



2025:DHC:2958-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 23.04.2025

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W.P.(C) 5132/2025 and CM APPL. 23411/2025

DOMINO PRINTING SCIENCES PLC

.....Petitioner

Through: Mr Vishal Kalra with Mr S.S. Tomar,
Mr Ankit Sahni and Mr Anil Kumar,
Advocates.

versus

THE COMMISSIONER OF INCOME TAX, (INTERNATIONAL-
TAX) -2, NEW DELHI

.....Respondent

Through: Mr. Gaurav Gupta, Mr. Shivendra
Singh, Mr. Yojit Pareek, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. Issue notice. Mr Gupta, the learned counsel appearing on behalf of the Revenue accepts notice.
2. With the consent of the learned counsel for the parties, the present petition was taken up for final hearing.
3. The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the decision of the respondent [Designated Authority] to reject the petitioner's declaration made in the prescribed form (Form 1) under the Direct Tax Vivad Se Vishwas Scheme, 2024 [DTVSV Scheme]. The petitioner, *inter alia*, prays as under:



- “a) issue a writ of and / or order and / or directions in the nature of mandamus directing the Respondent - Designated Authority to accept the Form -1 filed by the Petitioner for the Assessment Year 2017-18 and ;
- b) issue a writ of and / or order and / or directions in the nature of mandamus directing the Respondent - Designated Authority to issue Form - 2 for the Assessment Year 2017-18.”

Prefatory facts

4. The petitioner is a company incorporated under the laws of the United Kingdom and is engaged in the business of manufacture and sale of coding and marking equipments; manufacture and sale of consumables; sale of spares; and rendering of after sales services. The petitioner had incorporated a company in India named Domino Printech India Pvt. Ltd. [**Domino India**] on 16.05.1996 under the provisions of the Companies Act, 1956. Domino India was also engaged in the similar business that was carried out by the petitioner.
5. Domino India had issued 40,80,000 equity shares. The entire capital was subscribed by the petitioner – 40,79,998 (Forty Lacs Seventy-nine Thousand Nine Hundred and Ninety-eight) equity shares were held by the petitioner in its name and the balance 2 (Two) equity shares were held by Domino U.K. Ltd. as a nominee of the petitioner.
6. On 31.01.2012, the petitioner filed an application with the Foreign Investment Promotion Board [**FIPB**] to obtain a requisite approval for conversion of Domino India, a private limited company, to Limited Liability Partnership [**LLP**] in accordance with the Indian Foreign Direct Investment Policy. The FIPB granted its approval on 10.05.2012 subject to certain conditions. The two shares, which were held by Domino U.K. Ltd. in



Domino India were transferred to resident Indians – one share each – who were to act as designated partners of the proposed LLP.

7. Thereafter, on 28.11.2016, a certificate of registration was granted to Domino Printech India LLP [**Domino LLP**] on conversion of Domino India to an LLP under the Limited Liability Partnership Act, 2008 [**LLP Act**].

8. The petitioner's dispute with the tax authorities relates to chargeability of capital gains in the hands of the shareholders of Domino India on account of the conversion of the equity shares of Domino India into partnership interest in Domino LLP constituted under the LLP Act.

9. In the aforesaid context, the petitioner filed an application under Section 245Q(1) of the Income Tax Act, 1961 [**the Act**] before the Authority for Advance Ruling [**AAR**] on 01.03.2012 seeking an advance ruling in respect of chargeability of tax on capital gains arising from conversion of Domino India to an LLP. According to the petitioner, the said conversion did not give rise to any capital gains as it continued to hold the asset *albeit* in the different form.

10. The petitioner's application for a favourable ruling was rejected by the AAR by an order dated 23.08.2019 rendered under Section 245R(4) of the Act. Aggrieved by the said decision, the petitioner challenged the same by filing a writ petition being W.P.(C) 1677 of 2020 captioned **Domino Printing Sciences Plc. V. Commissioner of Income Tax (Intl. Taxation) – 2 & Ors.** The said petition is pending before this court.

11. The petitioner received a notice under Section 133(6) of the Act. The petitioner being desirous to avoid an additional exposure to interest liability, filed an application being C.M. No.34098 of 2020 in W.P.(C) 1677 of 2020.



12. On 13.01.2021, the Assessing Officer [AO] issued a notice under Section 148 of the Act in respect of Assessment Year [AY] 2017-18, *inter alia*, calling upon the petitioner to file its return of income for the relevant assessment year.

13. Thereafter, on 30.01.2021, the petitioner voluntarily deposited a sum of ₹47,11,15,609/- with the Income Tax Authority under protest and without prejudice to its contentions that no tax was payable on account of supposed capital gains arising from conversion of equity shares of Domino India to a partnership interest in Domino LLP.

