IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12860 and 12862 of 2021
and
W.M.P.Nos.13661, 13663, 13666 and 13668 of 2021

Dr.Andal Arumugam ... Petitioner in both W.Ps.

Vs.

1.The Principal Commissioner of Income Tax,
Chennai Central,
Chennai.

2.The Deputy Commissioner of Income Tax,
Central Circle 1(1),
No.46, M.G.Road,
Nungambakkam,
Chennai. ... Respondents in both W.Ps.

Prayer in W.P.No.12860 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 07.04.2021 reference No.232582271300121 rejecting the declaration made by the petitioner under Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020 in respect of Assessment Year 2010-11 on the file of the Principal Commissioner of Income Tax, Chennai Central, Chennai, the 1st respondent herein and quash the same and consequently direct the 1st respondent to accept the declaration.

Prayer in W.P.No.12862 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 07.04.2021 certificate No.338517350070421 partially rejecting the declaration made by the petitioner under Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020 in respect of Assessment Year 2015-16 on the file of the Principal Commissioner of Income Tax, Chennai Central, Chennai, the 1st respondent herein and quash the same and consequently direct the 1st respondent to accept the declaration.

For Petitioner (in both W.Ps)	:	Mr.B.Kumar Senior Counsel for Mr.S.Ramachandran
For Respondents (in both W.Ps)	:	Mr.A.P.Srinivas Senior Standing Counsel and Mr.A.N.R.Jayaprathap Junior Standing Counsel

COMMON ORDER

By this common order, both the writ petitions are being disposed of.

2. In **W.P. No.12860 of 2021**, the petitioner has challenged the Impugned Order dated **07.04.2021** bearing Ref.No.232582271300121 transmitted electronically to the Petitioner, whereby, the attempt of the Petitioner to settle the dispute under the provisions of the "Direct Tax Vivad Se Vishwas Act, 2020" *(hereinafter referred to as the 'DTVSV Act')* has been rejected for **Assessment Year 2010-2011**. By the Impugned Order dated 07.04.2021, it has been stated as follows:-

> *"There is no disputed income involved in this case for A.Y.2010-11. Thus, Form – 1 & 2 is rejected."*

3. In **W.P.No.12862 of 2021**, a similar order which is also dated **07.04.2021** issued for the **Assessment Year 2015-2016** is under challenge.

4. The facts of the case is that the petitioner is a physician who is also a Director of M/s. RKM Power Gen Private Limited. A search

proceeding was initiated under Section 132 of the Income Tax Act, 1961 *(herein after referred to as "the Act")* against M/s. Sri Ramachandhra University Trust and its Group of Companies at the premises of the Petitioner on 24.11.2015. It appears that statement was also recorded by the authorities from the Petitioner during the search and seizure operation that took place at the premises of the Petitioner.

5. The Petitioner had earlier filed a return of income on 01.10.2010 under Section 139(1) of the Act for the Assessment Year **2010-2011**, wherein, the Petitioner had declared a taxable income of **Rs.24,52,550/-**. In the light of the search and seizure operation conducted at the premises of the Petitioner on 24.11.2015, a Notice dated 18.07.2017 under Section 153A of the Act was issued to the Petitioner. Pursuant to the Notice dated 18.07.2017, the Petitioner filed revised return of income on 22.08.2017, wherein, the Petitioner declared the taxable income as **Rs.1,61,29,670/-** for the **Assessment Year 2010-2011.**

6. This culminated in an Assessment Order dated **29.12.2017** under Section 143(3) read with Section 153A of the Act. On the same day, the

Petitioner was also issued with a Demand Notice under Section 156 of the Act, whereby, the Petitioner was called upon to pay a sum of **Rs.74,86,720/-** towards the disputed amount determined in the aforesaid Assessment Order dated **29.12.2017.**

7. Aggrieved by the same, the Petitioner preferred an appeal under Section 246A of the Act, before the Commissioner of Income Tax (Appeals) on 25.01.2018.

