct. The amount of tax payable as quantified by the department in **Form-3** is correct as detailed below:-

S.No.	***W.P.***	***Assessment Year***	***Amount payable by the petitioner***
1	*10389/2021*	*1999- 2000*	*Rs.1,91,27,094/-*
2	*10393/2021*	*2000-2001*	*Rs.5,13,56,716/-*
3	*10600/2021*	*2001-2002*	*Rs.15,50,90,573/-*
4	*10395/2021*	*2002-2003*	*Rs.5,61,12,304/-*
Total			*Rs.28,16,86687/-*

35. Under Section 7 of the DTVSV Act, 2020, any amount paid in excess in pursuance of the declaration is not refundable. However, where the declarant had, before filing the declaration under Sub-Section (1) of Section 4, paid any amount under their Act, 1961 in respect of his tax

arrears which exceeds the amount payable under Section 3, shall be entitled to a refund of such excess amount.

36. However, such a declarant is not be entitled to interest on such excess amount under Section 244-A of the IT Act, 1961. Section 7 of DTVSV Act, 2020 is a complete code by itself. If the case is to be settled under it, no interest under Section 244-A of the IT Act, 1961 is available.

37. In this case, no amount was paid by the petitioner either along with Form-1 on 31.1.2021 or after Form-3 that was issued on various dates. The petitioner wants the Designated Authority to issue a fresh Form-3 together with interest on refunds under Section 244-A of the IT Act, 1961 on belated adjustment of refunds. This is not available in view of explanation to Section 7 of the DTVSV Act, 2020.

38. The Designated Authority while issuing Form-3 has correctly

acceded to refund of the amounts to the petitioner for the Assessment year 1999-2000 to 2002-2003. The Designated Authority has declined to order interest under Section 244-A of the IT Act, 1961. It is in accordance with explanation to Section 7 of the DTVSV Act, 2020.

39. Neither the Deputy Commissioner of Income Tax, International Taxation nor the Designated Authority were required to order refund of the amount for the Assessment Year 1999-2000 and Assessment Year 2000-2001 in **Form -3,** as no amount was paid in excess by the petitioner. There was only adjustment of the refunds due for the Assessment Year 2004-2003 and Assessment Year 2005-2006. In fact, the Deputy Commissioner of Income Tax, International Taxation while passing order dated 29.01.2021 under Section 154 of the IT Act, 1961 was not required to order interest under Section 244-A of the IT Act, 1961 for the Assessment Years 1999-2000 and 2000-2001. The excess amount after adjustment were to be refunded along with interest under Section 244-A for the Assessment Year 1999-2000 and Assessment Year 2000-2001. The excess amount after adjustment were to be refunded along with interest under Section 244-A read with Section 245 of the IT Act, 1961 for

the Assessment Year 2004-2005 and Assessment Year 2005-2006.

40. For these two Assessment Years viz., Assessment Year 1999-2000 and Assessment Year 2000-2001, there were mere adjustment of the amounts towards tax liability out of the refunds that were due to the petitioner for the Assessment year 2004-2005 and Assessment Year 2005-2006.

41. Excess amounts after adjustments of the liability ought to have been refunded together with interest under Section 244-A of the IT Act, 1961 for the Assessment Year 2004-2005 and Assessment Year 2005-2006, provided no applications were filed for Assessment Year 2004-2005 and Assessment Year 2005-2006 under Sl.No.(a) to Section 3 of the DTVSV Act, 2020.

42. For the Assessment Year 2001-2002 and for the Assessment Year 2002-2003, the petitioner was entitled to interest under Section 244-A of the IT Act,1961, if no declaration was filed under DTVSV Act, 2020. Interest under Section 244-A of the IT Act, 1961 will not be

available to the petitioner in view of explanation to Section 7 of the DTVSV Act, 2020. It makes it clear, that a declarant shall not be entitled to interest under Section 244-A of IT Act, 1961 on such excess amounts.