14. In compliance with the notice dated 13.01.2021 issued under Section 148 of the Act, the petitioner filed its return of income for AY 2017-18 on 31.01.2021.

15. The proceedings initiated pursuant to the notice dated 13.01.2021 issued under Section 148 of the Act culminated in an assessment order dated 23.05.2022 passed by the AO under Section 147 of the Act read with Section 144C(3) of the Act. The AO assessed the petitioner's income chargeable to tax as capital gains on account of conversion of equity shares of Domino India into partnership interest in Domino LLP, at ₹2,35,46,65,609/-.

16. Aggrieved by the said assessment order, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] which is pending adjudication.

17. The Parliament enacted the DTVSV Scheme in terms of Chapter IV of the Finance (No.2) Act, 2024.



18. The petitioner being desirous of availing the benefit of the DTVSV Scheme filed the requisite declaration in the prescribed form (Form No.1) on 23.12.2024 for settlement of dispute, which was pending before the CIT(A). The petitioner also duly disclosed the details of the appeal as well as the quantum of disputed tax.

19. The petitioner states that thereafter its representative held a meeting with the Designated Authority. During the course of the said meeting the petitioner was informed of the objections to the effect that the dispute relating to the appeal before CIT(A) could not be settled during the pendency of the writ petition [being W.P.(C) 1677 of 2020].

20. Thereafter, on 04.02.2025, the petitioner filed a representation before the Designated Authority contending that although the writ petition preferred by the petitioner before this court was pending, the total income and tax was assessed by the AO in terms of the assessment order dated 23.05.2022, which was the subject matter of challenge before the CIT(A). Thus, the petitioner had reported the dispute to be settled as the appeal that was pending before the CIT(A) in its declaration. The petitioner further abundantly clarified that the petitioner would withdraw its writ petition as well as its appeal before the CIT(A) immediately upon the Designated Authority issuing a certificate under Section 92(1) of the Finance (No.2) Act, 2024 and furnishing the requisite details in prescribed form (Form 3).

21. On 07.02.2025, the petitioner filed a revised declaration in the prescribed form (Form-1) also mentioning W.P.(C) 1677 of 2020.

22. The filing of the revised declaration was followed by the petitioner making a representation dated 08.02.2025 along with an affidavit dated



08.02.2025, *inter alia*, affirming that it would withdraw the writ petition pending before this court as well as the appeal pending before the CIT(A).

23. On 19.02.2025, the petitioner also filed a representation before the Central Board of Direct Taxes [CBDT] seeking an appropriate clarification in order that the petitioner's declaration could be accepted by the Designated Authority.

24. The Designated Authority rejected the petitioner's declaration and uploaded the reasons for the same on 20.02.2025. The same has led the petitioner to file the present petition.

Rival Contentions

25. The learned counsel for the petitioner contends that the non-disclosure of the details of the pending writ petition before this court was neither essential nor material. He submitted that the writ petition would have been rendered infructuous on settlement of the appeal, which was pending before the learned CIT(A). Additionally, the petitioner had also furnished an undertaking that it would waive all rights whether indirect or direct to pursue any remedy. It was further contended that the prescribed Form 1 did not permit the declarant to refer two separate disputes, and therefore, once the petitioner had filled in the column "whether appeal/objection/revision/writ/SLP" by mentioning 'appeal' and the next column captioned "appellate forum JCIT(A)/CIT(A)/DRP/CIT/PCIT/ITAT /HC/SC" by referring to 'CIT(A)', the online form would not accept any other entry. Thus, in the revised declaration (Form no.1), the petitioner had mentioned the details of writ petition in scheduled column. In the alternative, he submitted that the dispute pending before this court is



considered as a separate dispute by the Designated Authority. The petitioner was not precluded from settling the dispute confined to the appeal pending before CIT(A) as the petitioner is entitled to select the dispute, which it desires to settle.

26. Mr Gupta, the learned counsel appearing for the Revenue contended that initial declaration made by the petitioner by filing Form No. 1 was clearly defective and suffered from the vice of non-disclosure. He also referred to Section 90 of the Finance (No.2) Act, 2024, which mandated the declarant to make a full and true disclosure. Thus, the decision of the Designated Authority to reject the petitioner's declaration could not be faulted. He also submitted that the real dispute is regarding the quantum of tax liability that the petitioner is required to pay. He submitted that the date of the declaration is required to be considered as 07.02.2025 and thus, the petitioner was required to pay 110% of the disputed tax as against 100% that would be payable if the declaration was made before 31.12.2024 (extended to 31.01.2025).

