

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7839 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA** Sd/-**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI** Sd/-

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Approved for Reporting	Yes	No
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TEJAL MAYUR RAO

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX 1 & ORS.

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 3

MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 07/10/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

[1] Heard learned advocate Mr. Hiren J. Trivedi for the petitioner, learned Senior Standing Counsel Ms. Maithili D. Mehta for respondent Nos.1 and 2 and learned Senior

Standing Counsel Mr. Varun K. Patel for respondent No.

[2] Rule returnable forthwith. Learned Senior Standing Counsel Ms. Maithili D. Mehta and learned Senior Standing Counsel Mr. Varun K. Patel, waive service of notice of rule on behalf of the respective respondents.

[3] By this petition under Article 227 of the Constitution of India, the petitioner has challenged the communication dated 21.01.2025 issued by the respondent- authorities, whereby the declaration made by the petitioner under the Direct Tax Vivad Se Vishwas Scheme, 2024 (for short 'DTVSV Scheme, 2024'), is rejected on the ground that appeal filed by the petitioner was invalid.

[4] Brief facts of the case are as under:

[4.1] The petitioner preferred an application under the provisions of the DTVSV Scheme, 2024,

as the petitioner had challenged the assessment order for the Assessment Year 2012-13 by preferring an appeal in Form No.35 manually, as the petitioner is a Non-Resident Indian and was not having Aadhar number linked with PAN, so as to prefer an appeal online as per the provisions of Rule 45 of the Income Tax Rules, 1962 (for short 'the Rules').

[4.2] Assessment proceedings were carried out pursuant to the reopening of the assessment under Section 147 of the Income Tax Act, 1961 (for short 'the Act') by making an addition of Rs.32,71,000/- under Section 69A of the Act.

[4.3] The petitioner also received deficiency memo in respect of the appeal preferred by the petitioner on 28.04.2023 on the ground that tax on return income was not paid or particulars of payment was not mentioned by the petitioner. The petitioner filed Form No.1 under the DTVSV Scheme, 2024 on the basis of the pending appeal

before the Commissioner of Income Tax (Appeals), which was filed by the petitioner on 04.06.2020. According to the petitioner, appeal was pending on the specified date i.e. 22.07.2024.

[4.4] Thereafter, the petitioner received a letter dated 26.12.2024 from the respondent-authority seeking clarification in respect of Form No.1 filed by the petitioner under the DTVS Scheme, 2024 and to furnish the details of the Appellate Authority, before whom the appeal is pending as on date.

[4.5] The petitioner, by reply dated 28.12.2024, contended that the petitioner has preferred the appeal in Form No.35 manually on 04.06.2020 as the status of the petitioner was of Non-Resident Indian and he did not have Aadhar card linked with PAN and therefore, could not receive OTP for the purpose of filing of appeal online. The petitioner submitted copy of Form No.35 filed manually along with statement of

facts, grounds of appeal and the Challan of payment of appeal fees along with the reply. The petitioner requested the respondent to accept the Form No.1 under the DTVSV Scheme, 2024 as the appeal was pending on 22.07.2024, which is the specified date under the scheme, on which, the proceedings has to be pending to avail the benefits of the scheme.

[4.6] The petitioner also sought opportunity of hearing in person in respect of the notice issued on 26.12.2024, by letter dated 30.12.2024. However, on 21.01.2025, the Form No.1 filed by the petitioner under the DTVSV Scheme, 2024 was rejected with the following remarks:

"Rejection remarks :

As per the records there is no appeal pending in CIT(A) as on 22.07.2024 in your case in the case referred in form-1 dated 18.12.2025. In view of it you are not eligible for DTVSVS 2025 Scheme. Hence your request is hereby rejected."

[5] Being aggrieved, the petitioner has preferred this petition.

[6] Learned advocate Mr. Hiren J. Trivedi for the petitioner submitted that as per the DTVSV Scheme, 2024, only proceedings is required to be pending as on 22.07.2024 and respondent - authorities could not have gone into the validity of the pending appeal.

