



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.11.2024
Pronounced On	02.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.25404 of 2021
and W.M.P.No.26825 of 2021**

United Capital Partners India Pvt. Ltd.,
Represented by its Director, Mr.Jayaram V.Menon
K-27-6, Golden Windsor, 1st Avenue,
Anna Nagar East, Chennai – 600 102.

...Petitioner

Versus

Principle Commissioner of Income Tax,
Chennai – 3,
121 MG Road, Nungambakkam,
Chennai – 600 034.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent contained in its Form – 3 issued under Section 5(1) of the Direct Tax Vivad Se Vishvas Act, 2020 dated 14.06.2021 bearing acknowledgment number 367506730140621 and to quash the same as arbitrary, unjust and unfair and to consequently, direct the respondent to issue a revised Form 3 in terms of Section 5(1) of the Vivad Se Vishvas



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Scheme 2020, in favour of the petitioner and to grant time to the petitioner to complete the settlement of the assessment under the Direct Tax Vivad Se Vishwas Act, 2020 in accordance with law.

For Petitioner	:	Mr.Suhrith Parthasarathy
For Respondent	:	Mrs.S.Premalatha, Junior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged Form-3 issued by the respondent under Section 5(1) of the Direct Tax Vivad Se Vishwas Act, 2020 read with the Direct Tax Vivad Se Vishwas Rules, 2020.

2. The petitioner had suffered originally an Assessment Order under Section 143(3) of the Income Tax, 1961 on **27.12.2011**. The petitioner had filed an appeal before the Commissioner of Income Tax (Appeals)-III in **ITA.No.1405/2013-2014**.

3. The appeal was partly allowed on **14.02.2014**. Therefore, the petitioner took further steps by filing an appeal before the Income Tax Appellate Tribunal (ITAT) in **ITA.No.1058/Mds/2014** on **15.11.2020**. The Department had also filed an appeal in **ITA.No.1549/Mds/2014**.



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4. The Tribunal by its order dated **13.04.2016**, had remitted the case back to the Assessing Officer, which ultimately culminated in an Assessment Order dated **30.03.2017**.

5. The petitioner had filed further appeal before the Commissioner of Income Tax (Appeals)-11 in **ITA.No.15/2017-2018**. The Commissioner of Income Tax (Appeals)-11 by an order dated 15.11.2018, allowed the petitioner's appeal.

6. Aggrieved by the same, the Department filed a further appeal before the Income Tax Appellate Tribunal (for brevity, 'ITAT') in **ITA.No.161/Chny/2019**. Meanwhile, after the Commissioner of Income Tax (Appeals)-11 passed the order on **15.11.2018** in **ITA.No.15/2017-2018**, the Department purportedly refunded amounts to the petitioner on **25.02.2019**. Primarily, a sum of **Rs.40,00,000/-** was refunded to the petitioner that was paid by the petitioner as tax. Apart from the above, a sum of **Rs.15,47,040/-** was refunded towards the aforesaid sum of **Rs.40,00,000/-** with interest. Thus, in all, a sum of **Rs.55,47,040/-** was



refunded back to the petitioner. Meanwhile, the petitioner decided to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020 read with the Direct Tax Vivad Se Vishwas Rules, 2020 by filing Form-I on **29.12.2020**. The respondent had also issued Form-3 on **07.01.2021**.

7. It appears that there were certain mistakes in Form-I and therefore the petitioner was advised to file Revised Form-I which was also filed by the petitioner on **25.01.2021** pursuant to which, the Impugned Form-3 dated **14.06.2021** has been issued, wherein, the petitioner has been called upon to pay the following amount as detailed below:-

Sl. No.	Date	Balance amount payable/refundable after adjusting the amount already paid
1.	On or Before 30.06.2021	Rs.65,59,593/-
2.	After 30.06.2021	Rs.70,69,443/-

8. The case of the petitioner is that the total tax liability of the petitioner as per the respective Assessment Orders was only **Rs.1,03,37,420/-** and therefore, the petitioner was liable to pay only **50%** of the amount as per Section 3 of the Vivad Se Vishwas Act, 2020.



