



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.611 OF 2021  
WITH  
WRIT PETITION NO.606 OF 2021  
WITH  
WRIT PETITION NO.626 OF 2021  
WITH  
WRIT PETITION NO.590 OF 2021  
WITH  
WRIT PETITION NO.612 OF 2021  
WITH  
WRIT PETITION NO.601 OF 2021  
WITH  
WRIT PETITION NO.638 OF 2021  
WITH  
WRIT PETITION NO.593 OF 2021  
WITH  
WRIT PETITION NO.592 OF 2021  
WITH  
WRIT PETITION NO.596 OF 2021  
WITH  
WRIT PETITION NO.625 OF 2021

Sadruddin Tejani	]		
L-143, Maker Tower,	]		
J D Somani Road, Cuffe Parade,	]		
Mumbai 400 005.	]	..	Petitioner.
v/s.			
1	Income Tax Officer – Circle 17(3)	]	
	(1), having office at Kautilya Bhavan,	]	
	Bandra.	]	
2	Principal Commissioner of Income	]	
	Tax 17 (Designated Authority under	]	
	Direct Tax Vivad se Vishwas Act,	]	
	2020) having office at Room No.127,	]	
	Kautilya Bhavan, Bandra.	]	.. Respondents.

Mr. K. Gopal with Ms. Neha Paranjape, Advocate for the Petitioner in all the Petitions.

Mr. Sham Walve, for the Respondent in all the Petitions.



**CORAM: SUNIL P. DESHMUKH &  
ABHAY AHUJA, JJ.  
RESERVED ON : 17<sup>th</sup> MARCH, 2021.  
PRONOUNCED ON : 09<sup>th</sup> APRIL, 2021.**

**PER COURT:-**

By these Petitions filed under Article 226 of the Constitution of India, 1950, Petitioner is challenging the rejection of its declarations filed on 18<sup>th</sup> November, 2020 under Section 4(1) of the Direct Tax Vivad-Se-Vishwas Act, 2020 (“DTVSV” Act) for the eleven Assessment Years from A.Y. 1988-89 to 1998-99.

2 Petitioner has filed these Petitions for the following reliefs :-

“(a) That this Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction order or a writ including a writ in the nature of ‘Certiorari’ to call for the records and verify the declaration filed under section 4(1) of the DTVSV Act and direct the Respondent No.2 to accept the same;

(b) That the Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India appropriate writ or order or direction including a writ in the nature of ‘Mandamus’ directing the Respondent No.2 to accept the declaration made by the Petitioner on 18<sup>th</sup> November, 2020 under section 4(1) of the DTVSV Act;

(c) That this Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate writ or order or direction including a writ in the nature of ‘Prohibition’ restraining the Respondent No.2 disposing off the application filed under section 264 of the Act and recover the outstanding disputed demand thereunder”.

3 A sojourn into the facts will be helpful to appreciate the controversy. Petitioner who is stated to be engaged in the business of retail footwear under the shop name “*Jolly Shoes*”, has filed declarations in Form-1 and undertaking in Form-2 in respect of each of the Assessment Year from 1988-89 to 1997-98 under Section 4 (1) of the DTVSV Act on 18<sup>th</sup> November, 2020. However, the same has been rejected by updating

the status on the e-filing portal of the Petitioner on 30<sup>th</sup> January, 2021, which shows the action on the DTVSV Forms filed by the Petitioner from Assessment Year 1988-89 to 1997-98 as “Rejected”. Aggrieved by the same, Petitioner is before us.

4 Petitioner had earlier filed returns of income for the Assessment Years 1987-88 to 1998-99. Assessments for the Assessment years 1987-88 to 1995-96 were reopened by issuance of notices under Section 148 (1) of the Income Tax Act, 1961 (the Income Tax Act) and the re-assessment proceedings were completed by passing of Assessment Orders under Section 144 read with Section 147 of the Income Tax Act by making additions on account of gross profit and unsecured loan. For the Assessment Years 1996-97 to 1998-99, assessments were finalized under Section 143(3) of the Income Tax Act. Pursuant to the said Assessment Orders, Respondent No.1 raised following demands for those years by issuing notice under Section 156 of the Income Tax Act:-

Assessment Year	Demand raised u/s. 156 of the Act
1987-88	1,19,170/-
1988-89	5,53,774/-
1989-90	13,68,068/-
1990-91	23,57,128/-
1991-92	1,72,706/-
1992-93	13,21,156/-
1993-94	58,89,474/-
1994-95	29,75,306/-
1995-96	24,70,199/-
1996-97	15,21,293/-
1997-98	8,79,899/-
1998-99	1,37,122/-
Total:-	1,97,65,295/-



5 Being aggrieved by the Assessment Orders for the Assessment Years 1987-88 to 1998-99, Petitioner preferred Appeals before the Commissioner of Income Tax (Appeals) (CIT(A)), who confirmed the Assessment Orders and passed a consolidated order dated 9<sup>th</sup> October, 2002 for all the Assessment Years.

6 Further, appeals were preferred by Petitioner before the Income Tax Appellate Tribunal (ITAT) and the ITAT set aside the order of the CIT(A) by its order dated 20<sup>th</sup> August, 2004 and restored the issue back to the file of the first Respondent- Assessing Officer.

7 It is submitted that pending the proceedings before the CIT(A) and the ITAT, proceedings to recover the outstanding demands were initiated by the Tax Recovery Officer (TRO) and to avoid any coercive action, Petitioner handed over cheques totaling to an amount of Rs.12,43,000/- from time to time to the TRO, which appears to be pursuant to an order of stay of demand by the ITAT.

8 Petitioner submits that the said amount of Rs.12,43,000/- was adjusted only against the demand for Assessment Year 1987-88 and not for demands for the various Assessment Years 1987-88 to 1998-99. This, according to the Petitioner, was despite the fact that, the original demand for the Assessment Year 1987-88 was only Rs.19,170/- and, therefore the entire amount of Rs.12,43,000/- could not have been adjusted for the tax liability for that year alone.

