IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.36010 of 2024
and
W.M.P.Nos. 38900 & 38899 of 2024

Srinivasan Jayaprakasam .. Petitioner

vs

1.Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110001.

2.Union of India,
Rep. By Secretary to Government,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

3.Additional/Joint/Deputy
Assistant Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,Delhi.

4.The Income Tax Officer,
Ward 1(6),Salem
Tamil Nadu. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring "Section 89(1)(a) and Section 89(1)(j) of the Direct Tax Vivad Se Vishwas cheme (DTVSV) 2024 read with Query 9 contained in the Circular No.12 of 2024 dated 15.10.2024 to the extent of excluding cases where Taxpayer would have received orders but the time limit to file an appeal / special leave petition had not expired as on 22 July 2024" as unconstitutional, illegal and ultra vires the Constitution of India.

For Petitioner	:	Ms. G.Vardini Karthik
For Respondents	:	Dr.B.Ramaswamy Senior Standing Counsel for R1, R3, R4 Mr.AR.L.Sundaresan, Additional Solicitor-General assisted by Mr.K.Srinivasamurthy Senior Panel Counsel, for R2

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

This writ petition is closed on a happy note. We have captured the trajectory of the matter in earlier orders passed by this Court and we may make specific reference to our order dated 19.12.2024, which we extract below:-

> *"Heard Ms.Vardini Karthik, learned counsel for the petitioner and Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for Dr.B.Ramasamy, learned Senior Standing Counsel for R1, R3 and R4.*
>
> *2. The identical issue as raised before us has been raised before the Delhi High Court as well and by order dated 09.12.2024, the Delhi High Court has passed the following order:*
>
>> *1. The petitioner has filed the present petition challenging the constitutional validity of Chapter IV of The Finance (No.2) Act, 2024 – Direct Tax Vivad Se Vishwas Scheme, 2024. The petitioner is particularly aggrieved by Section 89(1)(a) of the said Act inasmuch as it has confined the meaning of the appellant to a person in whose case an appeal or a writ petition or a special leave petition has been filed by him or the Income Tax Authorities.*

2. According to the petitioner, the same does not take into account a person who intends to file an appeal and the time for filing the appeal has not expired. It is pointed out that this is in contrast with Section 2(1)(a) of the Direct Tax Vivad Se Vishwas Act, 2020. It is contended that the definition of the term 'Appellant' thus discriminates between a person who This is a digitally signed order. The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/12/2024 at 13:54:11 has filed an appeal before the specified date and a person who is in process of filing an appeal. Prima facie, we find it difficult to accept that differentiating between assessees on the basis whether they have filed an appeal before the specified date or thereafter could be dispositive of the assessee's right to claim benefit under the Direct Tax Vivad Se Vishwas Scheme, 2024. We also note that in respect of the Finance Act, 2020 the Central Board of Direct Taxes (hereafter CBDT) had issued a comprehensive circular to clarify that a case where an appeal is not filed but the time for filing the same has not expired would also be included in the scheme.

3. In the aforesaid circumstances, we consider it apposite to direct the CBDT to consider the anomaly pointed out by the petitioner in the present petition and to examine whether it would be apposite to issue a circular in the said regard. Since 31.12.2024 has been fixed as a cut off date for availing the maximum benefit, we request the CBDT to consider the present petition as a representation as expeditiously as possible, and preferably within a period of two weeks from date.

4. The writ petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

5. We clarify that if the grievance of the petitioner is not addressed, he is at liberty to apply afresh.

3. The period of two weeks as stipulated above expires on 23.12.2024. Mr.Sundaresan states that the matter is under active consideration. Circulars

> *have been issued in the interim period which did not touch upon this issue. Since the matter is stated to be under active consideration of the respondent, we only reiterate the directions issued by the Delhi High Court in W.P.(C)No.17014 of 2024 under order dated 09.12.2024.*
> *4. List on 27.12.2024 before the vacation Bench along with T.C.(A) No.212 of 2024. The urgency is on account of the expiry of the Scheme on 31.12.2024."*

2. Today, Ms. Vardini Karthik for the petitioner, Mr.AR.L.Sundaresan, learned Additional Solicitor-General assisted by Mr.K.Srinivasamurthy, learned Senior Panel Counsel for R2 and Dr.B.Ramaswamy, learned Senior Standing Counsel for R1, R3 & R4, would submit that, an Order, has been issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes on 20.01.2025, accepting the plea of the petitioner, as extracted below:-

> *"S.O. 348(E) – WHEREAS, the Direct Tax Vivad Se Vishwas Scheme,2024 was introduced vide the Finance (No.2) Act, 2024 (15 of 2024) and came into force with effect from the 1st day of October, 2024;*
>
> *WHEREAS, while implementing the said Scheme difficulties have arisen in situations where,—*
>
> *(a) an order in case of a person had been passed on or before the specified date i.e. the 22nd day of July, 2024;*
> *(b) the time for filing an appeal in respect of such order was available as on the said date;*
> *(c) appeal in respect of such order was filed after the said date within the stipulated time as applicable for filing of such appeal; and*
> *(d) aforesaid appeal is filed without any application for condonation of delay;*
>
> *WHEREAS, section 98 of the said Finance (No.2)*

Act, 2024 provides that if any difficulty arises in giving effect to the provisions of the Scheme, the Central Government may, by Order, not inconsistent with the provisions of the Scheme, remove the difficulty;

NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of section 98 of the Finance (No.2) Act, 2024, the Central Government hereby makes the following Order to remove the difficulty, namely: —

(i) in the case of such a person, aforesaid appeal shall be considered as pending as on the 22nd day of July, 2024 for the purposes of the said Scheme;
(ii) such a person shall be considered as an appellant for the purposes of the said Scheme;
(iii) in such a case, disputed tax shall be calculated on the basis of such appeal; and
(iv) the provisions of the said Scheme and the rules framed thereunder shall apply accordingly in such a case.

[No. 8/2025/ F. No. 370153/01/2025-TPL]
PRADEEP SHARMA, Dy. Secy., Tax Policy & Legislative Division"

3. The position now is that the benefit of the Vivad Se Vishwas Scheme is available even to those assessees who are aggrieved by virtue of an order passed by the Income-Tax Authorities and intend to challenge the same by way of appeal and in whose cases, the time for filing appeal has not expired. Since the prayer of the petitioner stands achieved, this writ petition is closed with no further order as to costs. Connected miscellaneous miscellaneous are closed.

[A.S.M., J] [G.A.M., J]
21.01.2025

Index:Yes
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

To

1.The Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110001.

2.The Secretary to Government,
Union of India,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

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Assistant Commissioner of Income Tax/
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