[6.1] In support of his submissions, reliance was placed in decision of this Court rendered in similar facts in case of **Neelaben Ghandhyambhai Parmar Vs. The Principal Commissioner of Income Tax**, in SCA Nos.10560 and 10784 of 2025 dated 08.09.2025.

[7] On the other hand, learned Senior Standing Counsel Mr. Varun Patel submitted that the appeal filed by the petitioner was not in accordance with Rule 45 as amended by the Income Tax (Amendment), Rules 2016 effective from 01.03.2016, as the petitioner did not file appeal online. It was, therefore, submitted that the respondent - authorities have rightly rejected

the Form No.1 filed by the petitioner under the DTVSV Scheme, 2024 as the appeal filed by the petitioner was not valid as on 22.07.2024.

[8] Having considered the submissions made by the learned advocates for the respective parties and having perused the material on record, it would be germane to refer to the provisions of the DTVSV Scheme, 2024, which has come into effect by Finance (No.2) Act, 2024. As per Chapter VI of the Finance (No.2) Act, 2024, Section 88 to Section 99 pertains to the 'DTVSV Scheme, 2024' for dispute resolution in respect of pending income tax litigation and to reduce the pending tax litigation in order to generate timely revenue for Government and benefit the tax payers 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. The DTVSV Scheme, 2024 was notified with effect from 01.10.2024 and

the Rules under the DTVSV Scheme, 2024 have been notified on 20.09.2024.

[9] Under Section 97 of the DTVSV Scheme, 2024, the Central Board of Direct Taxes has issued Guidance Note No.1/2024 in form of answers to the Frequently Asked Questions (FAQs) vide Circular No.12 of 2024 dated 15.10.2024. Thereafter, Guidance Note No.2/2024 was issued on 16.12.2024 and following FAQ No.36 was inserted in place of FAQ No.8 of Guidance Note No.1/2024, which reads as under:

Sr. No.	Issue	Comments
Eligibility of cases		
36	Suppose a taxpayer is eligible to apply is pending as on 22.07.2024. But subsequently, before the taxpayer could file declaration under the DTVSV Scheme 2024, his appeal has been disposed of on merits or dismissed as withdrawn for the purposes of the Scheme. Can such a taxpayer still file declaration under the Scheme?	Yes, such cases are eligible for settlement under the Scheme as appeal was pending as on 22.07.2024. Disputed tax will be calculated in the same manner as if the appeal pending on 22.07.2024 is yet to be disposed of.

[10] It is not in dispute that the petitioner filed an appeal manually on 04.06.2020 which was pending on 22.07.2024. Therefore, the declaration filed by the petitioner in Form No.1 for the Assessment Year 2012-13 under sub-section (1) of Section 90 read with sub-section (4) of Section 91 of the Finance (No.2) Act, 2024 under the DTVSV Scheme, 2024 wherein it was stated that the appeal filed before the CIT(Appeals) was pending on 22.07.2024, was as per the record.

[11] However, the rejection of Form No.1 filed by the petitioner by the respondent - authority on the ground that the appeal was not maintainable as the same was not filed online as per the provisions of Rule 45 of the Rules and therefore, the petitioner was not eligible for the benefits of the DTVSV Scheme, 2024, is concerned, as per the FAQ No.36 which is inserted by Guidance Note No.2 of 2024 dated 16.12.2024, the CBDT has clarified that the assessee would be

eligible for settlement under the DTVSV Scheme, 2024 as the appeal was pending as on 22.07.2024 and the disputed tax is to be calculated in the same manner as if the pending appeal on 22.07.2024 is yet to be disposed of, though appeal would have been disposed of on merits or otherwise.

[12] This Court in case of **Tushar Agro Chemicals Vs. Principal Commissioner of Income-Tax-1** reported in (2022) 441 ITR 179 (Gujarat) and in case of **Atul Roshanlal Gupta Vs. Principal Commissioner of Income-Tax** reported in (2024) 167 taxmann.com 634 (Gujarat), has in similar circumstances while considering the similar Scheme called "*Kar Vivad Samadhan Scheme*", held that even if the appeal is filed with a delay, it is to be treated as pending on the specified date.