9 It is submitted that, pursuant to the order dated 20<sup>th</sup> August, 2004, passed by the ITAT, Respondent No.1 passed the Assessment Order on 13<sup>th</sup> March, 2006 under Section 143(3) of the Income Tax Act for the Assessment Years 1987-88 to 1998-99 against which, Petitioner filed appeals before CIT(A). Vide order dated 23<sup>rd</sup> November, 2006, the CIT(A) granted partial relief to the Petitioner, pursuant to which, Respondent

No.1 passed order on 23<sup>rd</sup> January, 2007, giving effect to the order passed by the CIT(A). However, it is submitted that no credit for taxes paid on regular assessment of Rs.15,86,151/- including Rs.12,43,000/- was given while determining the demands for the respective years.

10 Being aggrieved by the partial relief granted by CIT(A), Revenue filed appeals before the ITAT for Assessment Years 1988-89 to 1990-91 and 1992-93 to 1998-99, which were disposed of by order dated 18<sup>th</sup> December, 2008.

11 It is submitted that as the revised demand for Assessment Year 1987-88 was only Rs.936/-, the payment of Rs.12,43,000/- has been made to be adjusted against the revised demand for the Assessment Years 1988-89 to 1998-99 as under:-

Assessment Year	Disputed Tax (Amount in Rs.)
1988-89	3,122
1989-90	74,228
1990-91	96,577
1991-92	3,370
1992-93	46,971
1993-94	1,34,400
1994-95	1,48,535
1995-96	76,127
1996-97	75,555
1997-98	2,79,116
1998-99	17,432
Total:-	9,55,433/-

12 It is submitted that Petitioner filed rectification application under Section 154 of the Income Tax Act for the Assessment Year 1987-88 to 1998-99, seeking credits for payments of Rs.15,86,151/- including Rs.12,43,000/-, for adjustment of payments to the tune of Rs.12,43,000/- against revised demand for the Assessment Year 1988-89 to 1998-99. This

rectification application was decided on 16<sup>th</sup> April, 2018, rejecting the request for the aforesaid adjustment as credit of tax as per challan was given to the Petitioner for Assessment Year 1987-88. The Assessing Officer, vide order dated 16<sup>th</sup> April, 2018 gave credit of the taxes paid of regular assessment of Rs.15,86,151/- and determined the refund for Assessment Year 1987-88 of Rs.23,64,620/-(including interest u/s. 244A of the Income Tax Act of Rs.11,22,380/-) and total tax demand for Assessment Year 1988-89 to Assessment Year 1998-99 of Rs.90,77,160/- (including interest u/s 220(2) of the Income Tax Act of Rs.47,75,722/-).

13 Aggrieved by the same, Petitioner sought remedy by filing Revision Application dated 15<sup>th</sup> May, 2018 under Section 264 of the Income Tax Act before the Principal Commissioner of Income Tax to compute the tax demand for Assessment Year 1987-88 to Assessment Year 1998-99 after giving credit of Rs.12,43,000/- for the Assessment Years 1988-89 to 1998-99, which has been adjusted in the impugned order against Assessment Year 1987-88 only, and which is pending.

14 Learned Counsel for the Petitioner, Mr. K. Gopal, submits that pending this application under Section 264 of the Income Tax Act, the Direct Tax Vivad Se Vishwas Act, 2020 came to be enacted on 17<sup>th</sup> March, 2020 to reduce pending income tax litigations, generate timely revenue for the Government and benefit tax payers by providing for peace of mind, certainty and saving time and resources that would otherwise be spent on the long drawn and vexatious litigation process. The Direct Tax Vivad Se Vishwas Rules, 2020 (the “DTVSV Rules”) were notified on 19<sup>th</sup> March, 2020, pursuant to which, Petitioner has filed declaration in Form – 1 and undertaking in Form-2 as per Rule 3 of the DTVSV Rules with the Designated Authority viz: Respondent No.2 on 18<sup>th</sup> November, 2020. Petitioner claims that he is an Appellant as per Section 2(1)(a)(v) of the DTVSV Act, inasmuch as he is a person who has filed an application for

revision under Section 264 of the Income Tax Act and the said application is pending on the specified date viz: 31<sup>st</sup> January, 2020 as defined in Section 2(1)(m) of the DTVSV Act. It is submitted that as such he is an eligible Appellant as his application under Section 264 of the Income Tax Act is pending on the specified date. He further submits that in the Petitioner's case, resolution of disputed tax has been sought for. This he says is because as per Section 2(1)(j)(F) of the DTVSV Act, "*disputed tax*" means the income tax (including surcharge and cess) that would become payable by the Appellant under the provisions of the Income Tax Act as computed in a case where an application for revision under Section 264 of the Income Tax Act is pending as on the specified date, was not to be accepted. He, therefore, submits that Petitioner satisfies all the conditions to file declaration under Section 4 of the DTVSV Act and has accordingly done so by filing declarations for each of the Assessment Years 1988-89 to 1998-99.

15 Upon receipt of the said applications, Respondent No.1 sent a mail on 3<sup>rd</sup> December, 2020 to the Petitioner, stating that there is no dispute in income tax calculation and requested Petitioner to give a working of the disputed tax in relation to undisputed income for Assessment Years 1987-88 to 1998-99 within 3 days, failing which, the applications would be processed, considering the '*disputed tax*' in relation to disputed income as "*Nil*". Learned Counsel for Petitioner has taken us through the said mail from the 1<sup>st</sup> Respondent, relevant portion of which is extracted as under:-

“ *Kindly refer to the above.  
Received your application under DTVsV Scheme for above mentioned assessment years. On perusal of the same, it is seen that you have opted for the scheme since your revision petition u/s. 264 of the I. T. Act is pending before the Pr. C.I.T. 17 Mumbai for A Y 1988 – 89 to 1998-99. The main ground of appeal as per your petition u/s. 264 of the I.T. Act is to direct the A. O. to give credit to regular tax paid challan's of A. Y. 1987-88 at Rs.12,43,000/- to*



various years i.e. for A. Y. 1988 to 1998 so that the interest u/s. 234B and 220(2) of the Act could be reduced considerably. There is no dispute on the income arrived for A. Y. 1987 to 1998 in the order passed u/s. 154 of the I. T. Act dated 16.04.2018 whereas in your application in form – 1 Schedule X for A. Y. 1988 to 1989 disputed income is shown nil, however, you have calculated disputed tax. On perusal of the order passed u/s. 154 of the I. T. Act and I.T. N. S-150 for A. Y. 1987 to 1998 dated 16-04-2108 it is seen that Income Tax is correctly calculated, there is no dispute in income tax calculation however you have mentioned disputed tax against undisputed income in Form-1.