Grounds for rejection

27. At this stage, it is relevant to refer to the reasons for which the petitioner's declaration was rejected. Although no formal order rejecting the petitioner's declaration has been communicated separately, the fact that the petitioner's declaration was rejected and the reasons for the rejection were disclosed as rejection remarks, which were uploaded on the portal on 20.02.2025. We consider it apposite to set out the remarks, which articulate the reasons for rejecting the petitioner's declaration under the DTVSV Scheme. The same are set out below:



“Rejection remarks:

1. The Hon'ble Authority for Advance Rulings (AAR) passed an order on 23.08.2019 regarding the taxability of the transaction involving the conversion of shareholding in an Indian company into partnership interest in an Indian LLP. It was held that capital gains arising on this transaction for the relevant year is taxable in the hands of assessee; however, the quantum of total income was not determined. The assessee disputed the decision and filed a writ petition (W.P. (C) No. 1677/2020) before the Hon'ble HC, which is still pending.

2. For AY 2017-18, the AO completed the proceedings u/s 147 r.w.s 143(3) on 23.05.2022, making an addition of Rs.2,35,46,65,609/- under LTCG. The assessee filed an appeal before the Ld. CIT(A), which is pending.

3. The assessee opted for DTVSV 2024, and filed Form-1. Upon verification, it was observed that the assessee did not disclose the details pertaining to the pending writ petition in Form-1. There was hence incorrect disclosure of information regard pending appeals in Form-1. As per section 91(5) of the DTVSV Act, a declaration shall be deemed invalid if any material particular furnished in the declaration is found to be false at any stage.

4. When this incorrect disclosure was reported by the AO in his report dated 31.01.2025 addressed to this office, the assessee filed letter dated 04.02.2025 stating that it would withdraw the writ petition upon issuance of Form-2 even though it was not declared in Form-1. Thereafter, the assessee filed a revised Form-1 on 07.02.2025 and also filed letter dated 08.02.2025 and email dated 19.02.2025. In the revised Form-1, the details regarding writ petition were declared.

5. The assessee submissions and revised Form-1 are carefully considered. As per CBDT Circular No. 19/2024 (FAQ no. 50) dated 16.12.2024, the amount payable is linked to the date of filing the declaration. Circular No. 20/2024 dated 30.12.2024 extended the due date for filing declarations till 31.01.2025. Since the assessee's revised Form-1 was filed on 07.02.2025, after the due date, the applicable tax rate should be 110% of the



disputed tax. The assessee, however, has not taken into consideration the additional 10% tax payable in its revised Form-1. Given that the original Form-1 was deemed invalid and that the revised Form-1 is effectively a fresh application, the assessee is liable to pay 110% of disputed tax. In the absence of declaration of correct tax payable, the revised Form-1 is rejected.

6. While the circulars under DTVSV 2024 do not address the eligibility of cases pending before the AAR or writs challenging AAR orders, However Circular No. 9/2020 dated 22.04.2020 (FAQ no.3) under the previous DTVSV 2020 scheme clarified that. The scheme is not available for disputes pending before the AAR. If an AAR order determines total income and a writ is pending in the High Court, the appellant is eligible to apply. However, if the AAR order does not determine total income, the case is ineligible under the scheme.

7. Since the scheme i.e. DTVSV 2020 and 2024 are broadly similar in features and goals, the guidelines of DTVSV 2020 are applicable in the present facts and circumstances. In the present case, Hon'ble AAR did not determine total income but only held that Capital Gain is chargeable to tax in India. Further, the assessment order/CIT(A) order is subject to the decision of Hon'ble HC in writ petition. Thus, the order of Hon'ble AAR is central to the whole issue. Since total income was not determined by the AAR and writ is pending before Hon'ble HC, the assessee is hence ineligible for DTVSV 2024. This understanding is also strengthened by circular no. 12 of 2024 dated 15.10.2024, FAQ no. 26 as per which if the income is yet to be determined, then the taxpayer is not eligible for the scheme.

8. In view of the above, the revised Form-1 is hereby rejected.

Rejection date:
20-Feb-2025”

Reasons and Conclusion

28. A plain reading of the rejection remarks as uploaded on the portal indicate that the petitioner's declaration made in Form-1 filed on 23.12.2024



had been disregarded as it did not refer to the pending writ petition. The declaration made by filing a revised Form-1 on 07.02.2025 is rejected for essentially two reasons. First, that the petitioner had not taken into account that the amount payable would be 110% of the disputed tax. And second, that the AAR had not determined the income arising out of capital gains, which is chargeable to tax; therefore, the dispute stemming from the decision of the AAR was not covered by the DTVSV Scheme.

