OD-01

WPO/262/2025
THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Anadya Babyproducts
Versus
The Union of India & Ors.

Before:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 11th September 2025

Appearance:
Mr. Subash Agarwal, Advocate
Mr. Rajarshi Chatterjee, Advocate
Mrs. Suman Sahani, Advocate
for the petitioner

Mr. Soumen Bhattacharjee, Advocate
Mr. Ankan Das, Advocate
Ms. Sradhya Ghosh, Advocate
for the respondents

The Court: 1. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to accept the application filed by the petitioner under Direct Tax Vivad Se Vishwas Scheme, 2024 (In short “DTVSVS”) by noting and/or taking cognizance of the appeal filed by the petitioner before Commissioner of Income Tax (Appeals), online on 29th January 2016 or in the alternative to direct the appropriate authority to hear out the said appeal expeditiously.

2. Mr. Agarwal, learned advocate representing the petitioner would submit that being aggrieved with the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the said Act”) dated 31st December 2015, for the assessment year 2013-14, an appeal was filed in Form 35 before the Commissioner of

Income Tax (Appeals) on 29th January 2016. In support of such contention a computer generated e-filing acknowledgement issued by the Income Tax Department acknowledging the receipt of e-filing of appeal dated 29th January 2016 has been disclosed in the writ petition. It is also the petitioner's contention that the said appeal has not been disposed of on merit, though, in response to a grievance raised by the petitioner a response was issued by the Grievance Redressal Forum of the Income Tax Department that the status of the grievance was closed without resolution thereof. In the interregnum, however, the petitioner had applied under Rule 4 of the DTVSVS. In support of the aforesaid contention he has placed reliance on a judgment delivered by a Division Bench of this Court in the matter of *Principal Commissioner of Income Tax v. Aditya Saraf HUF* reported in [2023] 148 taxmann.com 101 (Calcutta).

3. When the aforesaid application was moved, by an order dated 22nd May 2025 the respondents were directed to take appropriate instruction in the matter.

4. Pursuant to the aforesaid, Mr. Bhattacharjee, learned advocate representing the Income Tax Department has placed before this Court a note sheet prepared by Principal Commissioner of Income Tax dated 23rd January 2025 and had submitted that according to the said note sheet, the appeal was not pending on 22nd July 2024 as the same was not probably filed. Upon noting such submission, this Court by an order dated 31st July 2025 was passed to direct as follows:

> *"1. Mr. Bhattacharjee, learned Advocate appearing on behalf of the department has placed before this Court a*

note sheet prepared in the form of report by PCIT-5, Kolkata dated 23rd January, 2025 and would submit that, according to the PCIT-5, Kolkata, the appeal was not pending on 22nd July, 2024, and was not probably filed.

2. *I, however, notice that the petitioner has disclosed an acknowledgement as regards the appeal being filed on 29th January, 2016. The findings arrived at by PCIT-5 cannot be considered since he has proceeded on the basis of probability without addressing the e-filing acknowledgement receipt. However, since Mr. Bhattacharjee would submit that the matter may require further consideration by the department, I am of the view that an appropriate affidavit be filed by the department disclosing status of the appeal, if any, on the basis of the acknowledgement receipt issued by the department. Appropriate clarification should also be provided by the department as regards the e-filing acknowledgement receipt which, in my view, is prima facie, proof of the appeal being filed by the petitioner in respect of the assessment year 2013-14.*
3. *Let this matter appear under the heading 'Court Applications under Art.226 (Returnable)' in the monthly list of September, 2025.*
4. *Note sheet prepared in the form of report by the PCIT-5, Kolkata filed by Mr. Bhattachrjee in Court today be taken on record."*

5. Pursuant to the aforesaid, an affidavit has been filed by the respondents affirmed by the respondent no.2, on 4th September 2025 which is taken on record. I find from the aforesaid affidavit that the matter has been scrutinised. The appellate authority has not found the

appeal from the Appeal Register in the Appeal Module of the ITBA application. Accordingly, on the basis thereof, it has been recorded that the status of pendency of the appeal could not be ascertained by the Income Tax Department. In the instant case, I find, from the aforesaid affidavit, that the respondents are not certain whether the appeal has been filed. The respondents also could not make any positive assertion to deny the acknowledgement issued by the Income Tax Department acknowledging, the receipt of the appeal in Form 35, dated 29th January 2016.

6. Having regard to the above, I find that since, the petitioner has been able to demonstrate an e-filing receipt to establish the factum of filing of the appeal, and since, the respondents are in no position to deny the same, the petitioner's appeal ought to be disposed of on merits. The status of the appeal cannot be treated as closed, since the respondents are unable to identify the same from the Appeal Register in the Appeal Module of the ITBA application. I find that the instant writ petition has been filed on 17th April 2025. However, during pendency of the writ petition the scheme had expired.

7. Ordinarily I would have directed the respondents to dispose of the appeal on merits by reconstructing the appeal records by taking assistance from the petitioner, however, having regard to the fact that the application has already been filed by the petitioner on 11th November 2024 during pendency of the DTVSVS, 2024, I am of the view that it would be prudent to direct the respondents to consider such application in accordance with law by treating the appeal from the assessment order

dated 31st December 2015 issued under section 143 of the said Act in respect of the assessment year 2013-14 to be pending. If for any reason the aforesaid application is disallowed, then the respondents shall be obliged to reconstruct the papers and dispose of the appeal in the manner provided hereinabove. If in the process as aforesaid any document is required by the appellate authority, the appellate authority shall call for the same, in which case, the petitioner shall be obliged to cooperate and make available the document to the appellate authority for early disposal of the appeal. The decision by the Income Tax Authority to decide the petitioner's application under DTVSVS shall be taken within a period of eight weeks from the date of communication of this order.

8. The writ petitioner is accordingly disposed of.

(RAJA BASU CHOWDHURY, J.)

R. Bose