8. In the appeal preferred by the Petitioner before the Commissioner of Income Tax (Appeals) in Form – 35, it is stated as follows:-

> *"The appellant had deposited 7465.99 grams of gold in SBI GOLD Deposit Scheme on 11th April 2000 which matured on 11th April 2007. Upon maturity the gold was subsequently invested in SBI Gold Deposit Scheme in May 2009. On 22nd May 2009, additional gold weighing 2000 grams were also deposited in SBI Gold Deposit Scheme which matured on 22nd May 2014 and were again invested in SBI Gold Deposit Scheme. Further, in respect of the bonds which matured in May 2007, the income amounting to Rs.22,27,579/- was disclosed in the return of income for Assessment Year 2008-09 and claimed to be exempt under Section 10(15). Likewise, when the bonds matured in 2014, the interest received amounting to Rs.19,64,848/- was admitted in the*

return of income for Assessment Year 2016-2017.

2.The Investigation Wing of the Income-tax department had conducted a search under Section 12 of the Act on 23.11.2015 in M/s.Sri Ramachandra University Trust group of cases and as a part of the action, search option was also carried out in the case of the appellants residential premises and bank locker. During the course of the search operations loose sheets and gold bonds were seized and the appellant was asked to explain the source of funds for the SBI Gold Bond certificates for 9445 grams. The appellant provided the above explanation that she had gold deposits from the year 2000 which had been renewed from time to time. But it was put to her that this bond was not shown in the wealth tax return for Assessment Years 2008-09 and 2009-10. For a variety of reasons, the appellant was persuaded to accept in a statement under Section 132(4) that the value of the bond should be offered as income, which she agreed to and pay the relevant taxes thereon.

3.Subsequently notice under Section 153A of the Act was issued and in response to the notice issued, the appellant furnished the return of income for the Assessment Year 2010-11 on 22.08.2017 admitting a total income of Rs.1,61,29,670 wherein she offered the additional income of Rs.1,36,77,112/- as undisclosed income and the tax due as per the return of income were fully paid.

4.The return was taken up for scrutiny by the Assessing Officer and notices under Section 143(2)/142(1) of the Act were served on the appellant. In response to these notices, the appellant authorised representative appeared before the Assessing Officer and had furnished the details called for.

5.The Assessing Officer completed the assessment under Section 143(3) r.w.s.153A of the Income Tax Act, 1961 on 29.12.2021 the assessing the returned income filed by the appellant including the above income of Rs.1,36,77,112. Against this assessment a separate appeal has been preferred. In the course of the assessment proceedings penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 were also initiated by the Assessing Officer.

6.The Assessing Officer has issued an order of penalty under Section 271(1)(c) of the Act dated 07.06.2018 levying penalty of Rs.45,00,000/-. The appellant is aggrieved against the order levying penalty. Hence, the appeal."

9. The case of the Petitioner is that since the Petitioner has preferred an appeal before the Commissioner of Income Tax (Appeals) under Section 246A of the Income Tax Act, 1961 on **25.01.2018** and therefore, the petitioner is entitled to have the case settled under the provisions of the DTVSV Act.

10. Arguing further, the learned counsel for the Petitioner would draw reference to Section 9 of the DTVSV Act stating that none of the embargo specified under the Section are attracted and therefore the Petitioner is/was entitled to file an application/declaration for settling the

dispute under the DTVSV Act and the Rules made thereunder.

11. That apart, it is submitted that the Petitioner has "disputed income" within the meaning of Section 2(g) of the DTVSV Act even though the Petitioner filed its revised return of income on 22.08.2017, pursuant to the Notice dated 18.07.2017 issued under Section 153A of the Act.

12. Therefore, it is stated that the aforesaid amount of **Rs.74,86,720/-** as computed in the Demand Notice dated **29.12.2017** pursuant to the Assessment Order dated **29.12.2017** is a "disputed tax" within the meaning of Section 2(j) of the aforesaid Act. It is therefore submitted that the rejection of the declaration filed by the Petitioner in Form – 1 & 2 by the Respondent Department vide Impugned Order dated 07.04.2021 is liable to be interfered with.

13. An identical situation with respect to the **Assessment Year 2015-2016** is the subject matter of challenge in **W.P.No.12862 of 2021**. The background of the Order dated 07.04.2021 impugned in

W.P.No.12862 of 2021 is also the same search conducted at the premises of M/s.Sri Ramachadra University Trust Group of Companies which ultimately led to issuance of Notice dated 18.07.2017 under Section 153A of the Act to the Petitioner.

