M/S.Future Plus Enterprise vs The Principal Commissioner Of Income

Madras High Court M/S.Future Plus Enterprise vs The Principal Commissioner Of Income on 9 May, 2025 Author: C.Saravanan Bench: C.Saravanan W.P.Nos.7178 and 7182 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 06.12.2024 Pronounced On 09.05.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.7178 and 7182 of 2022 and W.M.P.Nos.7199, 7200, 7203, 7207, 7208 and 7210 of 2022

W.P.No.7178 of 2022

1.M/s.Future Plus Enterprise, Represented by its Partner Mr.Anup Khasnobis

2.Anup Khasnobis, Partner of M/s.Future Plus Enterprise ... Petitioners

Vs.

1.The Principal Commissioner of Income Tax (Central - 2), No.108, Uthamar Gandhi Road, Subba Road Avenue, Nungambakkam, Chennai – 600 034. (Notified as “Designated Authority” under the Direct Tax Vivad se Vishwas Act, 2020)

2.The Deputy/Assistant Commissioner of Income Tax, Central Circle – 2, Coimbatore, Office at 67A, Race Course Road, Coimbatore – 641 018.

3.Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001. ... Respondents

W.P.No.7182 of 2022

1.M/s.Divyajyoti Distributors (P.) Ltd., Represented by its Director Sri Uttam Kumar Saha

2.Sri Uttam Kumar Saha Director of M/s.Divyajyoti Distributors (P.) Ltd., ... Petitioners

Vs.

1.The Principal Commissioner of Income Tax (Central - 2), No.108, Uthamar Gandhi Road, Subba Road Avenue, Nungambakkam, Chennai – 600 034. (Notified as “Designated Authority” under the Direct Tax Vivad se Vishwas Act, 2020)

2.The Deputy/Assistant Commissioner of Income Tax, Central Circle – 2, Coimbatore, Office at 67A, Race Course Road, Coimbatore – 641 018.

3.Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001. ... Respondents

Prayer in both W.Ps: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, commanding the 1st respondent to transmit and certify the records relating to the said Impugned Rejection Order dated 26.09.2021 so that the same may be set aside and/or quashed and consequentially direct the respondents, their servants and agents to withdraw, cancel and/or rescind the said order dated 26.09.2021 and accept and admit the 1st petitioner's declaration dated 30.12.2020 and pass order in Form-3 determining the amount payable by the 1st petitioner (which is 12.5% of the disputed penalty) and accept the said payment from the 1st petitioner without any penal interest or liability for delayed payment, within such extended time.

For Petitioners : Mr.S.K.Bagaria (In both W.Ps) Senior Counsel for Mr.S.Diwakar and Mr.Saurabh Bagaria

For Respondents : Mr.A.P.Srinivas (In both W.Ps) Senior Standing Counsel

COMMON ORDER

By this Common Order, both these Writ Petitions are being disposed of.

2. In these Writ Petitions, the respective petitioners have challenged the Impugned Communication/Impugned Rejection Order dated 26.09.2021 rejecting the applications/declarations filed for settling the dispute under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

3. In the respective cases, the applications/declarations filed under the aforesaid Act which have been rejected on the ground that the respective petitioners were not eligible for the amnesty under the Direct Tax Vivad Se Vishwas Act, 2020 as the disputed demand was more than Rs.5,00,00,000/-.

4. Both the First Writ Petitioners in the respective Writ Petitions have suffered Assessment Orders dated 28.04.2017 and 27.04.2017 for the Assessment Year 2016-2017 passed under Section 143(3) of the Income Tax Act, 1961. The tax that was determined under the Assessment Orders passed under Section 143(3) of the Income Tax Act, 1961 including the interest has also been paid by the respective First Writ Petitioners.

5. These Assessment Orders were in the background of a search that was conducted under Section 132 of the Income Tax Act, 1961 in the case of the respective Writ Petitioners on 24.09.2015.

6. Insofar as the First Writ Petitioner in W.P.No.7178 of 2022 is concerned, during the course of the search, a non-disclosure of undisclosed income of Rs.120,00,00,000/- was unearthed. The First Writ Petitioner has also ____________ Page No. 4 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 paid proportionate tax that was determined under Section 143(3) of the Income Tax Act, 1961 together with interest thereon.

