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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 17336/2024 & CM APPL. 73796/2024****SEEMA TRIPATHI**

.....Petitioner

Through: Mr. Rohit Tiwari, Mr. Shobhit Tiwari, Ms. Tanya, Ms. Shivani and Mr. Shaantanu Devansh, Advs.

versus

PCIT -7, NEW DELHI & ORS.

.....Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC and Mr. Abhishek Anand, Advs.

Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap and Mr. Varun Pratap Singh, Advs.

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Date of Decision: 10th February, 2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G E M E N T****TUSHAR RAO GEDELA, J.: (ORAL)**

1. That the petitioner by way of the present petition, is challenging the Order / Intimation Dated 30.10.2024 (sent through e-mail) passed by the Respondent no. 1 under Direct Tax Vivad Se Visvas Scheme, 2014 (hereinafter, *DTVSV Scheme*) whereby the Respondent No. 1 rejected / cancelled the application of the petitioner filed vide DTVSV Form-1, of the said Scheme for resolving the dispute regarding interest charged



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under Sections 234A, 234B and 234C of the Income Tax Act, 1961, without assigning any reason.

2. Briefly stated, facts leading to the filing of the present petition is that the petitioner entered into a Share Purchase Agreement for sale of Shares held in Vikas Telecom Limited (hereinafter 'VTL') for a total consideration of INR 38,56,64,268/- to Embassy Property Developments Pvt. Ltd. (hereinafter 'EPDPL') vide Share Purchase Agreement dated 26.05.2013, in A.Y. 2014-15). The Petitioner, under the bona-fide belief that the transfer of shares will be taxable in the A.Y. 2014-15, had deposited Advance Tax amounting to INR 3,35,00,000/- out of which INR 6,37,195/- was deposited against the tax liability for A.Y. 2014-15, in that financial year on the estimated Capital Gains arising out of the sale of these shares. However, since the transfer of shares actually got materialized only on 25.04.2014, the Capital Gains on such transfer became liable to tax only in A.Y. 2015-16. On realizing the same, the Petitioner made several requests to the Assessing Officer (hereinafter 'AO') seeking refund of the Advance Tax amounting to INR 3,28,62,805/- paid in A.Y. 2014-15 so that the same can be used for depositing the Advance Tax for A.Y. 2015-16, but to no avail.

3. That thereafter, on 30.03.2015 the Petitioner filed the return of income for A.Y. 2014-15 claiming refund of Advance Tax amounting to INR 3,28,62,805/-. Out of the total tax liability(inclusive of surcharge and cess) of INR 7,56,08,989/- for A.Y.2015-16, the amount of INR 5,22,20,000/- (exclusive of interest amounts) was duly deposited with the Department as advance tax instalment by 14.03.2015.

4. That the 'AO' did not process the refund amounting to INR 3,28,62,805/- as claimed by the Petitioner for a period of almost 1 year



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and 9 Months for the A.Y. 2014-15 and it was ultimately processed on 29.12.2016 and the refund was granted to the Petitioner on 06.01.2017.

5. That in the meantime, the Petitioner made several representations to the AO, Asst. Commissioner, and Ministry of Finance, seeking either to refund of the Advance Tax inadvertently paid in A.Y. 2014-15 or treat the same as the Advance Tax for A.Y. 2015-16. It is due to the inaction of the AO in granting the refund for A.Y. 2014-15 / adjusting the same with the Advance Tax Liability for A.Y. 2015-16, that the Petitioner was unable to pay/categorize the remaining amount of INR 3,28,62,805/- towards its advance tax liability for A.Y. 2015-16 and as a direct consequence was unable to file its return for A.Y. 2015-16. That on receiving the refund of INR 3,67,98,380, the Petitioner deposited the balance amount of INR 2,55,20,610 (including a part of 234C interest) towards the total liability of INR 7,78,60,610/- with the Department on 16.01.2017.

6. That in these circumstances, the petitioner was subjected to interest amounting to INR 1,13,45,803/- under Sections 234A, 234B and 234C for the A.Y. 2015-16 for delayed filing of return and for delayed payment of Advance Tax.

7. That thereafter, the Petitioner filed an application before the learned CCIT-9, Delhi, under Section 119(2)(a) for waiver of the above interest amounts. However, without considering the merits and without appreciating the peculiar facts of the Petitioner's case, the Ld. CCIT-9, DELHI, *vide* the order dated 11.10.2017, merely dismissed the application in a routine manner.

8. That aggrieved by the said Order dated 11.10.2017 passed by the CCIT-9, DELHI, the petitioner filed W.P.(C) No. 4001/2018



challenging the same before this Court which is stated to be pending consideration.

9. That to resolve the pending dispute / litigation in the said W.P.(C) no. 4001/0018 before this Court with regard to interest charged under Section 234A, 234B and 234C of the Income-tax Act, 1961, once and for all, on 16.10.2024, the petitioner filed application vide Form 1 DTVSV 2024 before the Respondent no. 1.

10. That the respondent no. 1 verbally show-caused the petitioner to explain how her said application is covered under the DTVSV Scheme. That in response thereof she filed her submissions on 24.10.2024, regarding the coverage of Interest dispute under the said Scheme. That thereafter, *vide* impugned Order/Intimation dated 30.10.2024, the Respondent no.1 rejected/ cancelled the said application of the petitioner without assigning any reason.

11. Learned counsel for the petitioner, in support of his case, had relied upon the decision of this Court in ***Kapri International (P.) Ltd. v. Commissioner of Income-tax-IV: (2022) 144 taxmann.com 37 (Delhi)*** as well as the decision of the Madras High Court in ***Tvl. Sanmac Mootor Finance Ltd. v. Central Board of Income-tax: (2024) 168 taxmann.com 577 (Madras)***.

12. We had heard the matter on 17.12.2024 and issued notice. On 20.12.2024 learned counsel for the Revenue was afforded an opportunity to examine the present petition, as to whether the issue was covered by the aforesaid judgements and complete his instructions. The learned counsel was also directed to seek instructions regarding whether judgements cited by the petitioner have been challenged by the Department before Supreme Court or not.



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13. Today, learned counsel for the Revenue states that there is no information available with the Department as to whether any further appeal of the judgement of learned Coordinate Bench in ***Kapri International (supra)*** has been laid before the Supreme Court. In that view of the matter, the ratio laid down in ***Kapri International (supra)*** is still good law and binds this Court too. In any case, having examined the facts of the present matter, we are of the considered opinion that the ratio laid down in ***Kapri International (supra)*** too would apply.

14. Resultantly, in view of the ratio laid down in ***Kapri International Pvt. Ltd. v. CIT, 2022 SCC OnLine Del 2466*** and in ***Tvl. Sanmac Mootor Finance Ltd. v. Central Board of Income-tax: (2024) 168 taxmann.com 577 (Madras)***, the present petition is allowed, with the directions provided therein being applicable *mutatis mutandis* to the present petition also. Consequently, Rejection Order/Intimation dated 30.10.2024 is set aside, with directions to the CIT to re-examine/reassess the declaration filed by the petitioner under the DTVSV Scheme and decide on its merits in terms of procedure envisaged under the Act read with its Rules.

15. The petition is allowed and disposed of accordingly.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 10, 2025/rl