In view of the above, you are hereby given an opportunity to submit your working of disputed tax in relation to undisputed income for A. Y. 1987-88 to 1998-99 within 3 days from receipt of the mail. If no reply is received within 3 days, your application for DTVsV scheme will be processed accordingly considering the disputed tax in relation to disputed income at Rs.Nil.”

16 In reply, Petitioner has filed a detailed submission dated 5<sup>th</sup> December, 2020, which for the sake of convenience, is reproduced as under:-

“ Submissions of the Applicant:

9. For the sake of convenience, the Applicant divides his submissions into two parts as under:-

9.1 Submissions on the claims made by the Applicant in the said application (Paragraph 10)

9.2 Submissions dealing with the specific queries raised by Your Honour in the mail/ notice dated 03.12.2020 under consideration (Paragraph 11)

10. The Applicant at the outset draws Your Honour’s attention to the following definitions as mentioned u/s. 2 of the “the Act, 2020” and submits as under:-

10.1. Section 2(1)(a)(v):- Section 2(1)(a) defines the terms “appellant” and Section 2(1)(a)(v) as under:-

“person who has filed an application for revision under section 264 of the Income Tax Act and such application is pending on specified date”

The Applicant submits that since his applications for revision for the years under consideration are pending on specified date (i.e. 31.01.2020), the Applicant is an “appellant” as per the aforesaid definition.

10.2 Section 2(1)(c) defines “declarant” as under:-



*“Declarant means a person who files declaration under Section 4”  
 Since the applicant has made valid declarations u/s. 4 r.w.s. 3 of the  
 “the Act, 2020”, the Applicant duly satisfies the aforesaid definition  
 as well.*

*10.3 Section 2(1)(d) defines declaration as “declaration” means  
 the declaration filed under Section 4.*

*The Applicant submits that since all the declarations are filed u/s.  
 3 r.w.s. 4 of the Act, 2020, the Applicant is required to be  
 considered as “declarant” under the scheme.*

*10.4 Section 2(1)(j)(f) defines ‘disputed tax’ in the case of  
 application for revision pending before 264 of the specified date  
 and it reads as under:-*

*“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.”*

*The Applicant mentions that his revision applications for the  
 aforesaid years are pending before the learned PCIT on 31.01.2020  
 and the Applicant would be liable to pay the total demand of  
 Rs.88,90,180/- (including the income tax of Rs. 8,06,968/-) if his  
 main contention of granting credit/ adjustment of taxes of  
 Rs.12,43,000/- against the revised demands of subsequent years  
 were not accepted and all the revision applications filed by the  
 Applicant were to be rejected. Thus, the Applicant humbly submits  
 the definition of “disputed tax” gets duly satisfied in the facts under  
 consideration. For the sake of easy reference, the Applicant makes a  
 following table depicting the quantum ‘disputed tax’ under  
 consideration separately year wise:*

Assessment Years	Disputed Tax (Amounts in Rs.)
1988-89	3,192/-
1989-90	74,228/-
1990-91	96,577/-
1991-92	3,370/-
1992-93	46,971/-
1993-94	1,34,400/-
1994-95	1,48,435/-
1995-96	76,127/-
1996-97	75,555/-

1997-98	2,79,116/-
1998-99	17,432/-

10.1. Section 2(1)(a)(v):- Section 2(1)(a) defines the terms “appellant” and Section 2(1)(a)(v) as under:-

*“person who has filed an application for revision under section 264 of the Income Tax Act and such application is pending on specified date”*

*The Applicant submits that since his applications for revision for the years under consideration are pending on specified date (i.e. 31.01.2020), the Applicant is an “appellant” as per the aforesaid definition.*

10.5 Section 2(1)(o) of “the Act, 2020” defines tax arrears as under:-

*“(o) Tax arrears 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”.*

*The Applicant submits that from the aforesaid table, it is discernible that the amount / quantum of disputed tax is pending for all the years under consideration and thus, the definition of “disputed tax” duly gets satisfied in the present facts.*

10.6 Now, proceeding further the Applicant draws Your Honour’s attention to section 3 and section 4 of the Act, 2020 and submits that a conjoint reading of both the sections lays down the procedure to be adopted/ followed by a person/ declarant under the scheme after satisfying the aforesaid eligible conditions. The relevant parts of Section 3 and 4 of the Act, 2020 reads as under:-

*Section 3: Subject to the provisions of this Act, where a declarant files [under the provisions of this Act on or before such date as may be notified], a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then notwithstanding anything contained in the income tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely*

*(a) Where the tax arrears is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax”, in that case, the amount payable under this Act shall be the amount of disputed tax”.*

*Section 4 (1) The declaration referred to in section 3 shall be*

filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

10.7 From the aforesaid sections, the Applicant submits that the applications filed by him under the scheme with the intention to settle the dispute in relation to “disputed tax” for the years under consideration are valid and thus, the Applicant requests the learned competent authority (i.e. the learned PCIT) to process the said applications and oblige.

11 Now, the Applicant specifically deals with the objections raised by Your Honour in the mail/ reply dated 3<sup>rd</sup> December, 2020. The relevant part of the said mail/ notice is reproduced as under:

“ The main ground of appeal as per your petition u/s. 264 of the I.T. Act is to direct the A. O. to give credit to regular tax paid challan’s of A. Y. 1987-88 at Rs.12,43,000/- to various years i.e. for A. Y. 1988 to 1998 so that the interest u/s. 234B and 220(2) of the Act could be reduced considerably. There is no dispute on the income arrived for A. Y. 1987-1998 in the order passed u/s. 154 of the I. T. Act dated 16.04.2018 whereas in your application in form 1 schedule X. for A. Y. 1988 to 1998 disputed income is shown nil, however, you have calculated disputed tax. On perusal of the order passed u/s. 154 of the I. T. Act and I.T. N.S150 for A. Y, 1987 to 1998 dated 16.04.2018 it is seen that Income tax is correctly calculated, there is no dispute in income tax calculation however you have mentioned disputed tax against undisputed income in Form-I.”