14. The Petitioner had filed a return of income under Section 139(1) of the Act on **31.08.2015**, declaring a taxable income of **Rs.46,73,860/-** for the **Assessment Year 2015-2016**. On receipt of the Section 153A Notice dated **18.07.2017**, the Petitioner filed a revised return and declared a total amount of **Rs.2,84,30,690/-** as taxable income.

15. The said return was scrutinized and an Assessment Order came to be passed on **29.12.2017** for the **Assessment Year 2016-2016**, whereby, the taxable income of the petitioner was enhanced to **Rs.2,99,73,860/-**. On the same day, Demand Notice under Section 156 of the Act was issued by the Respondent, whereby, the Petitioner was called upon to pay a sum of **Rs.24,70,930/-** towards the difference in the tax amount to be payable by

the Petitioner.

16. Aggrieved by the same, the Petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) under Section 146A of the Act on 25.01.2018 challenging the aforesaid Assessment Order dated 29.12.2017 on the following grounds:-

> "*During the course of search, sale deeds in respect of acquisitiion of 189 acres of agricultural land were seized vide ANN/AA/MS/Sales deeds/S dated 24.11.2015. As per the sale deeds, it was found that M/s Sri Srinivasa Estates, a partnership firm in which Smt.Andal Arumugam and her husband Shri Arumugam are the partners have purchased 189 acres of Tea estate from N.C.Devaraj and his family members for a sale consideration of Rs.9,50,00,000/-. Smt.Andal Arumugam, in the search action while operating the Prohibitory Order placed in her office premises on 13.01.2016 stated that no on-money was paid to the sellers of the estate. Subsequently, in the post search proceedings, the assessee Smt.Andal Arumugam submitted vide her letter 14.06.2016 that she had not paid any cash on on-money for purchase of tea estate located at Kothagiri. She further added that to buy peace with the department and to cooperate with the proceedings, she admitted a sum of Rs.2,50,00,000/- as additional income for the Financial Year 2014-15 and submitted the challan for payment of taxes of Rs.1,01,00,380/-. While filing return of income for AY 2015-16, the assessee offered additional income of Rs.2,37,56,830/- under the head other income. Thus it is seen that there is a shortfall*

> *in computation of income in so far as additional income of Rs.2,37,56,830/- was included as against Rs.2,50,00,000/- offered during post search proceedings. Hence the shortfall of Rs.12,43,170/- is added to the total income of the assessee."*

17. The petitioner opted to settled the dispute under the DTVSV ACT by filing a declaration in Form – I on 30.01.2021 for the **Assessment Year 2015-2016**. By the Impugned Order dated **07.04.2021**, the Petitioner's case was partly accepted.

18. It is noticed that in the Impugned Order dated 07.04.2021, the relief has been confined to tax arrears of **Rs.4,22,553/-** for the **Assessment Year 2015-2016** alone out of the entire "disputed tax" amount of **Rs.12,43,170/-** and not for the balance amount. Hence, the Petitioner is before this Court challenging the aforesaid order dated **07.04.2021** in **WP. No. 12862 of 2021**.

19. The learned Senior Counsel for the Petitioner would submit that in both cases against the Assessment Orders dated 29.12.2017, the Petitioner has preferred an appeal before the CIT (Appeals) under Section

246A of the Act on 25.01.2018 and that the appeal was pending on the specified date.

20. It is submitted that if the appeal is allowed, the Petitioner would be entitled to a refund of the amount that was paid pursuant to the revised return filed by the Petitioner in the light of Notices issued under Section 153A of the Act.

21. The learned counsel for the Petitioner would further submit that the amount of tax payable by the Petitioner would not mean the amount of tax that would be payable by the Petitioner if the appeal was to be decided against the appellant.

22. In this connection, a reference is made to Circular No.7 of 2020 of the Central Board of Direct Taxes dated 04.03.2020 bearding Reference No.F.No.IT(A)/1/2020-TPL.

