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

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Date of decision: 22.03.2024

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W.P.(C) 4871/2021

MUFG BANK LTD

..... Petitioner

Through: Mr Percy Pardiwalla, Sr. Advocate
with Mr Hiten Chande, Advocate.

versus

COMMISSIONER OF INCOME TAX 2 & ANR..... Respondents

Through: Mr Prashant Meharchandani, Sr
Standing Counsel.

Mr Ravi Prakash, CGSC with Ms
Usha Jamnal, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition concerns Assessment Year (A.Y.) 2010-11.
2. *Via* the instant writ petition, the petitioner/assessee seeks to assail the order [Annexure P-22] rejecting the declaration made under Form 1 and the undertaking made under Form 2 of The Direct Tax Vivad Se Vishwas Rules, 2020 [in short, "Rules"] along with the communication dated 17.02.2021 [Annexure P-25] furnishing reasons for the rejection.
3. *Via* the impugned communication dated 17.02.2021, respondent no.1/revenue has rejected the Forms filed by the petitioner/assessee on the ground that the petitioner/assessee sought to settle only one of the matters pending adjudication. For convenience, the rejection communication is extracted hereafter:



“Madam/Sir,

I am directed to provide reason for rejection of VsV application [sic...application], as per CBDT circular No-7/2020 dated 04.03.2020 in FAQ No- 7, 11,14 and 36 you are not eligible to avail the benefit of VsV scheme. In the present case applicant trying to settle the part of appeal filed by the Revenue without considering the Revenue's SLP before Apex Court.”

4. The record discloses that the petitioner/assessee filed its return of income (ROI) for A.Y. 2010-11 on 06.10.2010, declaring a total income of Rs.1,35,07,54,180/-. The case of the petitioner/assessee was selected for scrutiny and notice under Section 143(2) of the Income-tax Act, 1961 [in short, “the Act”] was issued. The Assessing Officer (AO) framed a draft assessment order under Section 143(3)/144C(1) of the Act *via* order dated 24.03.2014, computing the taxable income of the petitioner/assessee at Rs.1,67,02,81,897/-. In addition to this, interest from External Commercial Borrowings [ECBs], amounting to Rs.1,97,68,25,304/-, was added to the taxable income of the petitioner/assessee.

4.1 Aggrieved by the draft assessment order, the petitioner/assessee pursued objections before the Dispute Resolution Panel [in short, DRP”].

5. *Via* directions dated 16.12.2014, under Section 144(C)(5) of the Act, the DRP rejected all the objections raised by the petitioner/assessee except the objection against adjustment made by the Transfer Pricing Officer (TPO) on account of a counter-guarantee transaction with the Associated Enterprise (AE) of the petitioner/assessee.

6. Pursuant to the directions passed by the DRP, the AO framed an assessment order dated 28.01.2015. The total income of the petitioner/assessee was computed at Rs.159,69,93,977/-. Interest received from ECBS was retained, which amounted to Rs.197,68,25,304/-.

7. Aggrieved by the final assessment order, the petitioner/assessee



lodged an appeal before the Income Tax Appellate Tribunal [in short, “the Tribunal”]. *Via* order dated 25.01.2017, the Tribunal partly allowed the appeal of the petitioner/assessee.

8. Against the order dated 25.01.2017, cross-appeals were filed before this Court. The petitioner’s/assessee’s appeal was numbered ITA 498/2017 while the respondents’/revenues’ appeal was numbered ITA 1066/2017. In addition to the substantive appeal, i.e., ITA 498/2017, the petitioner/assessee filed cross-objections in the respondents/revenue’s appeal before the Delhi High Court, i.e., ITA 1066/2017.

8.1 The petitioner’s/assessee’s appeal, i.e., ITA 498/2017, was admitted on 12.07.2017 and questions of law were framed to be listed in due course.

8.2 In the respondents’/revenues’ appeal, i.e., ITA 1066/2017, the Court *via* order dated 28.11.2017 confined itself to two (2) out of the five (5) issues that were raised by respondents/revenue.