7. As far as the First Writ Petitioner in W.P.No.7182 of 2022 is concerned, after the search was conducted, a non-disclousure of undisclosed income of Rs.18,00,00,000/- was unearthed. The First Writ Petitioner has also paid proportionate tax and interest.

8. However, the respective First Writ Petitioners were subjected to penalty proceeding under Section 271AAB of the Income Tax Act, 1961 wherein, penalty of Rs.9,84,53,720/- and Rs.12,00,00,000/- was imposed on the respective Writ Petitioners vide two Separate Orders both dated 12.09.2017 under Section 271(1)(c) of the Income Tax Act, 1961.

9. The respective Writ Petitioners filed appeals before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961.

10. As far as the Petitioner in W.P.No.7178 of 2022 is concerned, the Appellate Commissioner vide Order dated 20.02.2019 partly reduced penalty ____________ Page No. 5 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 from Rs.12,00,00,000/- to Rs.3,89,12,660/- being 10% on the undisclosed seized cash found during the search that was conducted on 24.09.2015.

11. As far as the petitioner in W.P.No.7182 of 2022 is concerned, the Appellate Commissioner vide order dated 15.02.2019 partly reduced the penalty from Rs.9,84,53,720/- to Rs.98,63,458/- being 10% on the unexplained/undisclosed seized cash found during the search that was conducted on 24.09.2015.

12. Aggrieved by these orders, the Income Tax Department has filed an appeal before the Appellate Tribunal. They are said to be pending as on date. The disputed penalty in the appeal are as under:-

W.P.No.7178 of 2022 W.P.No.7182 of 2022 Amounts of penalty disputed in Appeal Rs.8,10,87,340/- Rs.8,85,90,262/-

[Rs.12,00,00,000/- - Rs.9,84,53,720/- -

Rs.3,89,12,660] Rs.98,63,458/-]

13. It is at this juncture, the Parliament enacted Direct Tax Vivad Se Vishwas Act, 2020 which the respective Writ Petitioners opted to settle the ____________ Page No. 6 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 dispute under the Direct Tax Vivad Se Vishwas Act, 2020 by filing Declarations in Form-1 and Form-2 on 30.12.2020.

14. The First Respondent has rejected these applications/declarations filed by the respective Writ Petitioners under Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020 by invoking Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020 on the ground that the amount of disputed demand exceeded Rs.5,00,00,000/-. In the Impugned Rejection Order, it has been stated that the respective Writ Petitioners were not eligible for amnesty under the Scheme as the disputed demand is more than Rs.5,00,00,000/-.

15. Learned Senior Counsel for the Petitioners would submit that Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020 cannot be pressed against the respective Writ Petitioners as there is no disputed tax which was sought to be settled under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

16. It is submitted that restrictions under Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020 relates to “tax arrears” as defined in Section 2(1)(o) of the said Direct Tax Vivad Se Vishwas Act, 2020. It is submitted that ____________ Page No. 7 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020 contemplates 4 different categories as determined under the provisions of the Income Tax Act, 1961.

17. It is further submitted that “disputed penalty” was one of the category in Section 2(1)(o)(iii) of the said Direct Tax Vivad Se Vishwas Act, 2020 and therefore the respective Writ Petitioners were indeed entitled to the benefit under Sl.No.(c) to Table to Section 3 of the said Direct Tax Vivad Se Vishwas Act, 2020 which has been wrongly denied to the respective Writ Petitioners.

18. Learned Senior Counsel for the petitioners drew attention to the decisions of the Hon'ble Supreme Court, Bombay High Court and that of this Court rendered in the following cases:-

i. Prakash Ramdas Mahajan Vs. Union of India and others in Civil Appeal Nos.1414 to 1417 of 2024 dated 30.01.2024. ii. Shekhar Resorts Limited (Unit Hotel Orient Taj) Vs. Union of India and others, (2023) 3 SCC 220. iii. Principal Commissioner of Income-tax Vs. Pragati Pre Fab India (P.) Ltd., [2024] 165 taxmann.com 506 (SC). iv. Principal Commissioner of Income-tax, Central (IV) Vs. Marcotech Developers Ltd., [2023] 155 taxmann.com 282 (SC).

v. Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and others, (2018) 9 SCC 1. vi. Commissioner of Income Tax-III Vs. Calcutta Knitwears, ____________ Page No. 8 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 Ludhiana, (2014) 6 SCC 444. vii. Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and another, (2008) 14 SCC 151. viii. Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II, (2016) 15 SCC 785. ix. In Re: Cognizance for Extenstion of Limitation in Miscellaneous Application Nos.21 and 29 of 2022 in Miscellaneous Application No.665 of 2021 dated 10.01.2022. x. Govindrajulu Naidu Vs. Principal Commissioner of Income Tax (Central-1), Mumbai and others, 2021-TIOL- 1148-HC-MUM-IT. xi. Ashiwini Builders and

Developers Pvt. Ltd., Satara Vs. Assistant Commissioner, Satara and others, 2022-TIOL- HC-MUM-ST. xii. Dhanraj Malchand Rathi Vs. Union of India, Through Ministry of Finance, Department of Revenue and another, 2022-TIOL-194-HC-MUM-IT. xiii. Mpower Facility Services Pvt. Ltd., Mumbai Vs. The Union of India, Through the Revenue Secretary, New Delhi and others, 2022-TIOL-159-HC-MUM-ST. xiv.Pragati Pre Fab India (P.) Ltd., Vs. Principal Commissioner of Income-tax, [2023] 155 taxmann.com 281 (Bombay). xv.Marcotech Developers Ltd., Vs. Principal Commissioner of Income Tax, [2021] 126 taxmann.com 1 (Bombay). xvi. Gopalakrishnan Rajkumar Vs. Principal Commissioner of Income-tax, [2022] 140 taxmann.com 394 (Madras).

19. It is further submitted that even if there was ambiguity insofar as the interpretation of Section 9(a)(i) of the said Direct Tax Vivad Se Vishwas Act, 2020, the benefit of amnesty under it has to be extended to the respective Writ Petitioners. ____________ Page No. 9 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

20. Learned Senior Counsel for the Petitioners specifically drew attention to the Finance Minister's Speech which mentions about the proposed Direct Tax Vivad Se Vishwas Act, 2020 at the stage of presentation of the Bill in the Parliament.

21. That apart, the learned Senior Counsel for the Petitioners would submit that the Courts have interpreted that the Beneficial Scheme should not be denied.

22. Learned Senior Counsel for the Petitioners would also submits that in the Counter Affidavit filed by the First Respondent, there is no clear defence except to reiterate that the amount of disputed demand exceeded Rs.5,00,00,000/- and therefore, the respective Writ Petitioners were not entitled to the benefit of the Scheme.

23. Defending the Impugned Rejection Orders, rejecting the applications, the learned Senior Standing Counsel for the Respondents would submit that the decisions cited by the learned Senior Counsel for the Petitioners itself make it clear that the respective Writ Petitioners were not entitled to the benefit of the ____________ Page No. 10 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 Scheme in view of Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020.

24. It is further submitted that even as per the decision of the Bombay High Court in Marcotech Developers Limited's case (cited supra), it has been categorically stated that as per sub-clause (i), provisions of the Vivad Se Vishwas Act would not apply in respect of “tax arrears” relating to an Assessment Year in respect of which an assessment has been made including on the basis of search and seizure.

25. Similarly, the learned Senior Standing Counsel for the Respondents would also draw attention to Paragraph 29.1 wherein, the Bombay High Court while quashing the Circular No.21 of 2020 dated 04.12.2020, has observed as under:-

“Now tax arrear has a definite connotation under the Vivad se Vishwas Act in terms of Section 2(1)(o) which has to be read together with Sections 2(f) to 2(j).”

26. I have considered the arguments advanced by the learned Senior Counsel for the Petitioners and the learned Senior Standing Counsel for the ____________ Page No. 11 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 Respondents. I have perused the records that are available before this Court. I have also considered the decisions cited by the learned Senior Counsel for the Petitioners and the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

27. The purpose of enacting the Direct Tax Vivad Se Vishwas Act, 2020 has been explained in the Finance Minister's Speech during the presentation of the Finance Bill before the Parliament on 01.02.2020.

28. The extract of the speech of the Finance Minister reads as under:-

“Finance Minister Budget Speech

126. No Dispute but Trust Scheme – 'Vivad Se Vishwas' Scheme 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 forums 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 he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain ____________ Page No. 12 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 open till 30th June, 2020. Taxpayers in whose cases 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.”