11.1 The Applicant at the outset submits that the aforesaid objection is factually incorrect. From the facts narrated in the applications filed u/s. 264 of the Act as well as the present correspondence, it is clear that the Applicant has challenged the inaction on the part of the learned AO, with regard to granting credit of taxes of Rs.12,43,000/- paid by the Applicant. Thus, the main dispute under consideration is “non-allowance of tax credit of Rs.12,43,000/- for the relevant years.” The Applicant draws Your Honour’s attention to the specific prayers sought in his revision applications which are self-explanatory and factually support the aforesaid contention of the Applicant.

“Thus, the Applicant prays that your honours may be pleased to:

A. The Ld. A. O. may be directed to compute the tax demand for A Y 1987-88 to A Y 1998-99 and demand may be raised after giving credit of the taxes paid amounting to Rs.12,43,000/- which have been adjusted in the impugned order against A Y 1987-88 only.

B. The Ld AO may be directed to compute the tax demand for A Y 1987-88 to 1998-99 by restricting the charge of the interest

*u/s. 220(2) of the Act till October' 2013.*

*C. That, your honours may be pleased to pass such further and other order as the facts and circumstances of the case may require.” In the light of the aforesaid submission, the Applicant submits that it is incorrect to mention that the Applicant has raised only one issue (i.e. the issue of computation of interest u/s. 234 and 220(2) of the Act) in his revision applications for the years under consideration. It is submitted that adjustment/ credit of taxes paid on regular assessment is a statutory right of the Applicant/ assessee and the same cannot be equated with or considered as “disputed in relation to calculation of interest” merely on the fact that the issue of tax credit has a consequential effect on the interest calculation. Thus, the Applicant states that the first objection as raised by Your Honour is contrary to the provisions of the Act.*

*11.2 In the said notice, Your Honour has observed that there is no undisputed income in relation to disputed tax. On the said observation, the Applicant submits that the scheme has nowhere enunciated a pre-condition of existence of “disputed income” in order to settle the quantum of disputed tax. It is pertinent to note that the definition of disputed tax operated separately without bearing any nexus with the quantum of disputed income. As explained herein above, the disputed tax is computed by considering tax which would be payable by an Applicant if his appeal/ application u/s. 264 was to be rejected without having any relevance of quantum of the disputed income involved in such an appeal or a revision application. Even the scheme defines disputed income in a reverse manner giving reference to the quantum of disputed tax. The definition of disputed income mentioned u/s. 2(1)(g) of the “The Act, 2020” reads as under:-  
“Disputed income” in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax.”*

*In the light of the aforesaid submission, the Applicant states that the Applications preferred by him are in consonance with the provisions of the Act, 2020 and requests Your Honour to process the same.*

*12. Before closing the present submission, the Applicant clarifies that he has not made any elaborate submissions on the merits of the applications filed by him u/s. 264 of the Act and the present submission is limited only to the aspect of the validity/ eligibility of the Applicant's application filed for the respective years under the scheme. Further, the Applicant in order to avoid unnecessary repetition of the documents which have already been attached to*

*his revision applications prefer not to submit the same one more time with the present submission. However, the Applicant mentions that if Your Honour seeks any document/ clarification, the Applicant shall be pleased to provide. In the view of the above, the Applicant requests shall be pleased to provide. In the view of the above, the Applicant requests Your Honour to accept his all applications and process the same under the scheme.”*

17            Thereafter, admittedly, an opportunity of personal hearing was given to the Petitioner, wherein the aforesaid submissions were reiterated. However, Respondent No.2 has rejected the applications by updating the status on the e-filing portal of the Petitioner on 30<sup>th</sup> January, 2021, which according to the Petitioner, has been done in an arbitrary manner without passing any order and without assigning any reason for the same and, therefore, he prays that the 2<sup>nd</sup> Respondent be directed to accept the Form-1 declarations filed by the Petitioner.

18            Learned Counsel for the Petitioner Mr. K. Gopal reiterates the submissions made in the Petition and the Rejoinder as he purports to take us through the provisions of Section 2(1)(a) of the DTVSV Act with respect to the definition of “*Appellant*”. He submits as referred to herein above earlier that pursuant to Section 2(1) (a)(v), in view of the pendency of the Petitioner’s application for revision u/s. 264 of the Income Tax Act, Petitioner is eligible Appellant. The said provision is reproduced as under:-

*“2 Definitions:- (1) In this Act, unless the context otherwise requires - “(a) ‘appellant’ means -*

*(i) to (iv) .... ..*

*(v) 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.”*

19            He also takes us to the definition of “*disputed income*” which is defined in Section 2(1)(g), and which is quoted as under:-



(g) “disputed income” in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax.”

20 He submits that, it is clear from the above definition that disputed income is something which is relatable to the disputed tax and not the other way round. He, submits that, therefore, the definition of disputed tax in Section 2(1)(j) (F) becomes very much relevant. The same is quoted as under:-

(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 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:-

.... ....  
.... ....

(F) 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.”