29. Before proceeding further, it would be relevant to refer to Section 91 of the Finance (No.2) Act, 2024, the same is set out below:

“91. (1) The declaration referred to in section 90 shall be filed by the declarant before the designated authority in such form and verified in such manner, as may be prescribed.

(2) Upon filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals) or Joint Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear, shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 92 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 92 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of that section.

(4) Without prejudice to the provisions of sub-section (2) and sub-section (3), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force and the undertaking shall be made in such form and manner, as may be prescribed.



(5) The declaration under sub-section (1) shall be deemed not to have been made if,—

(a) any material particular furnished in the declaration is found to be false at any stage; or

(b) the declarant violates any of the conditions referred to in this Scheme; or

(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (4),

and in such cases, all the proceedings and claims which were withdrawn under this section and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(6) No appellate forum shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 92 by the designated authority or in respect of payment of sum determined under that section.”

30. Clause (a) of Sub-section (5) of Section 91 of the Finance (No.2) Act 2024, provides for a legal fiction whereby the declaration made would be deemed not to be made if any material particulars furnished in the declaration is found to be false at any stage. In this case, there is no allegation that material particulars mentioned by the petitioner in its declaration was false. The allegation against the petitioner is that it did not disclose the pendency of the writ petition before this court, which according to the Designated Authority is central to the dispute.

31. We are unable to accept the Designated Authority’s view that the declaration furnished by the petitioner was liable to be rejected or ignored for failure to mention the pendency of the writ petition. The dispute whether the petitioner was liable to pay any tax on the notional capital gains arising from conversion of equity shares of Domino India to a partnership interest in



Domino LLP had been fleshed out in the assessment order passed by the AO under Section 147 of the Act, which was subject matter of the petitioner's appeal before the CIT(A). Indisputably, the settlement of the said dispute would be dispositive of the petitioner's claim that no income chargeable to tax had arisen from extinguishment of the equity shares of Domino India and its conversion to a partnership interest in Domino LLP. Thus, not mentioning the pendency of the writ petition in the given facts could not be construed as failure to disclose a material fact, which would render the declaration made by the petitioner *non est* under Section 91(5)(a) of the Finance (No.2) Act 2024 or otherwise invalid.

32. It is also relevant to refer to the undertaking furnished by the petitioner, which was an integral part of the declaration made in the prescribed form. The said undertaking is reproduced below:

“UNDERTAKING

I ASHOK KUMAR SHRIMALI son/daughter of Shri/Smt MADAN LAL SHRIMALI designation Authorised Signatory holding PAN AJPPS6259K being duly authorised and competent in this regard, on behalf of DOMINO PRINTING SCIENCES PLC (name of declarant) having PAN AAGCD9072L (PAN of declarant) and having decided to avail the benefit of the Direct Tax Vivad se Vishwas Scheme, 2024 provided under Chapter IV of the Finance (No.2) Act, 2024 (15 of 2024), do hereby voluntarily waive all its rights, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax-arrear which may otherwise be available to me under any law for the time being in force, in equity, by statute or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise.

The above undertaking is irrevocable.

I do hereby also undertake that provisions of section 96 of Finance (No. 2) Act, 2024 are not attracted in this case.



I also confirm that I am aware of all the consequences of this undertaking.”

33. As is apparent from the above that the petitioner had unequivocally waived its rights whether direct or indirect to seek or pursue any remedy or any claim in relation to the tax arrears, which may otherwise have been available. Thus, in any event, the petitioner would be precluded from pursuing its writ petition, which is pending before this court. We say so because the petitioner’s grievance regarding the dis-favourable advance ruling – the redressal of which is sought by petitioning this court – would not survive after settlement of the subject dispute pending in the appeal filed before the CIT(A).

34. It is also relevant to note that the said undertaking was in terms of Sub-section (4) of Section 91 of the Finance (No.2) Act, 2024.

35. We may also take note of Sub-section (3) of Section 91 of the said Act which, *inter alia*, requires the declarant to withdraw its writ petition filed before the High Court or the Supreme Court in respect of any order in respect of ‘tax arrears’. The petitioner had expressly confirmed that it would withdraw the writ petition [being WP(C) 1677 of 2020] pending before this court if the certificate was issued by the Designated Authority (Form 2).

36. We are also unable to sustain the Designated Authority’s finding that the date of petitioner’s declaration is required to be construed as 07.02.2025 and not 23.12.2024. As held hereinbefore, the petitioner’s declaration filed on 23.12.2024 could not be treated as *non est* and ignored. Thus, the Designated Authority was required to issue a certificate determining the amount payable by the declarant in accordance with the provisions of the DTSSV Scheme within fifteen days of the date of receipt of the declaration.