29. The statistic that is available in the electronic and print media reveal that as on 30.11.2019, 4.83 lakhs direct tax disputes were pending at various Courts and Appellate Forums like CIT(A), ITAT, High Court and Supreme Court involving a whopping amount Rs.9.32 lakhs crores as tax arrears. The direct tax collection during the Financial Year 2018-2019 was pegged at Rs.11.37 lakhs Crores. Disputed tax arrears in these forum constituted nearly one year direct tax collection during the Financial Year 2018-2019. This is also evident from the statement of object and reasons of the said Act. The statement of object and reason for enacting the above Act reads as under:-

“Statement of Objects and Reasons:

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 30th November, 2018, the amount of disputed direct tax arrears is Rs.9.32 lakh crores.

Considering that the actual direct tax collection in the Financial Year 2018-2019 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection.

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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 taxpayers on the Government, which are pending with the Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court as on the 31st day of January, 2020 irrespective of whether demand is 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 only pay the whole of the disputed tax if the payment is made before the 31st day of March, 2020 and for the payments made after the 31st day of March, 2020 but on or before the date notified by Central Government, the amount payable shall be increased by 10 percent of disputed tax;

(d) in appeals related to disputed penalty, disputed interest or disputed fee, the amount payable by the declarant shall be 25 percent of the disputed penalty, disputed interest or disputed fee, as the case may be, if the payment is made on or before the 31 st day of March, 2020.

If payment is made after the 31st day of March, 2020 but on or before the date notified by Central Government, the ____________ Page No. 14 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 amount payable shall be increased to 30 percent 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 upto the date to be notified by the Government. President's Recommendation under Article 117 of the Constitution of India [Letter No.IT(A)/1/2020-TPL, dated 1.2.2020 from Smt.Nirmala Sitharaman, Minister of Finance and Corporate Affairs to the Secretary General, Lok Sabha] The President, having been informed of the subject matter of the Direct Tax Vivad Se Vishwas Bill, 2020, recommeds under clause (1) and (3) of Article 117 read with Clause (1) of Article 274 of the Constitution of India, the introduction of the Direct Tax Vivad Se Vishwas Bill, 2020, in Lok Sabha and also recommends to Lok Sabha the consideration of the Bill.”

30. Therefore, to recover the amounts stuck in litigation, the Direct Tax Vivad Se Vishwas Bill, 2020. The Bill was presented by the Finance Minister on 05.02.2020 in the well of Lok Sabha i.e., the Lower House of the Parliament.

31. The Bill was aimed to reduce direct tax litigation and provided a mechanism for resolution of disputes related to income tax and corporate tax, pending before the Appellate Forum as on January, 2020. ____________ Page No. 15 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

32. The Bill was passed without any discussion in the Parliament on 04.03.2020. By Circular No.7 of 2020 dated 04.03.2020, clarification was issued by the Central Board of Direct Taxes (CBDT). The Act received presidential assent on 17.03.2020.

33. Thereafter, Circular No.9 of 2020 dated 22.04.2020 was issued by the Central Board of Direct Taxes (CBDT). Text of Paragraphs 1 to 5 to Circular No.9 of 2020 dated 22.04.2020 captures the history. It is reproduced below:-

“Sub.: Clarifications on provisions of the Direct Tax Vivad Se Vishwas Act, 2020 – reg.

During the Union Budget, 2020 presentation, the 'Vivad se Vishwas' Scheme was announced to provide for dispute resolution in respect of pending income tax litigation. Pursuant to Budget announcement, the Direct Tax Vivad se Vishwas Bill, 2020 (the Bill) was introduced in the Lok Sabha on 5th Feb, 2020. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to the Bill were proposed. These amendments sought to widen the scope of the bill and reduce the compliance burden on taxpayers.

2. After introduction of the bill in Lok Sabha, several queries were received from the stakeholders seeking clarifications in respect of various provisions contained therein.

