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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 06.05.2025+ **W.P.(C) 3866/2025 & CM APPL. 25729/2025**

IE VENTURE FUND I

.....Petitioner

Through: Mr Sachit Jolly, Sr Advocate with Ms
Mansha Anand, Mr Aditya Rathore,
Mr Abhyudaya Shankar Bajpai and
Mr Sohum Dua, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME
TAX DELHI 4 & ANR.

.....Respondents

Through: Mr Abhishek Maratha, SSC, Mr
Apoorv Agarwal, Mr Parth Samwal,
JSCs, Ms Nupur Sharma, Mr Gaurav
Singh, Ms Muskaan Goel, Mr
Bhanukaran Singh Jodha and Mr
Himanshu Gaur, Advocates for
Revenue.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)****INTRODUCTION**

1. The petitioner has filed the present petition, *inter alia*, impugning the communications whereby the petitioner's application under the Direct Tax Vivad Se Vishwas Scheme, 2024 [**DTVSV Scheme**] enacted under Chapter



4 of the Finance (No.2) Act, 2024 [**FA2 Act**], was rejected on the premise that the petitioner's case did not fall under Rule 9 of the Direct Tax *Vivad Se Vishwas* Rules, 2024 [**DTVSV Rules**].

2. Mr. Maratha, the learned counsel appearing for the Revenue contended that in terms of Rule 9 of the DTVSV Rules, the dispute in relation to reduction in loss to be carried forward under the Act, could be computed in two ways; first option would be to calculate the disputed tax payable pertaining to the unabsorbed loss, ignoring the reduction and the second option would be to carry forward the reduced amount of loss. The DTVSV Rules also indicate that the exercise of the option is up to the declarant.

3. He submits that in the present case, the petitioner cannot opt for the second option as he has already filed the returns for the subsequent years where the loss has not been carried forward. Therefore, in any event, the petitioner could not claim carry forward of losses. He submits that in this case, the petitioner would necessarily have to pay the entire tax, as computed on the amount of carry forward, which is being denied to the petitioner. Since the said tax was not paid alongwith the declaration, the petitioner's dispute could not be admissible for the benefit of the DTVSV Scheme.

4. Mr Jolly, the learned Senior Counsel appearing for the petitioner has stoutly contested the submissions made on behalf of the Revenue. He submits that the options, as specified in Rule 9 of the DTVSV Rules, cannot



be examined on the basis of the actions taken in the subsequent assessment years. He submits that the fact that the petitioner may not claim carry forward of loss for the next year does not preclude the petitioner from exercising his options under the DTVSV Rules. He submits that in any event, the benefit of carry forward of loss in the future years is contingent upon an assessee complying with further conditions necessary for claiming carry forward of such losses. Exercising an option under the DTVSV Scheme does not necessarily guarantee the grant of benefit of carry forward if the assessee does not comply with further conditions. He submits that since the petitioner has not complied with the conditions of claiming the loss in the return filed in the years subsequent to the relevant assessment year, the same would result in the denial of benefit of carry forward to the assessee. But this would be for the reason of not claiming the carry forward loss and not because the petitioner was not entitled to, under the DTVSV Rules.

5. In view of the above, the limited question that is required to be addressed in the present case is whether the petitioner's declaration under the DTVSV Scheme is to be rejected on the ground that the petitioner has not claimed the carry forward of loss by filing the appropriate return in the assessment year following the relevant assessment year [AY 2023-24].

PREFATORY FACTS

6. Briefly stated, the necessary facts relevant to address the controversy in the present petition are as under.



7. The petitioner had filed its return of income for the AY 2022-23, under Section 139 of the Income Tax Act, 1961 [**the Act**] on 29.07.2022, declaring a loss of ₹17,68,31,441/-. The said amount was also reflected in the return as a business loss to be carried forward by the petitioner. However, according to the petitioner, it did not intend to claim any such loss.

8. The petitioner's return was picked up for scrutiny and a notice dated 01.06.2023 was issued under Section 143(2) of the Act. The petitioner was thereafter directed to furnish relevant evidence in support of its return on or before 16.06.2023. The petitioner was also required to provide further details. The petitioner responded to the said notice claiming that it was not carrying on any business or profession but was engaged in 'investment activities' and, therefore, was not required to maintain any books of account under Section 44AA of the Act.

9. Thereafter, the AO issued a show cause notice dated 15.03.2024 calling upon the petitioner to show cause why an amount of ₹17,68,47,978/-, which was paid to an entity named Smart Web Internet Services Limited should not be disallowed and added to the petitioner's income.

10. The record indicates that the petitioner readily accepted the said addition. It claimed that it had not in fact claimed any expenditure but the return had auto populated the said expense.

11. Thereafter, the AO passed an assessment order dated 21.03.2024



disallowing the said expenditure and consequently assessing the petitioner's income chargeable to tax at ₹16,537/-. The operative part of the assessment order setting out the computation of the petitioner's income for AY 2022-23 is set out below:

“Computation of Assessed Income:

Particulars		Amount in rupees
Return Income of the assessee	:	(17,68,31,441)
Addition	:	17,68,47,978/-
Assessed Income	:	16,537/-

Assessed under section 143(3) r. w. s. 144B of the Income-tax Act. Penalty proceeding u/s 270A is initiated separately as assessee has under reporting of income in consequence of misreporting. Computation of income and demand notice u/s 156 of the Act is attached.”