9. It is further submitted that the amount that was to be paid by the petitioner would be therefore only 50% of **Rs.1,03,37,420/-** i.e., **Rs.51,68,710/-** and not the amounts specified in the impugned Form-3 dated **14.06.2021**.

10. Learned counsel for the petitioner would rely on the decision of the Division Bench of the Bombay High Court in ***Mantelone Investment Limited Vs. Commissioner of Income Tax (International Taxation) & Ors.*** reported in **(2022) 440 ITR 111**. Specifically, the learned counsel would draw the attention of this Court to Paragraph No.11 of the said decision, wherein, it has been observed as under:-

11. Shri Vyas's reliance on Explanation to Section 7 of the Direct Tax Vivad se Vishwas Act, is misplaced inasmuch as the restriction on payment on interest under Section 244A of the Act is only when an assessee is eligible for a refund pursuant to making an application under the Direct Tax Vivad se Vishwas Act, i.e., when the tax paid by the assessee exceeds the amount payable under Section 3. In such a case, the assessee would be entitled to refund but without interest. In the case at hand, interest of Rs.42,72,210/- paid under Section 244A of the Act was not determined as payable under the Direct Tax Vivad se Vishwas Act, but was paid as per the assessment order passed for the assessment year which was more



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than 2 ½ years before the declaration under the Direct Tax Vivad se Vishwas Act, was filed by the petitioner. Therefore, the Explanation is not applicable to the case at hand. The petitioner has not asked for interest under Section 244A of the Act on the amount of refund claimed in Form 1. In the Explanation to Section 7 of the Direct Tax Vivad se Vishwas Act, the term specifically used is any amount paid “in respect of” tax arrear. The term “tax arrear”, is defined to mean aggregate amount of disputed tax and the term “disputed tax” is defined to mean the tax payable by the petitioner as if the appeal is decided against the petitioner. So, the Explanation only refers to the amount paid in respect of tax arrear which is refunded under the Direct Tax Vivad Se Vishwas Act, and not any other refund amount. This implies that the reference in which the restriction of interest under Section 244A of the Act is made is towards any excess payment of tax in respect of the tax arrears which is the disputed tax. Therefore, the Direct Tax Vivad se Vishwas Act, clearly envisages that no interest under Section 244A of the Act is payable on the amount of tax paid towards the disputed tax which is in excess of the amount determined payable as per Section 3 of the Direct Tax Vivad se Vishwas Act. The amount payable towards disputed tax will only arise post the assessment order is passed. In the case at hand, the petitioner has not made any payment post the assessment order, in fact, respondent No.2 has determined a refund to the petitioner in the revised assessment order after adjusting all the disputed tax. The refund determined by respondent No.2 in the assessment order is out of tax deducted at source and taxes paid prior to filing of the



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return of income and not on account of any amount paid towards tax arrear prior to applying under the Direct Tax Vivad se Vishwas Act, which has resulted in excess payment of the tax arrear (disputed tax) determined as per Section 3 of the Direct Tax Vivad se Vishwas Act. The interest on refund that was paid was on the undisputed part of the excess tax paid and not on the disputed tax.”

11. On the other hand, the learned Senior Standing Counsel for the respondent would submit that there is no error in the amount that has been demanded from the petitioner in the impugned Form-3 dated 14.06.2021.

12. In this connection, a reference is made to Paragraph No.19 of the counter affidavit, wherein, the total tax payable was **Rs.1,03,37,420/-** and the balance tax payable is given as Rs.65,59,593/- (Rupees Sixty Five Lakhs Fifty Nine Thousand Five Hundred and Ninety Three only).