23. A specific reference is made to ***Govindrajulu naidu*** *Vs.* **Principal Commissioner of Income tax, (Central-1), Mumbai** *reported*

in (2021) 435 ITR 703 (Bombay), wherein, while dealing with an identical situation, the Court held as under:

> *"18.The term 'disputed tax' has been assigned specific definition in the DTVSV Act and would have been appreciated in the context of DTVSV Act. It specifically provides, the disputed tax in relation to assessment year or financial year means 'income tax', wherein the appeal is pending before appellate forum as on the specified date, the amount of tax payable by the appellant, if such appeal were to be decided against him. Plainly reading, it would emerge that the disputed tax means an income tax payable by assessee under the provisions of the IT Act, on the income assessed by the authority and where any appeal is pending before the appellate forum on the specified date, against any order relating to tax payable under IT Act. It does not presumably seem to ascribe any qualification to the matter/appeal, save, that it should concern Income-tax Act. It would not be construed limiting and restricting it as is sought to be submitted on behalf of the Respondents. It does not appear that merits of appeal/matter would be consideration to qualify for 'disputed tax' under DTVSV Act."*

24. The learned Senior Counsel for the petitioner placed reliance on yet another decision of the Bombay High Court in the case of ***Premlata Mohan Agarwal*** *Vs.* ***The Principal Commissioner of Income Tax – 3 and others*** in W.P.No.3850 of 2021, wherein, even in the case where an appeal

before the Commissioner of Income Tax (Appeals) was filed with a delay, in accordance with the Circular dated 04.12.2020, the Court quashed the Order of rejection dated 26.02.2021 and consequently, directed the Respondent to process the declaration filed by the Petitioner under the DTVSV Act.

25. Finally, the learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in the case of ***Palam Gas Service*** *Vs.* ***Commissioner of Income Tax*** reported in ***(2017) 7 SCC 613*** to buttress the point that the expression 'payable' occurring in Section 40(a)(i-a) of the Act cannot be confined to only that amount that is yet to be paid but would also include the amount that has already been paid.

26. It is further submitted that as far as **W.P.No.12862 of 2021** relating to the **Assessment Year 2015-2016** is concerned, the Assessment Order dated 29.12.2017 that was passed under Section 143(C) read with Section 153A of the Act made a wrong addition of Rs.12,43,170/- over and above the chargeable income filed by the Petitioner.

27. The amount that was admitted by the Petitioner in the returns filed pursuant to Notice dated 18.07.2017 issued under Section 153A of the Act for **Assessment Year 2015-2016** was for a total sum of **Rs. 2,84,30,690/- [Rs.46,73,860/- + Rs.2,37,56,830/-].**

28. It is submitted that the relief that has been granted to the Petitioner has been confined only to an amount of **Rs.12,43,170/-** that was enhanced by the Department pursuant to the revised return filed by the Petitioner even though the Petitioner had challenged the entire addition of **Rs.2,50,00,000/- [Rs.2,37,56,830/- + Rs.12,43,170/-]** made in the Assessment Order dated 29.12.2017 in appeal before the Commissioner of Income Tax (Appeals).

29. The learned Senior Counsel for the Petitioner relies on the following decisions of the Hon'ble Supreme Court, Bombay High Court and that of this Court:-

i. ***Jute of Corporation of India Ltd*** *Vs.* ***Commissioner of Income Tax*** *reported in 1991 (57) ELT 176 SC.*
ii. ***Govindrajulu naidu*** *Vs.* **Principal Commissioner of Income tax, (Central-1), Mumbai** *reported in (2021) 435 ITR 703 (Bombay).*

iii. **Commissioner of Income-tax** *Vs.* ***Indian Express (Madurai) (P) Ltd*** *reported in 1983 (13) 441 Madras.*

30. On the other hand the learned Senior Standing Counsel for the respondents would submit that there is no "disputed tax" that was surviving even though the petitioner had filed an appeal before the Commissioner of Income Tax (Appeals) on 25.01.2018 against the respective Assessment Orders dated 29.12.2017 for the Assessment Years 2010-2011 and 2015-2016 passed under Section 143(3) read with 153A of the Act.

31. It is submitted that during the course of the search, the Petitioner admitted to the defaults committed in not disclosing the income from purchase of Gold Bonds and that the Petitioner had also not declared the same in the Wealth Tax return for Assessment years 2008-2009 and 2009-2010. It is therefore submitted that merely because the Petitioner filed an appeal *ipso facto* would not mean that there was a "disputed income" within the meaning of Section 2(g) of the DTVSV Act and would be covered under the ambit of "disputed tax" as defined in Section 2(j) of the

aforesaid Act.

32. That apart, it is submitted that the Petitioner had not retracted the statement issued during the course of search rather filed revised return, wherein, the Petitioner had disputed the tax amount.

