

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 780/Mum/2024**  
(Assessment Year: 2016-17)

**I.T.A. No. 781/Mum/2024**  
(Assessment Year: 2017-18)

<b>GTL Infrastructure Ltd.</b> 3 <sup>rd</sup> Floor, Global Vision, Electronic Sadan 2 TTC Industrial Area, MIDC, Mahape, Navi Mumbai, Thane - 400710. <b>PAN : AACCG2107K</b>	Vs.	<b>Commissioner of Income Tax (Appeals)/ NFAC/DCIT-3(4),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Ms. Krupa Gandhi & Mr. Bhavya  
Jain-CA

**Revenue/Respondent by** : Dr. Kishor Dhule, CIT-DR

**Date of Hearing** : 06.06.2024

**Date of Pronouncement** : 10.06.2024

**ORDER**

**Per Padmavathy S, AM:**

These two appeals by the assessee are against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] both dated 19.12.2023 for the AY 2016-17 & 2017-18. The common issue contended by the assessee in both these appeals is that the CIT(A) has erred in dismissing the appeal on the ground that the assessee has filed declaration under

Direct Tax Vivad se Vishwas Act, 2020 (VSVS) for the impugned assessment years.

2. The assessee is a company engaged in the business of providing shareable infrastructure facilities on "Build, Own or Operate" basis for a diverse range of customers operating in telecom sector. The assessee filed the return of income for AY 2016-17 on 14.10.2017 declaring a loss of Rs. 5,06,72,26,168/- under the normal provisions of the Income Tax Act (the Act) and a book loss of Rs. 1067,29,28,590/- under section 115JB of the Act. For AY 2017-8 the assessee filed the return of income on 31.10.2017 declaring a total income of Rs. 7,03,18,000/- which was subsequently revised to a loss of Rs. 1231,91,65,787/- under the normal provisions of the Act. The assessee for AY 2017-18 declared a loss of Rs. 1924,70,45,844/- under section 115JB of the Act. The cases were selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment under section 143(3) of the Act for both the years assessing the income for AY 2016-17 at Rs. 497,44,87,500/- and for AY 2017-18 at Rs. 958,03,86,940/-.

3. Subsequently a notice under section 148 of the Act was issued for both the AYs stating that there are reasons to belief that the income chargeable to tax has escaped assessment and the assessments were re-opened accordingly. The AO while completing the reassessment under section 147 made an addition of Rs. 1,91,14,131/- for AY 2016-17 to both the income under normal provisions of the Act and also to the book profits under section 115JB of the Act. For the AY 2017-18, the AO in the reassessment order made a disallowance of Rs. 278,01,51,710/-.

4. Aggrieved the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal as withdrawn by holding that –

*“2. During the course of appeal proceedings, the appellant submitted an application under the Direct Tax Vivad Se Vishwas Act, 2020 to adopt the scheme before the Designated Authority. i.e. Pr. Commissioner of Income Tax, Mumbai- 3.*

*2.1 In view of Section 4(2) of the Direct Tax Vivad Se Vishwas Act 2020, which for reference is produced below: -*

*“Upon filling the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner of Income Tax (Appeals) in respect of the disputed penalty of disputed fee and tax arrears shall be deemed to have been withdrawn from the date on which certificate under subsection (1) of section 5 is issued by the designated authority.”*

*3. In the light of the above provision, the appeal is deemed to have been withdrawn from 17.12.2020, the date on which certificate bearing No. 832660280171220 under sub-section (2) of Section 5 was issued on 11.03.2021 by the Pr. Commissioner of Income Tax, Mumbai -3. The appellant has paid amount to Rs. 0/- towards full and final settlement of tax arrear (i.e. 0/-) determined in the order. The request to withdrawn of the appeal is accordingly acceptable.*

*5. In the result, the appeal of the appellant is dismissed as withdrawn.”*

5. The Id. Authorized Representative (AR) submitted that the findings given by the CIT(A) stating that the assessee has filed declaration under VSVS for the impugned appeal is factually incorrect. In this regard the Id. AR drew our attention to Form-1 filed under VSVS Scheme and also Form-5 which is the order of full and final settlement under VSVS to submit that the acknowledgement numbers for which the declaration under VSVS is as mentioned therein (page 1 & 2 of PB) are different from the acknowledgement number in Form 36 of the appeals filed before the CIT(A) for AY 2016-17 and 2017-18. The Id. AR therefore submitted that the assessee has not filed the declaration for the impugned appeals filed before the

CIT(A) and therefore the CIT(A) is not correct in dismissing the appeal as withdrawn since they are declared as part of VSVS.

