

# SBC Tax Alert

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30 August 2021

**Taxpayer is eligible to file VSV application even where the time limit for filing objections against Draft Assessment order was expired before the specified date**

-Telangana HC rules in favour of the Taxpayer



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SBC has recently assisted a Foreign Company in successful disposal of a writ petition filed before the Honorable Telangana High Court regarding eligibility to settle a dispute under DTVSV Act. Summary of the Ruling:



*Even in a scenario where the time limit to file objections with DRP against a draft assessment order expired before the specified date of 31-01-2020 and no appeal is filed, the taxpayer would be eligible to settle the matter under VSV and would be considered as Appellant (pending issuance of final assessment order)*



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### Executive Summary

This Tax Alert summarizes a ruling of the High Court of Telangana (HC) dated 27<sup>th</sup> August 2021, on a WRIT petition filed by a foreign company (**the Company** or **the Taxpayer**) on the issue of its eligibility to settle its dispute arising from a draft assessment order for which the time limit to file objections expired before the specified date under Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV) i.e., 31-01-2020, and the final assessment order was pending issuance.

The HC referring to the second part of the frequently asked question (FAQ) 16 issued by the Central Board of Direct Taxes vide its Circular No. 9/2020 dated 22<sup>nd</sup> April 2020 and further stating that the DTVSV provisions are to be liberally interpreted, ruled that though the taxpayer

- has not filed objections before the specified date and time limit to file the same expired
- has not filed an appeal against the final assessment order passed after the specified date

the taxpayer would be considered as an 'Appellant' eligible to settle the dispute under the provisions of DTVSV.

### Background :

- DTVSV Act was enacted to provide an opportunity to various taxpayers to settle their open litigations under Income-tax Act, 1961.
- Direct Tax Vivad Se Vishwas Bill (Bill No. 29 of 2020) was introduced in Lok Sabha by the Hon'ble Finance Minister, Government of India, on 05<sup>th</sup> February 2020 as part of Budget Proposals for the year 2020-21. The said Bill was passed by Lok Sabha on 04<sup>th</sup> March 2020 and by the Rajya Sabha on 14<sup>th</sup> March 2020. Thereafter, it had received the assent of the President on 17<sup>th</sup> March 2020 and had thus, become an Act of Parliament from the said date.

- While the Bill was under consideration before the Lok Sabha, having regard to queries received from the stakeholders seeking clarifications in respect of various provisions contained in the Scheme, CBDT had issued Circular No.7/2020 dated 04th March 2020 providing clarification on various queries received in the form of answers to frequently asked questions (FAQs) which was followed by the issuance of Circular NO. 9/2020 (which is pari materia similar to the language used in Circular No.7/2020).
- In the present case, the Taxpayer was issued with a draft assessment order dated 30<sup>th</sup> December 2019. The Taxpayer was required to file objections against the draft assessment order, if any, before the DRP within a period of 30 days from the date of the receipt of the order. However, the Taxpayer did not file objections within the time prescribed i.e. on or before 29<sup>th</sup> January 2020.
- The final assessment order was issued on 10<sup>th</sup> February 2020. Relying on FAQ 16 of Circular No. 9/2020, the Taxpayer applied for the settlement of dispute under DTVSV on 30<sup>th</sup> March 2020.
- However, the Income-tax department placing reliance on definition as given in

Section 2(1)(a)(iii) of the DTVSV Act, rejected the application and termed the Company as ineligible Appellant on the following grounds:

- Time limit to file objections against draft assessment order expired before 31<sup>st</sup> January 2020.
- No appeal was filed against the final assessment order passed.

**Aggrieved by the rejection, the Taxpayer filed a WRIT before the HC.**

Following were the facts considered by the HC:

- The Taxpayer petitioner did not file an appeal against the Final order of assessment, as the scheme provided for settling tax disputes that have arisen before the 'specified date' mentioned as 31<sup>st</sup> January 2020.
- The Taxpayer contended that where draft assessment order has been issued, before the 'specified date' and the assessee decides not to file the objections with the DRP u/s. 144C of the Income-tax Act, 1961 and is waiting for the final order to be passed by the AO, the assessee would be considered as 'appellant' and would be eligible to settle his dispute under the DTVSV Act. In such a situation the 'disputed tax' would be computed based on the draft order.

- The Department contended that as no dispute exists as on the 'specified date', a sine qua non for availing the scheme, the petitioner is not entitled to avail the benefit under the DTVSV Act. Further, as the Taxpayer did not file an appeal before the filing of the declaration on 31<sup>st</sup> March 2021 or even before the date rejection of declaration under DTVSV, the tax payable under Act as per the Final order cannot be considered as 'disputed tax' in respect of which the benefit of scheme can be availed by petitioner.
- Circular No.9/2020 would have to be read in its entirety, whereby an appellant in declaration Form No.1 would be required to indicate in the appropriate schedule that time to file an appeal before the DRP has not expired. By referring to the said prescription in the declaration, the department contended that since, the time for filing objections before the DRP had before the 'specified date' under the DTVSV Act, the Taxpayer has not filed objections to the draft assessment order, hence, there is no dispute 'existing' to be settled.
- *CBDT vide FAQ 16 of Circular No. 9/2020 expanded the scope of eligible 'Appellant' and thus covers the Assessee's who decide not to file objections against a draft assessment order (even where the time limit to file objections expired before 31-01-2020)*
- *It is the possibility to file an appeal against the final order which is needed to be considered for a taxpayer to be considered as 'Appellant' for DTVSV.*
- *Extending the benefit only to an assessee who has filed objections to the draft assessment order and denying it to one who chooses not to file objections is not permitted.*
- *Clauses contained in the declaration form cannot be the basis for the eligibility / applicability of the DTVSV Act and the provisions cannot be put to test basis Forms issued.*

### SBC Comments:

The ruling provides the much-needed clarity for Assessee's who wish to settle the matter under DTVSV Act but the time limit to file the objections before the DRP expired before the specified date i.e., 31-01-2020.

The HC has also opined that DTVSV Act, being beneficial legislation needs to be interpreted favourably.

The HC has reaffirmed the age-old principle of interpretation i.e., whenever there lies an ambiguity in the interpretation of any law, it is the intent of the law enacted which prevails.

***We hope you find the above useful.***

### HC's Ruling:

#### The HC while ruling in favour of the Taxpayer and directing the Income-tax department to accept the application under DTVSV Act ruled as follows:

- *DTVSV Act is a beneficial piece of legislation and the same has to be interpreted in a manner that would achieve the object for which it was enacted.*

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