33. The learned Senior Standing Counsel for the Respondent would submit that there is no "disputed tax" remaining to be paid within the meaning of Section 2(j) of the DTVSV Act. It is submitted that the language in the definition of "disputed tax" in Section 2(j) is categorical. It is submitted that in case where any appeal or writ petition is pending before the Appellate Forum or this Court as on the specified date, the amount of tax that is payable by the Petitioner would be that if such Appeal or Writ Petition or Special Leave Petition was to be decided against the Petitioner.

34. It is submitted that in present case, even if the appeals preferred

by the Petitioner are to be rejected by the Commissioner of Income Tax (Appeals), there would be no amount payable by the Petitioner. It is therefore submitted that there is no scope for interfering with the Impugned Orders dated 07.04,2021 issued by the Respondent.

35. On the other hand, it is submitted that the revised return filed by the Petitioner pursuant to the Notice dated 18.07.2017 issued under Section 153A of the Act was scrutinized and culminated in the Assessment Order dated 29.12.2017, subsequent to which the Demand Notice dated 29.12.2017 was issued under Section 156 of the Act. Therefore, the Respondent justifies the partial relief to the Petitioner vide Order dated 07.04.2021 for the Assessment Year 2015-2016 impugned in WP. No. 12862 of 2021. It is therefore submitted that both the Writ Petitions are devoid of merits and are therefore liable to be dismissed.

36. I have considered the arguments advanced and judgments relied upon by the learned Senior Counsel for the Petitioner and the learned

Senior Standing Counsel for the Respondents and have perused the records that are available before this Court and have also examined the provisions of the DTVSV Act.

37. The DTVSV Act was enacted with a view to ensure that the pending tax litigations which were blocking the revenue for the Government were settled. This is evident from the speech of the Finance Minister during presentation of the Budget during February – March 2020.

38. The scheme of the DTVSV Act read with the Rules made thereunder allows an assessee to file declaration under Section 3 of the aforesaid Act in respect of tax arrears, interest charged, chargeable on the disputed tax and penalty levied on the disputed tax etc,.

39. As per Section 4 of the DTVSV Act, "declaration" referred to in Section 3 of the DTVSV Act, shall be filed by a declarant before the Designated Authority in such form and verified in the manner as

prescribed under the provisions of the DTVSV Act.

40. Upon filing the declaration as prescribed in Section 3 of DTVSV Act in accordance with the provisions of Section 4 of the DTVSV Act, any appeal pending before the Income Tax Appellate Tribunal or Commissioner of Income Tax (Appeals) in respect of "disputed income" or "disputed interest" or "disputed penalty" or "disputed fee" and "disputed tax" arrears shall be deemed to have been withdrawn from the date on which the certificate is issued by the Designated Authority as prescribed under Section 5(1) of the DTVSV Act.

41. The Petitioner had earlier filed the regular returns under Section 139(1) by declaring the taxable income of **Rs.24,52,550/-** on 01.10.2010 and **Rs.46,73,860/-** on 31.08.2015 respectively for the **Assessment Years 2010-2011 and 2015-2016**.

42. As far as **Assessment Year 2010-2011** is concerned, a revised return filed by the Petitioner on **22.08.2017** declaring the taxable income of **Rs.1,61,29,670/-** pursuant to Notice dated 18.07.2017 under Section

153A of the Act has been accepted.

43. As far as the **Assessment Year 2015-2016** is concerned, a revised return that was filed by the Petitioner on **29.08.2017** admitting an amount of **Rs.2,84,30,670/-** which included the income already showed by the Petitioner was enhanced to **Rs.2,96,73,860/-**.

44. In the appeal before the Commissioner of Income Tax (Appeals), the Petitioner has disputed the additions made pursuant to Notice dated 18.07.2017 issued under Section 153A of the Act.

45. The definition of "disputed tax" under Section 2(j) of the DTVSV Act is extracted hereunder:-

> *2(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, 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 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)...
(D)...
....
(F)....”

46. The expression **“disputed tax”** is given specific connotation under Section 2(j) of the DTVSV Act. The meaning and scope of the expression “disputed tax” cannot be limited and restricted as is sought to be interpreted by the Respondent. It has to read in the context as specified and intended under the provisions of the DTVSV Act.