Government had considered these queries and had decided to clarify the same in form of answers to frequently asked questions (FAQs) vide circular no 7 of 2020 dated 4th March 2020. These clarifications were, however, subject to approval and passing of the bill by the Parliament and receiving assent of the Hon 'ble President of India. ____________ Page No. 16 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

3. The Bill has since been passed by the Parliament and has also received the assent of the Hon'ble President of India and has now been enacted as The Direct Tax Vivad Se Vishwas Act, 2020 (Vivad se Vishwas). The objective of Vivad se Vishwas is to inter alia reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

4. 55 questions contained in circular no 7 of 2020 are reissued under this circular with following modifications i. Vivad se Vishwas referred to Direct Tax Vivad se Vishwas Bill, 2020 in circular no 7. Howcver, in this circular it refers to The Direct Tax Vivad Se Vishwas Act, 2020; ii. Since clauses of the Bill have now become sections in the Vivad Se Vishwas, the reference to "clause" in circular no 7 has been replaced with "section"; iii. Reference to declaration form in circular no 7 has been replaced with referencing of relevant form, since rules and forms have now been notified; and iv. Answer to question no 22 has been modified to reflect the correct intent of the law. It has now been clarified that where only notice for initiation of prosecution has been issued without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas. However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before filing the declaration.

5. Section 10 and 11 of the Vivad se Vishwas empowers the Board or the Central Government to issue directions or orders in public interest or to remove difficulties. This circular ____________ Page No. 17 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm)

W.P.Nos.7178 and 7182 of 2022 is such direction/order issued under Section 10 and Section 11 of the Vivad se Vishvas. Thus answers to some of the questions in this circular extend the application of Vivad se Vishwas in public interest or to remove difficulties, under Section 10 and Section 11 of Vivad se Vishwas. “QUESTIONS ON SCOPE/ELIGIBILITY (Q. No. 1 - 24)” Question No. 6. Can the benefit of the Vivad Se Vishwas be availed, if a search and seizure action by the Income-tax Department has been initiated against a taxpayer? Answer: Case where the tax arrears relate to an assessment made under Section 143(3) or Section 144 or Section 153A or Section 153C of the Act on the basis of search initiated under Section 132 or Section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year. Thus, if there are 7 assessments of an assessee relating to search and seizure, out of which in 4 assessments, disputed tax is five crore rupees or less in each year and in remaining 3 assessments, disputed tax is more than five crore rupees in each year, declaration can be filed for 4 assessments where disputed tax is five crore rupees or less in each year. ____________ Page No. 18 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

34. As far as search cases are concerned, the clarification in Paragraph 6 of both the Circulars one and the same. They are extracted below once again:-

Question No.6 Circular No.7 of 2020 Circular No.9 of 2020 dated 04.03.2020 dated 22.04.2020 Can the benefit of the Case where the tax arrears Case where the tax arrears Vivad Se Vishwas be relate to an assessment relate to an assessment availed, if a search and made under Section 143(3) made under Section 143(3) seizure action by the or Section 144 or Section or Section 144 or Section Income-tax Department 153A or Section 153C of the 153A or Section 153C of has been initiated Act on the basis of search the Act on the basis of against a taxpayer? initiated under Section 132 search initiated under or Section 132A of the Act Section 132 or Section are excluded if the amount 132A of the Act are of disputed tax exceeds five excluded if the amount of crore rupees in that disputed tax exceeds five assessment year. crore rupees in that assessment year.

Thus, if there are 7 Thus, if there are 7 assessments of an assessee assessments of an assessee relating to search and relating to search and seizure, out of which in 4 seizure, out of which in 4 assessments, disputed tax is assessments, disputed tax five crore rupees or less in is five crore rupees or less each year and in remaining in each year and in 3 assessments, disputed tax remaining 3 assessments, is more than five crore disputed tax is more than rupees in each year, five crore rupees in each declaration can be filed for year, declaration can be 4 assessments where filed for 4 assessments disputed tax is five crore where disputed tax is five rupees or less in each year. crore rupees or less in each year.

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35. For the purpose of determining the issue in the present case, an interpretation of Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020 falls for consideration.

36. As per Section 9(a)(i) of the Direct Tax Vivad Se Vishwas Act, 2020, there is an embargo on settling the dispute in respect of “tax arrears” relating to Assessment Year in respect of which, an Assessment has been made under Sub-Section 3 to Section 143 or Section 144 or Section 153A or Section 153C of the Income Tax Act, 1961 on the basis of search initiated under Section 132 or Section 132A of the Income Tax Act, 1961 where the amount of “disputed tax” exceeds Rs.5,00,00,000/-.