43. Therefore, the petitioner is not entitled to the relief as prayed for in full. The amounts that have been ordered to be refunded under Section 154 Order dated 29.01.2021 for the Assessment Year 1999-2000 and Assessment Year 2000-2001, are refundable separately together with interest under Section 244-A of the IT Act, 1961 for the Assessment Year 2004-2005 and Assessment Year 2005-2006 subject to limitation under Explanation to Section 7 of the DTVSV Act, 2020, i.e., no declaration was filed for Assessment Year 2004-2005 and Assessment Year 2005-2006.

44. The amount of tax that has been ordered to be refunded for the rest of the two Assessment Years ie., Assessment Year 2001-2002 and Assessment Year 2002-2003 are concerned, excess amounts are refundable in view of Section 7 of the DTVSV Act, 2020. However, the petitioner is not entitled to interest under Section 244-A of the IT Act,

1961 for these two Assessment Years in view of Explanation to Section 7 of the DTVSV Act, 2020.

45. Therefore, to do complete justice and to balance the interest of the petitioner and the Income Tax Department, these writ petitions are disposed with the following directions/orders/ observations:-

i. *The amounts adjusted and appropriated towards tax liability for the Assessment Year 1999-2000 and Assessment Year 2000-2001under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020from and out of the refunds due for the Assessment Year 2004-05 and Assessment Year 2005-06 are treated as amount paid by the petitioner for the Assessment Year 1999-2000 and Assessment Year 2000-2001 underDirect Tax Vivad Se Vishwas Act, 2020;*

ii. *Consequently, the Designated Authority or any other Authority in its place shall issue Form 5 to the Petitioner and close the pending case of the petitioner for the Assessment Year 1999-2000 and Assessment Year 2000-2001;*

iii. *Consequently, the Income Tax Department is directed to process the excess amount quantified as refundable in Section 154 orders dated 29.01.2021 for the Assessment Year 1999-2000 and Assessment Year 2000-2001 together with interest under Section*

244-A of the IT Act, 1961 for Assessment Year 2004-2005 and Assessment Year 2005-2006, subject to Section 7 of the Direct Tax Vivad Se Vishwas Act, 2020;

iv. W.P.No.10389 of 2021 and W.P.No.10600 of 2021 are disposed of interms of (i), (ii) & (iii) as above;

v. As far as Assessment Year 2001-2002 and Assessment Year 2002-2003 are concerned, the amount quantified by the Designated Authority under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020are correct;

vi. Consequently, the Designated Authority or any other Authority in its place shall issue Form 5 to the Petitioner and close the pending case of the petitioner for the Assessment Year 2001-2002 and Assessment Year 2002-2003;

vii. The petitioner is not entitled to interest under Section 244-A of the IT Act, 1961 for Assessment Year 2001-2002 and Assessment Year 2002-2003, in view of Explanation to Section 7 to Direct Tax Vivad Se Vishwas Act, 2020;

viii. Therefore, W.P No.10393 of 2021 and W.P.No.10395 of 2021 are liable be partly dismissed and are accordingly partly dismissed to the extent of (vii) before;

ix. Since the petitioner has paid a sum of Rs.15,84,14,906/- Tax amounts for the Assessment Year 2003-2004 to 2006-2007 pursuant to order dated 28.10.2021, the

Designated Authority or any other Authority in its place shall issue Form 5 to the Petitioner and close the pending case of the petitioner for these Assessment Years also;

x. *The above excercise shall be completed within a period of three months;*

xi. *Refund arising out of the order and interest under Section 244-A of the IT Act, 1961 for Assessment Year 2004-2005 and Assessment Year 2005-2006 shall also be processed within a period of three months from the date of receipt of a copy of this order;*

xii. *No costs. Consequently, connected miscellaneous petitions are closed.*

11.03.2024

Neutral Citation: Yes/No
Internet : Yes/No
Index : Yes / No
rgm

To

1. The Deputy Commissioner of Income Tax,
   International Taxation – 1,
   16, Greams Road,
   Thousand Lights West,
   Chennai – 600 006.

2. The Commissioner of Income Tax,
   International Transaction,
   16, Greams Road,
   Thousand Lights West,
   Chennai – 600 006.

C.SARAVANAN, J.

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W.P.Nos.10389, 10393, 10395 & 10600 of 2021
and
W.M.P.Nos.10974, 10976, 10979, 10980, 10981,
10982, 1121, 11212 & 17157 of 2022

11.03.2024