21 He submits that the disputed tax in the case of Petitioner would mean the amount of income tax including surcharge and cess payable by the Appellant under the Income Tax Act, if the application for revision u/s. 264 of the Act was not to be accepted. According to him, if the Petitioner’s Revision Application for the Assessment Years 1988-89 to 1998-99, which are pending before the PCIT as on 31<sup>st</sup> January, 2020 are rejected i.e. if the main contention of granting credit/ adjustment of taxes of Rs.12,43,000/- against revised demands of subsequent years (i.e. not including Assessment Year 1987-88) were not accepted, then Petitioner would be liable to pay a total demand of Rs.88,90,180/- including income tax, interest. Learned Counsel also draws our attention to Section 2(1)(o) of the DTVSV Act, which defines tax arrear as under:-

“(o) Tax arrears 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.”.*

22 He submits that considering that since the total amount of demand upon rejection will have a substantial interest component u/s. 234B and 220(2) of the Income Tax Act, the definition of ‘*tax arrears*’ as above also gets satisfied in the facts of the case. He, therefore submits that it is not correct for the Revenue to say that there is no dispute in income tax calculation. He would submit that there is disputed tax against the income as declared in Form-1 and which is a subject matter of pending Revision Application. Therefore, to say that the disputed income is ‘*Nil*’ is not correct. Referring to the 1<sup>st</sup> Respondent’s e-mail communication dated 3<sup>rd</sup> December, 2020, he would submit that the main dispute under consideration is disallowance of tax credit of Rs.12,43,000/- for the relevant years and that it is incorrect to mention that same is being done to considerably reduce interest u/s. 234 B and 220(2) of the Income Tax Act. He submits that adjustment/credit of taxes paid on regular assessment is a statutory right of the Applicant/ Assessee and the same cannot be equated with or considered as ‘*dispute in relation to calculation of interest*’ merely on the fact that the issue of tax credit has a consequential effect on the interest calculation.

23 He would submit that by Petitioner’s reply dated 5<sup>th</sup> December, 2020, it was explained as to how there was disputed tax and in view of the definition of disputed tax as above, what is relevant is that, there should be disputed tax, and disputed income, in the context of the DTVSV Act, is to be determined on the basis of the disputed tax and not the other way around. He submits that, therefore, the department has grossly erred in rejecting the applications made under the DTVSV Act.

24 Mr. Gopal, learned Counsel for the Petitioner would submit that Petitioner does not fall under section 4(6) nor within the



disqualifications provided in Section 9 of the DTVSV Act, a fact which is not disputed by the petitioner and, therefore, Respondent No.2 is not justified in rejecting the declarations filed by Petitioner under Section 4(1) of the DTVSV Act.

25 He also submits that the Respondent within the time period prescribed under Section 5(1) of the Act i.e. within 15 days from the date on which the declaration is filed, is required to determine disputed tax payable under the DTVSV Act which may not be the same as declared by the Petitioner in the Forms 1 and 2 but the Respondent has no jurisdiction to reject the valid declaration filed by the Petitioner.

26 Mr. Gopal, learned Counsel for the Petitioner submits that the object behind the enactment is to settle tax disputes and to reduce litigation. The Act confers benefits upon tax payers, who can put an end to the litigation by paying specified percentages of tax and obtain immunity from penalty and prosecution and when Petitioner has come forward and filed valid declarations, the Designated Authority instead of issuing Form 3 u/s. 5 of the DTVSV Act has simply updated the portal on 30<sup>th</sup> January, 2021 with the remark “*Rejected*” which is not contemplated in the scheme of the DTVSV Act.

27 He would, therefore, submit that this is a fit case for interference by this Court and accordingly submits that the Petition as prayed for, be allowed.

28 *Per contra*, the Revenue has filed its affidavit in reply where it is admitted that Petitioner is an Appellant as per Section 2(1)(a)(v) of the DTVSV Act. Further stating that the applications of the Petitioner have not been rejected on that ground but on the ground that there is no disputed tax.

29 Mr. Sham Walve, learned standing counsel for the Revenue  
S.R.JOSHI

seeks to rely upon and takes us through paragraphs 5, 8, 10, 11, 12 and 23 of the said reply. For the sake of convenience, the said paragraphs are reproduced here under:-

*“5:- I say that, as per the definition of “appellant” mentioned in Sec.2(1)(a)(v) of The Direct Tax Vivad se Vishwas Act, 2020 (henceforth referred as DTVSV Act), the Petitioner is an appellant under DTVSV Act. Also, the Petitioner’s case does not fall in any of the categories mentioned in Section 9 of DTVSV Act. Hence, the contention of the petitioner that he is an “appellant” under DTVSV Act, is found to be correct and is not the reason for rejection of application under DTVSV Act, made by the appellant.*

*8:- On perusal of order passed u/s. 154 of the Act, it is seen that the Income Tax (Income Tax including cess and surcharge) is correctly calculated in the case of petitioner and no dispute in income tax calculation was raised. Further, it is noticed that the primary ground raised in revision u/s. 264 of the Act, is to direct the A.O. to give credit of regular taxes challan’s paid for A.Y. 1987-88 of Rs.12,43,000/- to A. Ys. 1988-89 to 1998-99 so that interest u/s. 234 B and 220(2) of the Act, could be reduced considerably. Accordingly, appellant was asked as to why he has claimed “disputed tax” in Form-1 of DTVSV Act even though there is no disputed income in appellant’s case. To which the appellant replied that ‘disputed tax’ u/s. 2(1)(j)(f) which provides that “in a case where an application for revision u/s. 264 of the Act, is pending as on specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted.”*

*The petitioner submitted that the revision application preferred u/s. 264 of the Act, is pending and the petitioner would be liable to pay the total demand of Rs.88,90,180/- if the main contention of granting credit of taxes of Rs.12,43,000/- against the revised demand of subsequent years is not accepted and the revision application filed by the petitioner is rejected. Thus, the definition of ‘disputed tax’ gets duly satisfied in the facts under consideration. The appellant had further submitted that it is incorrect to mention that he has raised only one issue (i.e. the issue of computation of interest u/s 234 and 220(2) of the Act, in the revision application.*

*10:- From plain reading of Sec. 2(j)(F) of DTVSV Act, 2020 it is clear that disputed tax means the income tax including surcharge and cess. Nowhere in Sec. 2(j)(F) of DTVSV Act, 2020, it is mentioned that disputed tax includes interest viz. 234A, B, C or*

220(2) of the Act, etc. or credit of challans given or to be given etc. This definition of “disputed tax” as per Sec. 2(j)(F) of DTVSV Act, 2020 is emphasized upon solely for the reason that the declaration of petitioner’s application under VSV Act, relates to the “disputed tax”. There after, query was raised on account of “disputed tax” against the Petitioner.