9. The respondents/revenue preferred a Special Leave Petition (SLP) in the Supreme Court against the order dated 28.11.2017.

10. It is against this backdrop that the petitioner/assessee took recourse to the Direct Tax Vivad Se Vishwas Act, 2020 [in short, “VSV Act”] and Rules.

11. The endeavour to have the matter settled under the VSV Act failed for the reason contained in the impugned communication dated 17.02.2021 passed by respondent no.1/revenue to which we have made a reference hereinabove.

12. Therefore, the moot question that arises for consideration is: can an applicant, under the VSV Act, choose to settle one or more of the appeals, while continuing to contest others?



6. Mr Percy Pardiwalla, learned senior counsel, has drawn our attention to a judgment of a coordinate Bench dated 25.11.2022 passed in WP(C) 3973/2021 titled, *MUFG Bank Ltd. v. CIT 2 and Anr.*

7. The coordinate bench, after examining the provisions of the VSV Act, has, *inter alia*, concluded that an assessee has the leeway to settle any one appeal under the VSV Act and is not required to settle all the pending appeals filed by the respondents/revenue. For convenience, the relevant parts of the judgment are extracted hereafter:

“34. This Court is further of the view that under the DTVSV Act, 2020 each appeal, writ petition or SLP is treated as a separate dispute which is evident from Section 2(1)(j) read with Section 2(1)(a) of the Act. The said Sections provide that disputed tax for each appeal, writ petition or SLP is to be computed and, the disputed tax payable by the declarant is the amount as if such appeal, writ petition or SLP were to be decided against the assessee. Section 2(1)(a) of the Act use the words “an appeal” and Section 2(1)(j) of the Act uses the word “any appeal” both of which indicate that the unit for settlement of dispute under the provisions of DTVSV Act is an appeal or a writ petition or a SLP. The aforesaid position is further confirmed by the definition of “dispute” in Rule 2(b) of the DTVSV Rules, 2020 which defines each appeal, writ petition or SLP as a separate dispute for the purpose of computing disputed tax under Rules 9, 10 and 11 of the DTVSV Rules. This is also evident from the statutory Form No.5 issued by the designated authority prescribed under the Rules where the Column No.3 records the detail of the ‘Details of dispute settled (Appeal Reference Number)’.

35. The submission of the revenue that under the DTVSV Act the unit of settlement is an assessment year is contrary to its own stand as the Department has no grievance with the petitioner not settling the appeal filed by it for the same assessment year, but requires the petitioner to settle all the Departmental appeals for an assessment year. In fact, the aforesaid position is not borne out from any provision of the DTVSV Act or the Rules. Consequently, the unit for settlement of dispute under the DTVSV Act, 2020 is an appeal, writ petition or SLP and not the assessment year as had been canvassed by the revenue.

36. Even assuming that the DTVSV Act is a taxing statute, there is no restriction on an assessee to choose an appeal to be settled under the DTVSV Act as Section 2(1)(j) uses the words “any appeal” which even on a literal interpretation would mean any one or more appeals.”

[Emphasis is ours]



8. The coordinate Bench has categorically held that the unit of settlement under the VSV Act is not an ‘assessment year’ but “*any appeal, writ petition or an SLP*”. In this regard, the coordinate bench has referred, *inter alia*, to the provisions of Section 2(1)(j) read with Section 2(1)(a) of the VSV Act.

8. Mr Prashant Meharchandani, learned senior standing counsel, who appears on behalf of the respondents/revenue, cannot but accept that the issue raised in the present petition is covered by the decision of the coordinate Bench.

9. Accordingly, the writ petition is allowed. The order rejecting the subject Forms and the communication dated 17.02.2021 are set aside.

10. The concerned authority under VSV Act will, now, take the next steps in law for processing the subject Forms filed by the petitioner/assessee.

11. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 22, 2024 / tr