12. It is apparent from the above that whereas the return filed by the petitioner had reflected a loss of ₹17,68,31,441/- and also reflected the same as a loss to be carried forward, the additions made by the AO, reduced the said carried forward loss to the full extent and has further assessed the income at an amount of ₹16,537/-. The AO also directed the issuance of proceedings for imposition of penalty.

13. The petitioner, being aggrieved by the impugned order, filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] on 20.04.2024. In the meanwhile, the AO also commenced penalty proceedings by issuance of notice dated 21.03.2024 under Section 274 read with Section 270A of the Act.



14. The Parliament enacted the **FA2 Act**, *inter alia*, embodying the DTVSV Scheme under Chapter 4 of the said Act, which came into effect from 01.10.2024.

15. The petitioner, being desirous of settlement of disputes under the DTVSV Scheme, filed a declaration in terms of Section 91 of the FA2 Act in the prescribed form [**Form 1**]. The same was apparently rejected on 28.10.2024 and thereafter, on 27.12.2024. The said orders are not on record. However, the rejection remarks, as uploaded on the portal on 17.02.2025, reflect that the petitioner's declaration was rejected on 17.02.2025 and also refers to the earlier rejections dated 28.10.2024 and 27.12.2024.

REASONS AND CONCLUSION

16. At the outset, it will be relevant to refer to the rejection order [rejection remarks as uploaded on the portal] whereby the petitioner was informed that its application for settlement under the DTVSV Scheme was rejected. The said order is reproduced below:

“Rejection remarks:

Form-1 of the VsVs application of the assessee was earlier rejected on 28.10.204 and 27.12.2024 by the Ld. Designation Authority with the observation that the case of the assessee is not falling under Rule-9 of DTVSVS, 2024. Therefore, there is no change in the facts and law with regard to the current declaration filed by the assessee. Hence, the application filed is rejected.

Rejection date :
17-Feb-2025”



17. As is apparent from the above, the petitioner's application was rejected on the ground that it did not fall under Rule 9 of the DTVSV Rules.

18. Before proceeding to examine the same, it is thus necessary to refer to Rule 9 of the DTVSV Rules. The said Rule is set out below:

“9. Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced.- (1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, 1961 (43 of 1961), the declarant shall have an option to -

(i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or

(ii) carry forward the reduced amount of loss or unabsorbed depreciation.

(2) Where the declarant exercises the option as provided in clause (ii) of sub-rule (I), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:

Provided that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation:

Provided further that in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (I), one-half of the amount by which loss or un absorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.”

19. A plain reading of Rule 9 of the DTVSV Rules indicates that it relates



to the manner of computing disputed tax in cases where the dispute is on account of a loss or unabsorbed depreciation as claimed by the Assessee being reduced. In such cases, the declarant is required to select one of the two options for settlement of the disputes. As is apparent, the first option [as specified in Clause (i) of Rule 9(1) of the DTVSV Rules] is for an Assessee to compute the disputed tax attributable to the extent that the loss has been reduced. In this case, the declarant would be entitled to carry forward the loss/depreciation as claimed. The second option available to a declarant is to accept the reduction in the unabsorbed loss or depreciation and confine the carry forward loss or depreciation to the amount as reduced. This essentially implies that the declarant accepts the reduction of loss as assessed by the AO.

20. It is apparent from Sub-rule (2) of Rule 9 that the option as specified in Rule 9(1) of the DTVSV Rules is required to be exercised by the declarant and cannot be imposed by the AO. In cases where the declarant exercises second option he would be liable to pay the tax including surcharge and cess along with the interest, if any, as a consequence for carrying forward the reduced amount of loss/unabsorbed depreciation.

21. Given that the scope of Rule 9 is to provide a manner for ascertaining the disputed tax, we are unable to readily accept that the said Rule would be dispositive of whether the dispute is covered under the DTVSV Scheme.

22. It is settled law that where the machinery provisions for computing the tax are inapplicable, the same would indicate that the event is outside the



net of charge [See reference *CIT v. B.C. Sriviniash Shetty*]. This appears to be the principle that is applied by the designated authority in the present case. Since the designated authority found that Rule 9(1) is not applicable, it has concluded that the petitioner's dispute would fall outside the scope of DTVSV Scheme enacted by virtue of FA2 Act.

23. Before proceeding to address the question whether Rule 9 is inapplicable, it would be relevant to examine the scope of the DTVSV Scheme under the FA2 Act.

24. It is relevant to refer to the definition of the term 'appellant' and 'disputed tax' as set out in Clause (a) and (j) of sub-Section (1) of Section 89 respectively. The said clauses are set out below:

"89. (1) In this Scheme, unless the context otherwise requires,-

(a) "appellant" means-

(i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date; or

(ii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act and the Dispute Resolution Panel has not issued any direction on or before the specified date; or

(iii) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not completed the assessment under sub-section (13) of that section on or before the specified date; or



(iv) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date.