The Petitioner vide submission made on 05.12.2020 submitted that the revision application preferred u/s. 264 of the Act, is pending and the petitioner would be liable to pay the total demand of Rs.88,90,180/- if the main contention of granting credit of taxes Rs.12,43,000/- against the revised demand of subsequent years is not accepted and the revision application filed by the petitioner is rejected. Thus, the definition of “disputed tax” gets duly satisfied in the facts under consideration.

11:- Careful perusal of the revision application u/s. 264 of the Act, and the above reply of the assessee, revealed that the petitioner has never contested against the income tax demand raised in order u/s. 154 of the Act, tax (i.e. income tax, including surcharge and cess) calculated thereon from A. Y. 1987-88 to 1998-99. However, the only request or contention behind revision application made by the assessee is to compute the tax demand for A. Y. 1987-88 to 1998-99 after giving credit of the taxes paid amounting to Rs.12,43,000/- which have been adjusted against A. Y. 1987-88 only. Nowhere in the revision application u/s. 264 of the Act, has the petitioner objected to the income tax demand (income tax including surcharge and cess) raised by the AO for A. Ys. 1987-88 to 1998-99, in fact, he has only contended that the AO has treated the tax payments made by the petitioner against disputed demands, only against A. Y. 1987-88. Also, the AO determined the tax demand of Rs.90,77,170/- of which principal tax demand is Rs.10,50,699/- whereas balance is towards interest u/s. 234 of Rs.32,40,483/- and interest u/s. 220(2) of the Act till 30.04.2018 (Rs.26,60,926). This reduction in demand is attributed to the fact that as per orders dt. 18.04.2018 for A. Y. 1987-88, the interest payable to the assessee u/s. 244A is calculated at 0.5% pm, whereas interest u/s. 234B/ 220(2) is computed at 1% pm. This results into the penalization of assessee, inspite of having paid taxes. In view of the above stated facts, the assessee’ ground on which the appellant was defending that he has satisfied the definition of “disputed tax” as per DTVSV Act, is infructuous.

12:- I say that the petitioner under the revision petition u/s. 264 of the Act, has applied for waiver of interest u/s. 220(2) of the Act,

*even though the matter does not fall under the ambit of the provisions of Sec. 264 of the Act. The revision petition u/s. 264 of the Act cannot be a remedy for waiver of interest u/s. 220 (2) of the Act. The petitioner for waiver of interest has to apply to the appropriate authority and revision petition u/s. 264 of the Act cannot be a route for waiver of interest u/s. 220(2) of the Act.*

*23:- With reference to paragraphs 3.10(iv) of the petition, I say that the contention of the petitioner that definition of 'tax arrears' as per provisions of Sec.2(1)(o) of DTVSV Act, is satisfied is found to be correct. In fact the petitioner himself if accepting the fact that the disputed tax for A.Ys. 1988-89 to 1998-99 and tax arrears implies to the same demand. For further clarity:*

*Disputed Tax – Income Tax including surcharge and cess-  
Tax Arrears – Disputed tax plus interest and penalty leviable or levied. Hence, the petitioner himself is contracting his statement made in Para 3.10(iv) that he has satisfied the definition of "disputed tax" as per Sec.2(1)(j)(F) of DTVSV Act, simply for the fact that the "disputed tax" which the petitioner has declared in application under DTVSV Act, is nothing but the "Tax Arrears" and this is clear from petitioner's explanations given in various submissions and in this Para as well."*

30 The learned Counsel for the Revenue submits that there has been no challenge by the Petitioner to the income tax demand and, therefore, there is no disputed income nor disputed tax. Petitioner is only seeking remedy of waiver of interest which cannot be by way of an application under Section 264 of the Income Tax Act. He submits that Petitioner is, therefore, not entitled to the reliefs claimed as rejections by the designated authority are justified.

31 We have heard learned Counsel for the parties. We have also with their assistance, perused the papers and proceedings in the matter as well as the relevant provisions of the DTVSV Act as well as the DTVSV Rules.

32 The basic facts set out above are not in dispute. Without getting into the merits of the demands by the Revenue or the Application

for Revision under Section 264 of the Income Tax Act by the Petitioner, it would be relevant to note that, it is not in dispute that Petitioner had filed application under Section 264 of the Income Tax Act for adjustment/credit of Rs.12,43,000/-paid earlier in respect of the tax demands for Assessment Years 1988-89 to 1998-99 as according to him, this amount had been adjusted only against the demand for the A.Y 1987-88. While this application was pending, the Direct Tax Vivad Se Vishwas Act, 2020 came to be enacted followed by Direct Tax Vivad Se Vishwas Rules, 2020. Petitioner filed applications under the DTVSV Act and Rules vide declarations in Form-1 dated 18<sup>th</sup> November, 2020 and waiver undertakings in Form-2 for each of the 11 years for the period 1988-89 to 1998-99 to avail of beneficial tax payments to end the litigation with the Revenue-Authorities. Pursuant to the filing of these applications, on 3<sup>rd</sup> December, 2020, Respondent No.1 called upon the Petitioner to submit working of disputed tax in relation to undisputed income for A.Y 1987-88 to 1998-99, stating that, Petitioner had mentioned disputed tax in the Form-1 despite the disputed income shown as 'Nil' in the 154 proceedings, tax having been calculated correctly for Assessment Years 1987 to 1998 and there being no dispute in income tax calculation and despite that, the Petitioner had calculated disputed tax and filed the declarations under the DTVSV Act. The main purpose of the application under section 264 of the Income Tax Act being only to considerably reduce the interest under Sections 234-B and 220(2) of the Income Tax Act by seeking to adjust the credit of regular tax paid challans for Assessment Year 1987-88 of Rs.12,43,000/- to various years i.e. to Assessment Years 1988-89 to 1998-99 even though Petitioner would be liable to pay a total demand of Rs.88,90,180/- including a large interest component if the revision application under section 264 was to be rejected.



'disputed tax' as contained in the DTVSV Act and Rules so as to be considered to have filed a valid declaration in Form-1 and waiver undertaking in Form-2. Going by the above submission and the definition of disputed tax as contained in section 2(1)(j)(F) of the DTVSV Act as contended by the Petitioner, it appears from the facts that the Petitioner would fall within the said definition. We find merit in the submissions made on behalf of the Petitioner.