37. As per Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, a declarant is entitled to file a declaration before the Designated authority in accordance with the provisions of Section 4 of the said Act in respect of tax year. Section 4 deals with the procedure to be followed by a declarant entitled to file a declaration under the said Act. ____________ Page No. 20 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

38. As per Sub-Section (3) to Section 4 of the said Act, if a declarant is filed any appeal before any Appellate Forum or any Writ Petition before the High Court of the Supreme Court against any order in respect of “tax arrears”, such a declarant is required to withdraw the appeal or writ petition with the leave of the Court whenever required after issuance a Certificate under sub- section (1) of Section 5 and furnish proof of such withdraw along with the commission of payment to the Designated Authority under sub-section (2) of Section 5 of the said Act.

39. It is the specific case of the Petitioners that their case has to be settled in terms of Serial No.(c) to the table in Section 3 of the said Act. Relevant portion of Section 3 of the Act is extracted 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 arrear”, then, nowithstanding 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:-

____________ Page No. 21 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 Sl. Nature of tax Amount payable Amount payable arrear under this Act on or under this Act on No. before 31st day of or after 1st day of March 2020 April, 2020 but on or before the last date

(c) Where the tax Twenty-five percent Thirty percent of arrear relates to of disputed interest or disputed interest or disputed interest or disputed penalty or disputed penalty or disputed penalty or disputed fee. disputed fee.

disputed fee.

40. The expression used in the Direct Tax Vivad Se Vishwas Act, 2020 is “disputed tax” and “tax arrears”. These 2 expressions have been defined in Section 2(1)(j) and Section 2(1)(o) of the Direct Tax Vivad Se Vishwas Act, 2020. They read as under:- 2(1)(j) 2(1)(o) 2.(1) In this Act, unless the context otherwise requires,- (a)..... (a) ..... (b)..... (b) ..... (c)..... (c) ..... (d)..... (d) ..... (e)..... (e) ..... (f)..... (f) ..... (g)..... (g) ..... (h)..... (h) ..... (i)..... (i) .....

(j) “disputed tax”, in relation (j) ..... to an assessment year or (k) ..... financial year, as the case ____________ Page No. 22 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 2(1)(j) 2(1)(o) may be, means the income- (l) ..... tax including surcharge and (m)..... cess (hereafter in this clause referred to as the amount of (n) ..... tax) payable by the (o) “tax arrear” means,- appellant under the i. the aggregate amount of provisions of the Income- disputed tax, interest tax Act, 1961, as computed chargeable or charged on hereunder:- such disputed tax, and A) In a case where any penalty leviable or levied on appeal, writ petition or such disputed tax; or special leave petition is ii. disputed interest; or pending before the

appellate forum as on the iii. disputed penalty; or specified date, the amount iv. disputed fee, of tax that is payable by the appellant if such as determined under the provisions of the Income-tax appeal or writ petition or special leave petition was Act. 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

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2(1)(j) 2(1)(o) 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 Dispute 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 Dispute Resolution Panel was to confirm the variation proposed in the draft order; E) In a case where Dispute 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

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2(1)(j) 2(1)(o) assessment order to be passed by the Assessing Order 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 be accepted. Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under Section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued: Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under Section 115JAA or Section 115D of the Income-tax Act or any loss or depreciation computed thereunder, the

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2(1)(j) 2(1)(o) appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

41. There is however exception to Section 3 and Section 4 of the said Act in Section 9(a)(i) of the said Act. As per Section 9(a)(i) of the said Act, the provisions of the Act shall not apply in respect of “tax arrears” relating to an Assessment Year in respect of which an assessment has been made under sub- section (3) of Section 143 or Section 144 or Section 153A or Section 153C of the Income Tax Act, 1961 on the basis of a search initiated under Section 132 or Section 132A of the Income Tax Act, 1961, if the amount of the “disputed tax” exceeds Rs.5,00,00,000/-.

42. Section 9(a)(i) of the Direct Tax Act Vivad Se Vishwas Act, 2020 ____________ Page No. 26 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 reads as under:-

“9. The provisions of this Act shall not apply -

(a) in respect of tax arrear,-

i. relating to an assessment year in respect of which an assessment has been made under sub-section (3) of Section 143 or Section 144 or Section 153A or Section 153C of the Income-tax Act on the basis of search initiated under Section 132 or Section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees.”