47. It would also be relevant to refer to the expression **“disputed income”** under Section 2(g) of the DTVSV Act. As per the definition of “disputed income” in Section 2(g) of the DTVSV Act, “disputed income” means the whole or such measure of total income as is relatable to “disputed tax”. As per the definition of **“dispute”** under Rule 2(b) of the

DTVSV Rules, "dispute" means an appeal/writ petition or Special Leave Petition by the declarant before the appropriate forum.

48. A plain reading of the provisions of the DTVSV Act and the Rules made thereunder makes it clear that the merit and outcome of the appeal preferred by an assessee before the Commissioner of Income Tax (Appeals) is not a relevant consideration determining the "disputed tax" as defined in Section 2(j) of the DTVSV Act.

49. There is no dispute that additions to income chargeable were made pursuant to the returns filed by the Petitioner after issuance of Notice under Section 153A of the Act for the respective Assessment Years 2010-2011 and 2015-2016. The returns were scrutinized and Assessment orders dated 29.12.2017 were passed.

50. It is also not in dispute that appeals were pending before the Commissioner of Income Tax (Appeals) against the respective Assessment Orders dated 29.12.2017 for the Assessment Years 2010-2011 and 2015-2016 passed by the 2nd Respondent.

51. Therefore, in the present case, there exists a "dispute" as defined in Rule 2(b) of the DTVSV Rules. The Respondents have also not disputed the same. In such a scenario, the stand of the Respondent that the tax amount disputed in the Appeal is not "disputed tax" for purpose of the DTVSV Act cannot be considered.

52. The DTVSV Act and Rules made thereunder do not purport to analyse the outcome of the appeal or with regards to the details of the return filed by the Petitioner.

53. The Designated Authority is merely required to calculate the amount that is payable under the DTVSV Act after the declarations are accepted. All that the Designated Authority has to see is that the amount that was confirmed before the declaration and the appeal that was filed before the Appellate Authority.

54. Therefore, it would be incorrect on the part of the Designated Authority to state that no amount was payable by the Petitioner even if the appeal is rejected, as far as the **Assessment Year 2010-2011** is concerned.

55. Therefore, **W.P.No.12860 of 2021** deserves to be **allowed** and therefore the Designated Authority has to quantify the actual amount that has to be paid by the Petitioner for the **Assessment Year 2010-2011**.

56. As far as the Assessment year 2015-2016 is concerned, covered by W.P.No.12862 of 2021, the relief has been confined only to the amount of addition made in the Assessment order for a sum of Rs.12,43,170/- over and above **Rs.2,37,56,830/-** that was admitted by the Petitioner in the revised returns filed pursuant to the Notice issued under Section 153A of the Act.

57. Once an appeal has been filed, the assessment is put to Jeopardy. The consequence would be there shall be a refund of the amounts payable by the Petitioner, if the amount of tax paid is more than the amount

payable under the DTVSV Act. It has to be refunded back in terms of Section 7 of the DTVSV Act. Section 7 of the DTVSV Act reads as under:-

> *"7. **No refund of amount paid:** 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."*

58. This is also answered in the Board Circular vide Circular No.F.No.IT(A)/1/2020-TPL dated 04.03.2020 wherein it has been clarified as under:-

> "**Question No. 5** *What if the disputed demand including interest has been paid by the appellant while being in appeal?*
>
> **Answer:** Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. **If the amount of tax paid is more than amount payable under Vivad Se Vishwas, the appellant will be entitled to refund without interest under Section 244A of the Act."**

59. Therefore, **W.P.No.12862 of 2021** also deserves to be **allowed** with a direction to the Designated Authority to re-quantify the amount to be paid by the petitioner on the entire amount of **Rs.2,50,00,000/-** disputed by the Petitioner before the Commissioner of Income Tax (Appeals).

60. In the result, with the above directions;

(i) W.P.No.12860 of 2021 is allowed;

(ii) W.P.No.12862 of 2021is allowed;

(iii) No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

25.10.2024

Neutral Citation : Yes / No

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<u>To</u>:

1.The Principal Commissioner of Income Tax,
Chennai Central,
Chennai.

2.The Deputy Commissioner of Income Tax,
Central Circle 1(1),
No.46, M.G.Road,
Nungambakkam,
Chennai.

C.SARAVANAN, J.

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<u>W.P.Nos.12860 and 12862 of 2021</u>
<u>and</u>
<u>W.M.P.Nos.13661, 13663, 13666 and 13668 of 2021</u>

25.10.2024