34 It would, therefore be apposite to refer to the legislative background of the DTVSV Act. For this purpose, firstly, the relevant portion of the budget speech of the Hon'ble Finance Minister made on 1<sup>st</sup> February, 2020 is quoted as under:-

*"Sir, in the past our government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forms i.e. Commissioner (Appeals). ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.*

*Under the proposed 'Vivad se Vishwas' scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided the pays by 31<sup>st</sup> March, 2020. Those who avail this scheme after 31<sup>st</sup> March, 2020 will have to pay some additional amount. The scheme will remain open till 30<sup>th</sup> June, 2020.*

*Taxpayers in whose case appeals are pending at any level can benefit from this scheme.*

*I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process."*

35 Thus, what was intended by the Hon'ble Finance Minister was to bring a scheme similar to the *Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019* which pertained to indirect taxes. The object of the *Vivad se Vishwas Scheme* is to reduce litigations in direct taxes, where the tax payer would have to pay disputed tax.

36 Also, the statement of objects and reasons for bringing the said legislation, reads as under:-

“ Over the years, the pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed. As a result, a huge amount of disputed tax arrears is locked-up in these appeals. As on the 30<sup>th</sup> November, 2019, the amount of disputed direct tax arrears is Rs.9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

2 Tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.

3 It is, therefore, proposed to introduce the Direct Tax Vivad se Vishwas Bill, 2020, for dispute resolution related to direct taxes, which, inter alia, provides for the following namely:-

(a) the provisions of the Bill shall be applicable to appeals filed by tax payers or the Government, which are pending with the Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court as on the 31<sup>st</sup> day of January, 2020 irrespective of whether demand in such cases is pending or has been paid;

(b) the pending appeal may be against disputed tax, interest or penalty in relation to an assessment or reassessment order or against disputed interest, disputed fees where there is no disputed tax. Further, the appeal may also be against the tax determined on defaults in respect of tax deducted at source or tax collected at source.

(c) in appeals related to disputed tax, the declarant shall not pay the whole of the disputed tax if the payment is made before the 31<sup>st</sup> day of March, 2020 and for the payments made after the 31<sup>st</sup> day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 per cent of disputed tax.

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 per cent of the disputed penalty, disputed interest or disputed fee, as



*the case may be if the payment is made on or before the 31<sup>st</sup> day of March, 2020. If payment is made after 31<sup>st</sup> day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased to 30 per cent of the disputed penalty, disputed interest or disputed fee, as the case may be.*

*4 The proposed Bill shall come into force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.”*

37 It therefore emerges that the DTVSV Act has been enacted to address the urgent need to provide for resolution of pending tax disputes where a huge amount of disputed tax arrears of over Rs.9.32 lakh crores is locked-up. The DTVSV Act is aimed not only to benefit the Government by generating timely revenue but also to benefit the taxpayers by providing them peace of mind, certainty and saving time and resources rather than spending the same otherwise, enabling the taxpayers to be able to deploy the time, energy and resources saved, by opting for such dispute resolution, towards their business activities. The Act confers benefit on the tax payers who can put an end to tax litigation by paying specified percentage of tax and obtain immunity from penalty and prosecution and waiver of interest. In the context of the issue at hand, it would be pertinent to refer to the preamble to the DTVSV Act.

38 The preamble clearly provides that this is an Act to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The emphasis is on disputed tax and not on disputed income.

39 Also for the purpose of our discussion, it would be pertinent to set forth the following provisions of the DTVSV Act.

*“2. Definitions – (1) In this Act, 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;

(ii) to (iv) .... .... .... .... ....

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

“(g) – *disputed income* – in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax.”

“(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 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) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;

(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;

(D) in a case where objection filed by the appellant is pending before the Disputed 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 Disputed Resolution Panel was to confirm the variation proposed in the draft order;

(E) in a case where Disputed Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order 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 under sub-section (13) thereof;

(F) 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.”

(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.”

40 Section 3 with respect to the tax amount payable by declarant also assumes significance and is quoted hereunder:-

*“3:- Amount payable by declarant:- Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:-*

Sl. No.	Nature of tax appear	Amount payable under this Act on or before 31 <sup>st</sup> day of March, 2020	Amount payable under this Act on or after the 1 <sup>st</sup> day of April, 2020 but on or before the last date.
(a)	Where the <u>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.</u>	<u>Amount of the disputed tax</u>	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 132A 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	The aggregate of the amount of disputed tax and thirty-five percent of disputed tax; provided that where the thirty-five per cent of disputed tax exceeds the aggregate

		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.	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-five per cent of disputed interest or disputed penalty or disputed fee.

*Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the table above calculated on such issue, in such manner as may be prescribed:*

*Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income-tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the table above calculated on such issue, in such manner as may be prescribed:*

*Provided also that in a case where an appeal is filed by the appellant on any issue before the Income-tax Appellate Tribunal on which he has already got a decisions in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the table above calculated on such issue, in such manner as may be prescribed.”*

Counsel for the parties submit that the date in the second column is now 30<sup>th</sup> day of April, 2021 instead of 31<sup>st</sup> day of March, 2020.

41 Sections 4 and 5 read as under:-

**“4. (1)** *The declaration referred to in section 3 shall be filed by*

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*the declarant before the designated authority in such form and verified in such manner as may be prescribed.*

*(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or 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 ate on which certificate under sub-section (1) of section 5 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 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of section 5.*

*(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal along with the intimation of payment to the designated authority under sub-section (2) of section 5.*

*(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), 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, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.*

*(6) The declaration under sub-section (1) shall be presumed never to have been made if,-*

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

*(b) the declarant violates any of the conditions referred to in*

*this Act;*

*(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section(5),*

*and in such cases, all proceedings and claims which were withdrawn under section 4 and all the consequences under the Income Tax Act against the declarant shall be deemed to have been revived.*

*(7) No appellate forum or arbitrator, conciliator or mediator 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 5 by the designated authority or the payment of sum determined under that section.*

*5.(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.*

*(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.*

*(3) Every order passed under sub-section (1), determining amount payable under this Act, shall be conclusive as to matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income Tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.”*

42 Under the provisions of this Act, tax payers have been given an option to settle their tax disputes by making a declaration to designated authority and paying specified percentage of disputed tax as per section 3 of the DTVSV Act.