43. There is no ambiguity in the language in Section 9(a)(i) of the Direct Tax Act Vivad Se Vishwas Act, 2020.

44. The expression “disputed tax” in Section 2(j) of the Direct Tax Act Vivad Se Vishwas Act, 2020 means the income tax payable by the appellant under the provisions of the Income Tax Act, 1961.

45. It is qualified with further sub-clauses (A) to (F). In this case admittedly, there is no income tax payable by the Petitioners as on date. The expression “disputed penalty” has also been defined in Section 2(i) of the Direct Tax Act Vivad Se Vishwas Act, 2020. ____________ Page No. 27 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

46. The expression “disputed penalty” in Section 2(i) of the Direct Tax Act Vivad Se Viswas Act, 2020 means the penalty determined in any case under the provisions of the Income Tax Act, 1961, where - i. such penalty is not levied on leviable in respect of disputed income or disputed tax, as the case may be. ii. and appeal has been filed by the appellant’s in respect of such penalty.

47. The exclusion in Section 9(a)(i) of the Direct Tax Act Vivad Se Viswas Act, 2020 will apply in respect of “tax arrear” where orders have been passed under Section 143(3), Section 144 or Section 153A or Section 153C of the Income Tax Act, 1961 where the disputed that exceeds Rs.5,00,00,000/-.

48. The respective Writ Petitioners were assessed under section 153A/C read with Section 143(3) of the Income Tax Act, 1961 pursuant to search that was conducted under Section 132 of the Income Tax Act, 1961 on 24.09.2015.

49. Admittedly, the “disputed tax” in the Assessment Orders dated 28.04.2017 and 27.04.2017 respectively in the case of the respective Writ Petitioners exceeded Rs.5,00,00,000/-. ____________ Page No. 28 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022

50. Merely because the respective Writ Petitioners have paid the tax by admitting to the undisclosed income pursuant to the assessment that was completed under Section 143(3) on 28.04.2017 in the case of the Petitioners in W.P.No.7182 of 2022 and the Assessment Order that was passed under Section 143(3) read with Section 153B of the Income Tax Act, 1961 on 27.04.2017 in the case of the Writ Petitioners in W.P.No.7178 of 2022 ipso

facto would not mean that the “disputed tax” did not exceed Rs.5,00,00,000/-.

51. The clarification in Serial No.6 of the Central Board of Direct Taxes (CBDT) in Circular No.9 of 2020 dated 22nd April 2020 as also the previous clarification in Circular No.7 of 2020 dated 4th March 2020 also makes it clear that the benefit of the amnesty under the Direct Tax Vivad Se Vishvas Act, 2020 was not available to an assessee who has been proceeded by the tax arrears relate to an assessment made under the provisions mentioned above.

52. The clarification of the Central Board of Direct Taxes (CBDT) though not binding on this Court are to be considered as Contemporanea expositio of law. Therefore, I do not find any merits in these Writ Petitions merely because the respective Writ Petitioners have paid the tax pursuant to the ____________ Page No. 29 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 search conducted in the respective Assessment Orders.

53. Therefore, these Writ Petitions are liable to be dismissed. Accordingly, they are dismissed. However, there shall be no order as to costs. Connected Writ Miscellaneous Petitions are closed. 09 .05.2025 Neutral Citation : Yes / No arb/msm To:

1.The Principal Commissioner of Income Tax (Central - 2), No.108, Uthamar Gandhi Road, Subba Road Avenue, Nungambakkam, Chennai – 600 034.

(Notified as “Designated Authority” under the Direct Tax Vivad se Vishwas Act, 2020) 2.The Deputy/Assistant Commissioner of Income Tax, Central Circle – 2, Coimbatore, Office at 67A, Race Course Road, Coimbatore – 641 018. 3.The Secretary, Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001. ____________ Page No. 30 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm) W.P.Nos.7178 and 7182 of 2022 C.SARAVANAN, J. arb/msm Pre-delivery Common Order in W.P.Nos.7178 and 7182 of 2022 09.05.2025 ____________ Page No. 31 of 31 https://www.mhc.tn.gov.in/judis (Uploaded on: 07/06/2025 08:24:53 pm)