[13] In case of **Neelaben Ghanshyambhai Parmar (supra)**, after considering the above decisions of

this Court, it is held as under:

"19. Having considered the rival submissions made by learned advocates for the respective parties, it would be germane to refer to the relevant provisions of the DTVSV Scheme, 2024 as contained in sections 88 to 99 in Finance (No.2) Act, 2024 as under:

"89.(1) in the Scheme, unless the context otherwise requires-

(1) "last date" means such date as may be notified by the Central Government in the Official Gazette."

(n) "specified date" means the 22nd day of July, 2024"

20. As per section 90 of the the DTVSV Scheme, 2024, a declarant assessee has to pay the tax as on 1st day of January, 2025. The date of computation of tax payable was further extended by Circular No.20/2024 dated 30.12.2024 from 31st December, 2024 to 31st January, 2025 and in view of Notification dated 8.04.2025, the last date of the Scheme was notified as the 30th day of April, 2025. Accordingly, the petitioner has filed a declaration under section 90(1) read with section 91(4) of the DTVSV Scheme, 2024 in Form-1 on the ground that the appeal preferred by the petitioner before the CIT(Appeals) though disposed of in October/December, 2024 was pending as on the specified date i.e. 22.07.2024 as per the provisions of section 89(1)(n) of Finance (No.2) Act, 2024.

21. In case of **Tushar Agro Chemicals** (supra), this Court has held as under:

"10. At this juncture, it would be relevant to refer to the decision of Supreme Court in case of Commissioner of Income Tax v. Shatrusailya Digvijaysingh Jadeja, relied upon by the learned Senior Advocate Mr. Hemani, in which the S.C. had an occasion to deal with the issue, as to whether, the department could have rejected the Declaration filed under the similar scheme called Kar Vivad Samadhan Scheme, introduced vide the Finance [No.2] Act 1998, on the ground that the Revision / Appeal filed by the concerned Petitioner was time barred or was not valid. In the said case, the Supreme Court considered the object of the said Scheme as also the other earlier decisions, and observed as under:

"13. In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. As stated above, the said Scheme was a complete Code by itself. Its object was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT Act/WT Act. Keeping in mind the above object, we have to examine section 95(i)(c) of the Scheme, which was different from appeals under section 246, revisions under section 264, appeals under section 260A etc. of the IT Act and similar provisions under the W.T. Act. Under the I.T. Act, there is a difference between appeals, revisions and references. However, those differences were obliterated and appeals, revisions

and references were put on par under section 95(i)(c) of the Scheme. The object behind section 95(i)(c) in putting on par appeals, references and revisions was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and, therefore, the rulings on the scope of appeals and revisions under the IT Act or on Voluntary Disclosure Scheme, will not apply to this case.

15. In the case of Dr. Mrs. Renuka Delta (supra), this Court has held on interpretation of section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration under section 88 of the Scheme, it is not for the DA to hold that the appeal/revision was "sham", "ineffective" or "infructuous" as it has.

16. In the case of Raja Kulkarni v. The State of Bombay reported in AIR 1954 SC 73, this Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may

ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court.

17. To the same effect is the law laid down by the judgment of this Court in the case of *Tirupati Balaji Developers (P) Ltd. v. State of Bihar & Others* reported in (2004) 5 SCC 1, in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent."

11. In view of the aforestated legal position, there remains no shadow of doubt that appeal could be said to be pending, even if the delay occurred in filing the same was not condoned and even if it was allegedly irregular or incompetent. In the instant case therefore also, the Respondent could not have rejected the Declaration Form of the Petitioner filed under the said Act merely on the ground that the Appeal was not valid or competent, as the delay occurred in filing the Appeal was not condoned by the Appellate Authority. In the opinion of the Court, the Respondent had to only take into consideration, as to whether, the Petitioner had filed an Appeal, and the same was pending on the 'specified date' i.e. 31.1.2020. It was not for the Respondent to decide, as to whether, such Appeal was irregular or incompetent or invalid in the eye of law."