Admittedly, no such order was passed by the Designated Authority within the period as prescribed under Section 92(1) of the Finance (No.2) Act, 2024.

37. There is no cavil that the Designated Authority had refrained from passing such an order on account of its objections, including failure to mention that the writ petition preferred by the petitioner was pending before this court, in the declaration. As observed earlier, we do not find the said non-disclosure to be material or of any significance in the given facts and circumstances of the case.

38. It is also not controverted that there was no specific space to mention an additional proceeding relating to the same subject matter in the relevant column in Part B (Information Relating to Dispute) of Form-1. Thus, once the petitioner had filled up the field by entering 'CIT(A)' in the relevant column regarding where dispute was pending; it could not fill in the details of the writ petition under the same column of Form no. 1.

39. The settlement of the dispute pending before the CIT(A) in the petitioner's appeal would also be dispositive of the petitioner's writ petition pending before this court. However, to obviate any such objection on the part of the Designated Authority, the petitioner had once again filed a declaration by furnishing revised Form no. 1 which mentioned the pending writ petition *albeit* in another column. The revised Form no. 1 was clearly in aid of the declaration made earlier on 23.12.2024 and thus was necessarily be read to substitute the earlier declaration. We are convinced to say so for the reasons that the declaration filed on 23.12.2024 could not be construed as *non est* or not having been made for the reasons as stated herein



before.

40. The contention that the Designated Authority's reason that the dispute involved is not covered under the DTVSV Scheme is insubstantial and so is the reference to FAQ No.26 of CBDT Circular No.12 of 2024 dated 15.10.2024.

41. The AAR had rendered an unfavourable ruling rejecting the contention that no tax was payable in respect of the capital gains, which had arisen from conversion of equity shares of Domino India into partnership interest in Domino LLP. However, the quantum of tax payable on this basis had been determined by the AO in the assessment order passed under Section 147 of the Act read with Section 144C(3) of the Act. And the said assessment order was the subject matter of challenge in the appeal filed by the petitioner before the CIT(A). Thus, the premise that the disputed income was yet to be determined in the present case is *ex facie* erroneous.

42. The FAQ No.26 of CBDT Circular No.12 of 2024 dated 15.10.2024, which was relied upon by the Designated Authority for rejecting the petitioner's declaration in the rejection remarks is extracted below:

<u>"Writ on 148/148A notice</u>	
26 If a writ has been filed against a notice issued under section 148/148A of the Act and no assessment order has been passed consequent to that notice, whether such cases are eligible under the Scheme?	The income in such cases is yet to be determined. Therefore, the disputed tax is not ascertainable. Thus, the taxpayer would not be eligible for the Scheme in such cases."



43. It is apparent from the plain reading of the aforesaid FAQ that it is not applicable in the facts of the present case. The said FAQ relates to a situation where a writ petition has been filed against a notice initiating reassessment proceedings (notice under Section 148 or 148A of the Act). At the stage of reopening of the assessment, it is not ascertained whether the income of the assessee chargeable to tax has escaped assessment. The quantum of any such income and tax payable on the same is yet to be determined; the same is determined by the AO at the culmination of the proceedings. There is no determination of the “disputed income”, “disputed tax”, “tax arrear”, “disputed penalty” and “disputed interest” at the stage of issuance of notice under Section 148 or 148A of the Act. Consequently, it would be impossible to determine the amount payable for settlement of the dispute under DTVSV Scheme which in terms of Section 90 of Finance (No.2) Act, 2024 is based on the quantum of “disputed tax”, “disputed penalty”, “disputed interest” or “disputed fee.” It is in this context that the FAQ No.26 of CBDT Circular No.12 of 2024 dated 15.10.2024 clarifies that in such cases DTVSV Scheme would be inapplicable. The FAQ 26 expressly indicates that it is in respect of writ petitions challenging notices issued under Section 148 or 148A of the Act. More importantly, the principle on the basis of which the clarification is rendered – that the disputed tax is not determined – is wholly inapplicable in the facts of the present case.

44. In view of the above, the present petition is allowed. The Designated Authority is directed to process the petitioner’s declaration and determine the amount payable by the declarant in accordance with the provisions of the



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DTVSV Scheme by construing the date of declaration filed by the petitioner as 23.12.2024 and issue an appropriate certificate in the prescribed form within a period of fifteen days from the date.

45. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 23, 2025

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Click here to check corrigendum, if any