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(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 Chapter referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 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 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;

(C) 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 completed the assessment 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 in pursuance of the said assessment under sub-section (13) thereof;

(D) 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 the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115JD 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.”

[emphasis added]

25. It is clear from the above that the petitioner falls within the definition of the term ‘appellant’ within the meaning of sub-Clause (i) of Clause (a) of Section 89(1) of the FA2 Act, as the petitioner has filed the appeal against the assessment order before the CIT(A) and, that appeal is pending.

26. The controversy essentially relates to whether the dispute falls within the meaning of the term ‘disputed tax.’ The learned counsel for the parties are *ad idem* that the said question is required to be considered by referring to the proviso to Clause (j) of Section 89(1) of the FA2 Act since in the present case the dispute relates to the reduction of a loss. The said proviso further explains that in cases falling under the proviso ‘the appellant’ would have an option to either include the amount of tax relating to the loss, which is in dispute or to carry forward the reduced loss in the manner as prescribed.

27. It is also relevant to refer to the term ‘tax arrears’ as defined in Clause (o) of Section 89(1) of the FA2 Act, which reads as under:

“(o) “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.”

28. We may also refer to Section 96 of the FA2 Act, which sets out the circumstances that are not covered under the DTVSV Scheme. Section 96 of the FA2 Act is set out below:

“96. The provisions of this Scheme shall not apply—

(a) in respect of tax arrear,—

(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 147 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act;

(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the date of filing of declaration:

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory



Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8 read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Corruption Act, 1988, the Prevention of Money-laundering Act, 2002, has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an income-tax authority;

(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the date of filing of declaration.”

29. It is clear from the above that in the present case the petitioner does



not fall within the exclusionary provisions of Section 96 of the FA2 Act. Thus, it would be difficult for this court to accept that the dispute which is pending is incapable of settlement under the provisions of the DTVSV Scheme.

30. There is no cavil that on the plain reading of the provisions of the FA2 Act embodying the DTVSV Scheme, the subject dispute falls within its scope. As noted hereinbefore, the Revenue's case that the dispute is incapable of settlement under the DTVSV Scheme rests on its reading of Rule 9 of the DTVSV Rules coupled with the fact that the petitioner has not claimed carry forward loss in its return for the subsequent assessment year.

31. It is necessary to bear in mind that the DTVSV Rules have been framed under Section 99 of the FA2 Act for carrying out the provisions of the DTVSV Scheme. Clause (a) of Section 99(2) of the FA2 is relevant and is set out below:

“(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) determination of disputed tax including the manner of set-off in respect of brought forward or carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act.”

32. Thus, Rule 9 has been framed in exercise of the aforesaid powers solely for the purposes of providing the manner for computing the disputed



tax. The import of Rule 9 neither is nor can be construed to control or curtail scope of the main enactment.

33. In the facts of the present case the petitioner's application has been rejected solely on the ground that it has, in fact, not claimed carry forward of loss in the subsequent assessment year, and therefore, none of the options as set out in Rule 9(1) are applicable. This reasoning is erroneous. The fact that the petitioner had not claimed carry forward loss in his return for the subsequent assessment year [AY 23-24] does not preclude it from settlement of its dispute under the DTVSV Scheme for AY 2022-23. The only implication of not claiming a carry forward loss in the next assessment year is that the petitioner would not get the said benefit of the carry forward of loss in the assessment of that year. In any event, benefit of carry forward of losses from previous assessment year is contingent on the Assessee complying with the requisite conditions. Thus, notwithstanding that an Assessee may be entitled to carry forward losses relatable to prior assessment years, an assessee would not be granted the benefit if it does not specifically claim the same in its return. This does not detract from the fact that the assessee could claim a loss in the prior assessment year, which it is entitled to carry forward.

34. There is a distinction between an assessee being entitled to a benefit and the assessee claiming the same. The question of whether a dispute relating to a particular assessment year can be settled, must be considered as confined to the issues relating to that assessment year. The determination of the same cannot be made contingent on the assessee's action in the subsequent assessment years. The approach of the designated authority to eliminate the applicability of options available to the assessee under Rule



9(1) of the DTVSV Rules on the basis of an action of the assessee taken for AY 2023-24 is erroneous. Thus, under the second option [clause (ii) of Rule 9(1) of DTVSV Rules], the Assessee would be entitled to carry forward NIL losses as the entire carry forward loss had been reduced by the AO.

35. The fact that the AO had in fact not claimed any carry forward of loss in the next assessment year would not be destructive of the petitioner's right to exercise its option in terms of Rule 9(1) of the DTVSV Rules.

36. In view of the above, the present petition is allowed and the impugned rejection order is set aside. The designated authority is directed to process the petitioner's application in accordance with the DTVSV Scheme and the DTVSV Rules bearing in mind this order.

37. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 06, 2025/tr

Click here to check corrigendum, if any