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

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Date of decision: 22.03.2024

+ **W.P.(C) 4909/2021**

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 with Mr Akshat
Singh, 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.) 2011-12.
2. *Via* the instant writ petition, the petitioner/assessee seeks to assail the order [Annexure P-22] passed by respondent no.1/revenue rejecting the declaration made by the petitioner in Form-1 and the undertaking given by the petitioner/assessee in 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. The issue that arises for consideration is no different from the issue that arose for consideration in WP(C) 4871/2021, which is listed on our



board today.

4. The reason given by respondent no.1/revenue, *via* communication dated 17.02.2021, for the rejection of the Forms is that the petitioner/assessee was seeking to settle only a part of the dispute obtaining between them. The said 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.”

5. The record discloses the petitioner/assessee filed its Return of Income (ROI) on 30.11.2011 declaring its total income as Rs. 2,28,02,36,682/-. The case of the petitioner/assessee was selected for scrutiny and thereafter, the Assessing Officer (AO) framed a draft assessment order dated 30.03.2015 under Section 143(3)/144C(1) of the Income-tax Act, 1961 [hereafter referred to as “the Act”]. *Via* the draft assessment order, the AO proposed various additions to the income of the petitioner/assessee.

5.1 The AO assessed the net taxable business income of the petitioner/assessee at Rs. 2,75,90,61,548/-. Besides this, the AO also added interest earned from External Commercial Borrowings [ECBs] amounting to Rs. 2,15,06,42,866/-.

5.1 Aggrieved by the draft assessment order, the petitioner/assessee pursued objections before the Dispute Resolution Panel [DRP]. The DRP allowed some objections of the petitioner/assessee while dismissing others.

6. Pursuant to the directions passed by the DRP, the AO framed a final assessment order dated 18.12.2015 computing the income of the petitioner/assessee at Rs.2,28,02,36,684/-. The addition of interest from



ECBs was retained, taking the total taxable income to Rs. 4,43,08,79,550/-.

7. Aggrieved by the final assessment order dated 18.12.2015, cross-appeals were filed before the Income Tax Appellate Tribunal [hereafter referred to as “the Tribunal”]. The appeal filed by the respondent/revenue before the Income Tax Appellate Tribunal was numbered as ITA 283/Del/2016. To be noted, the petitioner/assessee also filed cross-objections in the respondents’/revenue’s appeal preferred before the Tribunal.

7.1 In addition to cross-objections, the petitioner/assessee also filed a substantive appeal which was numbered ITA No.306/Del/2016.

8. In the petitioner’s/assessee’s appeal, the Tribunal, *via* order dated 26.04.2017, partly allowed the appeal of the petitioner/assessee.

9. Against the order of the Tribunal in the petitioner’s/assessee’s appeal, i.e., ITA No. 306/Del/2016, cross-appeals were filed before the Delhi High Court. The appeal of the petitioner/assessee before the Delhi High Court was numbered ITA 806/2017 while the respondent’s/revenue’s appeal was numbered ITA 1072/2017.

10. The denial of relief to the petitioner/assessee under the provisions of the Direct Tax Vivas Se Vishwas Act, 2020 [in short, “VSV Act”] is pivoted on the fact that the petitioner/assessee has chosen to settle only one of the three (3) matters. The matters pending adjudication were:

- (i) Petitioner’s/Assessee’s appeal, i.e., ITA 806/2017;
- (ii) Respondent’s/Revenue’s appeal, i.e., ITA 1072/2017;
- (iii) Respondent’s/Revenue’s Special Leave Petition (SLP).

10.1 The application for settlement was under the VSV Act only vis-à-vis the respondent/revenue’s appeal before the Delhi High Court, i.e., ITA



1072/2017.

11. Given the fact we have concluded, while disposing of WP(C) 4871/2021, that an applicant can choose to settle one or more appeals or SLPs that may emerge from a given assessment year under the VSV Act, the issue raised in this writ petition stands covered by a decision in the said matter.

12. Accordingly, the prayer made in the writ petition is allowed. The impugned order rejecting the declaration and undertaking made by the petitioner/assessee along with the communication dated 17.02.2021 are set aside.

13. Consequently, respondent no.1/revenue will take next steps in the matter for processing the subject Forms, as per provisions of the VSV Act.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 22, 2024 / tr