13. Defending the stand of the Revenue Department, the learned counsel for the respondent drew the attention of this Court to Paragraph No.19 of the counter affidavit and submitted that a sum of Rs.65,59,593/- was payable by the petitioner under the Direct Tax Vivad Se Vishwas Act,



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14. In this connection, a reference is made to the following table :-

PAN : AAACU9457G

Acknowledgement Number : 367506733149621

FORM-3
[See rule 5]

FORM FOR CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 5 OF THE DIRECT TAX
VIVAD BY VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD BY VISHWAS RULES, 2020

PART A - General Information

Whereas Mr/Ms/Ms. UNITED CAPITAL PARTNERS INDIA PRIVATE LIMITED (hereinafter referred to as the declarant) having PAN/TAN AAACU9457G Address No. ... has filed a declaration under section 5 of the Act; Now, therefore, in exercise of the powers conferred by sub-section (1) of section 5 of the Act and after consideration of relevant material, the following amounts are hereby determined to be payable by the declarant towards full and final settlement of the tax arrears covered by the said declaration under the Act:

Details of order by which tax arrears determined from Form 1 part B							
1.	Assessment year/financial year						
2.	Whether search case?						
3.	Whether search case with disputed tax less than Rs. 5 crores in the assessment year? (Information not relevant for minor, which amount payable is to be computed)						
4.	Declarant's name	Declarant's address	Declarant's signature	Declarant's stamp	Declarant's date	Declarant's place	Declarant's mobile number
1	UNITED CAPITAL PARTNERS INDIA PRIVATE LIMITED	...	...	...	...	...	...

Details of pending appeal as per schedules A, B, C & D (attachable as per Page 1)

S.	Schedule No.	Appeal number	As per schedule A		As per schedule B		As per schedule C		As per schedule D	
			Assessment year	Amount payable under DTAA or DTAA	Assessment year	Amount payable under DTAA or DTAA	Assessment year	Amount payable under DTAA or DTAA	Assessment year	Amount payable under DTAA or DTAA
1	Schedule A	1612013	2017-18	5,00,000	2018-19	5,00,000	2019-20	5,00,000	2020-21	5,00,000

INFORMATION RELATED TO PAYMENTS AGAINST TAX ARREARS as per Part B(i) of Form 1

S.	HSR Code	Date of payment	Serial Number of Chalan	Amount	Month/Year
1	6760218	24-02-2020	10611	20,000	March/2020



1	6360218	31/03/2014	01397	500000	Mismatch
2	6360218	22/08/2013	01405	500000	Mismatch
3	6360218	22/08/2013	00812	500000	Mismatch
4	6360218	26/06/2013	01016	500000	Mismatch
5	6360218	26/06/2013	31858	1000000	Mismatch
6	6360218	10/02/2012	32733	500000	Mismatch
Refund reduced in assessment as per part (D/V) of Form 1				0	
Balance amount payable / refundable after adjusting amount already paid					
On or before 30.06.2021				5439593	
After 30.06.2021				5000000	
Remarks					

"The declarant is hereby affirmed to make the payment of sum payable, if any, as per Balance amount payable / refundable as per adjusting amount already paid as per the form."

In case of non-payment of amount payable as per the form, then the declaration under Form-1 shall be treated as void and shall be deemed never to have been made.

Certificate No. 367866728348621

Place: CHENNAI

Date: 14/06/2021

Note- Submission of DTVSV Form 4 online in e-filing portal mandatorily required.

Authorized Designated Authority: RADHA KAMAL PATHAK
Institution of Authorized authority: PCIT, Chennai 7



INCOME TAX DEPARTMENT

15. It is further submitted that the order of the Commissioner (Appeals), dated **15.11.2018** in **ITA.No.15/2017-18** was followed by giving effect to order dated **07.01.2019** bearing reference to **PAN:AAACU9457G/Corp.Cir.3(2)/2018-19**, wherein, a sum of **Rs.55,47,040/-** was refunded back to the petitioner as detailed below:-



Assessed income as per order u/s 143 (3) r.w.s 254 dated 30.03.2017	Rs.3,04,13,119/-
LESS: Relief given by CIT(A)-11 order as above	Rs.3,00,00,000/-
i) Unexplained Cash Deposits u/s 68 of Rs.3,00,00,000/-	
After giving effect to the above order, the Revised income as per this order	Rs.4,13,119/-
Gross Tax	Rs.1,23,936/-
Add:Surcharge	Nil
Add:Edu.Cess	Rs.3,718/-
Net Tax	Rs.1,27,654/-
Less : TDS	Rs.2,26,367/-
: Collections	Rs.40,00,000/-
Refundable	Rs.40,98,713/-
Add: Interest u/s 244A	Rs.14,18,331/-
Total Amount Refundable	Rs.55,47,040/-