43 Section 3 of the DTVSV Act provides that where a declarant files a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrears, the amount payable would be the amount of disputed tax as is applicable in the cases referred to in the table in the said section. Under section 4, the form of declaration and the particulars to be furnished before the designated authority are provided for. Rules stipulate that declaration has to be filed in Form-1 under section 4(1) of the Act read with Rule 3(1) of the Rules. Also an undertaking in Form-2 under section 4(5) of the Act read with Rule 3(2) of the Rules is to be filed by appellant under the Act, which admittedly has been filed by the petitioner.

44 It is stated in section 4 (5) that, declarant is to furnish an undertaking waiving his right to seek or pursue any remedy or claim in relation to the tax arrears which may be available to him in law or equity under statute or under any agreement.

45 It is also stated in section 4(6) that declaration under sub section 1 shall be presumed never to have been made if-

- (a) any material particular(s) furnished in the declaration, is found to be false at any stage;
  - (b) the declarant violates any of the conditions referred to in the Act;
  - (c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub section (5)
- and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income Tax Act against the declarant shall be deemed to have been revived.



46 Section 9 specifies the matters in respect of which the DTVSV Act shall not apply, such as where the tax arrears in respect of which, the disputed tax amount exceeds Rs.5 crores in respect of assessments made under section 143(3) or 144 or 153-A or 153-C on the basis of search initiated under Section 132 or 132-A or if on or before the date of filing of the declarations, the tax arrears relates to an assessment year in respect of which prosecution has been instituted or if it relates to un-disclosed income or the source located out side India or un-disclosed asset located out side India or it relates to assessment or re-assessment made on the basis of information received under the agreement refers to in section 90 or section90-A of the Income Tax Act, in relation to any tax arrears, or to persons in respect of whom detentions have been made under COFEPOSA Act, 1974 or in respect of prosecutions for any offence under UAPA, 1967, NDPS 1985, Prevention of Corruption Act, 1988, PMLA 2002, Prohibition of Benami Property Transaction Act, 1988 or such persons have been convicted of any such offences punishable under those Acts or to any person in respect of whom prosecution has been initiated by an income tax authority for an offence punishable under the Indian Penal Code or for the purposes of enforcement of any civil law under Section 3 of the Special Court (Trial and offence relating to transaction in securities) Act, 1992 etc.

47 It would also pertinent to quote the following provisions from the Direct Tax Vivad se Vishwas Rules 2020 (DTVSV Rules):-

*“2. Definition – In these rules, unless the context otherwise requires-*

*(b) ‘dispute’ means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed on or to be filed under Section 264 of the Income-tax Act.”*

*“3. Form of declaration and undertaking:- (1) The declaration under sub-section (1) of section 4 shall be made in Form-1 to the designated authority.*

*(2) The undertaking referred to in sub-section (5) of section 4 shall be furnished in Form-2 along with the declaration.*

*(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.*

*(4) The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgment thereof.”*

*“4. Form of certificate by designated authority:- The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in Form 3.*

*7. Order by designated authority – the order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in Form-5.”*

48 From the above exposition, what emerges is that for a declarant to file a valid declaration, there should be disputed tax in the case of such a declarant. As can be seen from the aforesaid undisputed fact that Petitioner having filed revision application under Section 264 of the Income Tax Act for the Assessment Years 1988-89 to 1998-99 for credit/ adjustment of Rs.12,43,000/- which application is pending before the Commissioner. Petitioner, admittedly being an eligible Appellant, squarely satisfies the definition of “disputed tax” as contained in Section 2(1) (j)(F) of the DTVSV Act, 2020. This is because, if the revision application under Section 264 of the Income Tax Act is rejected, then the Petitioner would purportedly be liable to pay a demand of Rs.88,90,180/- including income tax, interest. Petitioner as eligible Appellant has filed declaration under section 4 with the designated authority under the

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provisions of Section 4 of the DTVSV Act in respect of tax arrears which include the disputed tax which will become payable as may be determined by designated authority under Section 3. A look at definition of 'tax arrears' clearly refers to an aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax etc. determined under the provisions of Income Tax Act.

49 We are of the view that this is not only a case where there is a disputed tax but also tax arrears as referred to in section 3 of the DTVSV Act. The respondents have not raised any objection under any provision of the DTVSV Act or DTVSV Rules with respect to the declarations or undertakings furnished by the Petitioner nor have they passed any order let alone a reasoned or speaking order rejecting the said declarations. The Respondents have summarily rejected the declarations without their being any such provision in the DTVSV Act or the Rules. There also does not appear to be any fetter on the Designated Authority to determine disputed tax of an amount other than that declared by the petitioner.

50 From a plain reading of the provisions of the DTVSV Act and the Rules set out above, it emerges that the Respondent- Designated Authority would have to issue Form-3 as referred to in Section 5 (1) specifying the amount payable in accordance with section 3 of the DTVSV Act in the case of declarant who is an eligible appellant not falling under section 4(6) nor within the exceptions in section 9 of the DTVSV Act, which fact appears to be undisputed. As also observed by us earlier, the case of the Petitioner would be covered by the definition of disputed tax as per Section 2(1)(j)(F) of the DTVSV Act. It has to be kept in mind in view of what has been observed by us earlier, that the DTVSV Act is a beneficial legislation for both the Revenue and the tax payer.



51 In view of the aforesaid discussion, we are of the view that the Designated Authority under the DTVSV Act viz Respondent No.2 in this case is not justified in rejecting the declarations filed by the Petitioner.

52 Accordingly, we set aside the rejections. We direct the Respondent No.2 to consider the applications made by Petitioner by way of declarations dated 18<sup>th</sup> November, 2020 in Form-1 as per law and proceed with according to the scheme of the DTVSV Act and Rules in the light of above discussion within a period of two weeks from the date of this order.

53 Petition is allowed in the above terms. No order as to costs.

54 Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

**(ABHAY AHUJA,J.)**

**(SUNIL P. DESHMUKH,J.)**