22. In case of **Atul Roshanlal**

Gupta (supra), it was held by this Court as under:

"7. In view of the above provisions of the VSV Act, it emerges that the petitioner has to be an appellant so as to be eligible on the specified date i.e. 31st January, 2020 to file declaration under Sections 3 and 4 of the VSV Act. Admittedly, the appeal filed by the petitioner in the year 2015 was not pending as on 31st January, 2020. However, in view of order dated 03rd September, 2020 passed by the Tribunal recalling its order dated 26th March, 2019 whereby appeal filed by the petitioner was dismissed, the appeal was restored to its file i.e. Appeal filed in the year 2015. Therefore, the appeal of the petitioner has to be considered as pending as on 31st January, 2020 which is the specified date as per the VSV Act.

7.1 It is also pertinent to note that when the petitioner has filed declaration under the VSV Act to claim the benefit of the Scheme, the Tribunal had already recalled the order dated 26th March, 2019 and therefore, the appeal preferred by the petitioner before the Tribunal was pending as on 31st January, 2020.

7.2 In view of the above facts, it cannot be said that no appeal was pending as on 31st January, 2020 when the petitioner filed the application/declaration under the provisions of the Scheme in view of order dated 03rd September, 2020 passed by the Tribunal in

Miscellaneous Application
No.75/Ahd/2020 preferred by the petitioner to recall order dated 26th March, 2019 whereby appeal of the petitioner was dismissed for non-prosecution."

8. Considering the above facts, the impugned action of the respondent authority of rejecting the declaration filed by the petitioner is not tenable and accordingly, the same is quashed and set aside. The respondent authority is directed to consider and process the declaration filed by the petitioner under the provisions of the VSV Act within a period of 12 weeks from the date of receipt of copy of this order. The petition is accordingly disposed of. Notice is discharged. No order as to costs."

23. Applying the above decisions to the facts of the case and in view of FAQ No.36, it is not in dispute that appeal filed by the petitioner was pending on the specified date i.e. 22.07.2024 and therefore, we are of the opinion that the Designated Authority was not justified in rejecting the declaration filed by the petitioner in Form-1 on the ground that appeal filed by the petitioner was an invalid appeal as the appeal was very much pending as on 22.07.2024 even if the same was held to be invalid subsequently. The appeal cannot be said to be not filed or pending only on the ground that it was held to be non maintainable by CIT(Appeals) subsequently. Therefore, the respondent Designated Authority could not have rejected the declaration in Form-1

filed by the petitioner under the said Act merely on the ground that the appeal was not valid or competent.

24. In view of the foregoing reasons, the impugned communication in both the petitions dated 11.04.2025 displayed on the Portal of the Department, rejecting declaration in Form-1 filed by the petitioner under the DTVSV Scheme, 2024 is hereby quashed and set aside. The respondent Designated Authority is directed to process the declaration in Form-1 filed by the petitioner under the DTVSV Scheme, 2024 in accordance with the said scheme."

[14] Applying the above ratio to the facts of the case, the respondent-authority was not justified in rejecting the declaration in Form No.1 filed by the petitioner under the DTVSV Scheme, 2024 on the ground that appeal filed by the petitioner was an invalid appeal as the same was not filed as per Rule 45 of the Rules.

[15] In view of the foregoing reasons, the impugned communication dated 22.01.2025 displayed on the portal of the department, rejecting the declaration in Form No.1 filed by the petitioner under the DTVSV Scheme, 2024, is hereby quashed

and set aside and the respondent - authority is directed to process the declaration in Form No.1 filed by the petitioner under the DTVSV Scheme, 2024.

[16] Such exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order. The petition is accordingly disposed of. Rule is made absolute to the aforesaid extent.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

Lalji Desai