16. It is submitted that the amount to be paid by the petitioner would include not only the tax payable on the disputed tax, but, also the interest which was paid under Section 244A of the Income Tax Act, 1961 to the petitioner pursuant to the order of the Commissioner (Appeals) *vide* order dated **15.11.2018** in ITA.No.15/2017-18 of the Deputy Commissioner of Income Tax in giving effect to the said order.

17. Thus, the short point for consideration in this writ petition is whether for the purpose of determining the “amount payable” by the



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petitioner under the Direct Tax Vivad Se Vishwas Act, 2020 would include the amount that was refunded back to the petitioner under Section 244A of the Income Tax Act, 1961 in terms of giving effect to the order dated **07.01.2019** bearing reference to PAN:AAACU9457G/Corp.Cir.3(2)/2018-19 of the Deputy Commissioner, pursuant to the aforesaid order in appeal dated **15.11.2018** in **ITA.No.15/2017-18 of the CIT (Appeals)**.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the documents filed in support of the present writ petition. I have also considered the decision of the Division Bench of the Bombay High Court referred to *supra*.

19. The view taken by the Division Bench of the Bombay High Court cannot be applied although it deals with the same issue. The petitioner is entitled to settle the dispute under Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, in respect of “**tax arrear**” as defined in Section 2(o) of the said Act on the “**disputed tax**” as defined in Section 2(1)(j) of the said Act. These are three categories in Section 3 of the Direct Tax Vivad Se



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Vishwas Act, 2020. They are as under:

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 the [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 dispute 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.
(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 132 of the Income-tax Act.	the aggregate of the amount of disputed tax and twenty-five per cent. 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 per cent. 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 per cent. of disputed interest or disputed penalty or disputed fee.	thirty per cent. of disputed interest or disputed penalty or disputed fee:



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20. These expressions as defined under the Direct Tax Vivad Se

Vishwas Act, 2020 are reproduced below:-

2(1)(j)	2(1)(o)
Disputed Tax	Tax Arrear
“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:— (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) ...	“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. Explanation.—For the removal of doubts, it is hereby clarified that the expression “tax arrear” shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income-tax Act.

21. As per Sl.(a) to Section 3 of the said Act, 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”**, the amount payable under the said Act on or before the 31st day of December, 2020 or such later date as may be notified is the amount of the **“disputed tax”**.

22. The amount determined was to be paid on or after the **1st day of December 2020** or such later date as may be notified or before such later date as may be notified in the said Act, the amount payable is the aggregate of the amount of **“disputed tax”** and 10% of the disputed tax, provided that where the 10% 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 the said Act .

23. As extracted above, the definition of the expression **“Disputed Tax”** in Section 2(1)(j) of the said Act will be the amount of tax that is payable by an assessee, if an appeal or writ petition or a special leave petition is pending was to be decided against the assessee. Therefore, the interest paid to the petitioner under Section 244-A of the Income Tax Act,



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1961 will be recoverable, if the appeal filed by the Income Tax Department before the Tribunal (ITAT) in ITA.No.161/Chny/2019 is decided against the petitioner.

24. In this case, if the Department's appeal before the Tribunal (ITAT) in ITA.No.161/Chny/2019 is accepted, the petitioner will not only be liable to pay the amount of differential tax but also the interest paid to the petitioner under Section 244-A of the Income Tax Act, 1961. Hence, there is no merit in the submission of the petitioner.

25. Therefore, this writ petition is liable to be dismissed. This writ petition thus stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

arb/nst/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order



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To
The Principle Commissioner of Income Tax,
Chennai – 3,
121 MG Road, Nungambakkam,
Chennai – 600 034.



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C.SARAVANAN, J.

arb/nst/mrr

**Pre-Delivery Order in
W.P.No.25404 of 2021**

02.01.2025