6. We heard the Id. Departmental Representative (DR) and perused the materials on record. The details of appeals pertaining to AY 2016-17 & 2017-18 declared under VSVS as per Form-1 is extracted below:

PART B – INFORMATION RELATING TO DISPUTE												
S. No.	Nature of tax arrear	Details of order by which tax arrear determined										
		Assessment Year/ Financial Year	Section under which order passed (there could be multiple sections for same assessment year)	Read with section	Income-tax authority / Appellate Forum who passed the order (there could be multiple orders for same assessment year)	Date on which order passed (there could be multiple dates for same assessment year)	Whether Search case ?	Whether search case with disputed tax less than or equal to Rs. 5 crores in the assessment year? (information flag relevant for rate at which amount payable is to be computed)				
1	Disputed Tax	2016-17	143(3)	143(3)	Assessing Officer	27/12/2018	NO					
2	Disputed Tax	2016-17	143(3)	143(3)	Assessing Officer	26/12/2019	NO					
S. No.	Details of pending* appeal / writ / SLP / DRP / Objections / Revision application / Arbitration / Conciliation / Mediation –											
	Whether / objection/ revision/ Writ / SLP/Arbitration/ Conciliation/ Mediation?	Appellate Forum	Whether already filed?	If No, date on which time-limit for filing expires in case of assessee	If Appeal filed / to be filed by	Date of filing	Reference number / Acknowledgement Number	Whether DRP case?	If yes, whether directions passed by DRP on or before 31.1.2020?	If yes, whether order passed by AO? (If yes, not eligible)	Whether revision application case?	If yes, date of filing
1	Appeal	CIT(A)	YES		Assessee	28/01/2019	413 364 331 280	NO			NO	
2	Appeal	CIT(A)	YES		Assessee	28/01/2020	119 296 821 451 280 120	NO			NO	

**FORM-1**  
[ See rule 3 ... ]  
**Form for filing declaration and undertaking**

PART A - General Information													
Acknowledgement Number of Original Form 1													
PAN / TAN					AACCG2107K								
Aadhaar No.													
First Name of appellant													
Middle Name of appellant													
Last Name of appellant					GTL INFRASTRUCTURE LIMITED								
Mobile No.					9920377910								
Email Address					directtax@gtlinfra.com								
Note-If Mobile number/Email address is required to be changed then please update in "My Profile".													
INFORMATION RELATING TO ELIGIBILITY													
Whether the applicant is appellant in terms of section 2 of the DTVSV and is not ineligible to apply in terms of section 9 of DTVSV?					YES								
Option exercised by Appellant													
Whether opting to pay tax on reduction of losses or depreciation or MAT credit If Yes go to relevant schedule under A; If No fill up schedule D					NO								
PART B - INFORMATION RELATING TO DISPUTE													
S. No.	Nature of tax arrear	Details of order by which tax arrear determined											
		Assessment Year/ Financial Year	Section under which order passed (there could be multiple sections for same assessment year)	Read with section	Income-tax authority / Appellate Forum who passed the order (there could be multiple orders for same assessment year)	Date on which order passed (there could be multiple dates for same assessment year)	Whether Search case ?	Whether search case with disputed tax less than or equal to Rs. 5 crores in the assessment year/ Block Period? (information flag relevant for rate at which amount payable is to be computed)					
1	Disputed Tax	2017-18	143(3)	143(3)	Assessing Officer	27/12/2019	NO						
S. No.	Details of pending* appeal / writ / SLP / DRP Objections / Revision application / Arbitration/Conciliation/Mediation -												
	Whether objection/ revision/ Writ / SLP/Arbitration/ Conciliation/ Mediation/ Miscellaneous Application?	Appellate Forum	Whether already filed?	If No, date on which time-limit for filing expires in case of assessee/ Department	If Appeal filed / to be filed by	Date of filing		Reference number / Acknowledgement Number	Whether DRP case?	If yes, whether directions passed by DRP on or before 31.1.2020?	If yes, whether order passed by AO? (If yes, not eligible)	Whether revision application case?	If yes, date of filing
1	Appeal	CIT(A)	YES	Assessee	29/01/2020	Filed by Assessee	Filed by Department	29728518 1290120	NO			NO	

7. The orders for full and final settlement of tax arrear under VSVS in Form-5 for AY 2016-17 & 2017-18 are as given below:

PAN : AACCG2107K

Acknowledgement Number : 287407780110321

FORM-5

[ See rule 7 ]

ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2)  
 READ WITH SECTION 6 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)  
 THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

## Part A - General Information

Whereas **GTL INFRASTRUCTURE LIMITED** having PAN /TAN AACCG2107K Aadhaar No. (hereinafter referred to as the declarant) had made a declaration under section 4 of the Act;

And whereas the designated authority by Certificate No. **832668920171220** dated **17/12/2020** determined the amount of Rs. **0** rupees payable by / refundable to the declarant in accordance with the provisions of the Act and granted a certificate setting forth therein the particulars of the tax arrear and the amount payable / refundable after such determination towards full and final settlement of tax arrear;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, it is hereby certified that -

(a) a sum of Rs. **0** has been paid by the declarant towards full and final settlement of tax arrear determined in the order No **832668920171220** dated **17/12/2020** and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment [as per section 6 of the Act], in respect of the tax arrear as detailed in the table below:

Sl. No.	Assessment Year / Financial Year	Details of dispute settled (Appeal reference number)	Nature of tax arrear (disputed tax /disputed penalty /disputed interest / disputed fee)	Amount of tax arrear
1	2016-17	4133643312801 19,29682145128 0120	Disputed Tax	0

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Place : MUMBAI

Date : 11/03/2021

Name of the Designated Authority : **SUMEET KUMAR**  
 Designation of the Designated Authority : **PCIT, Mumbai**

To

- (1) The declarant
- (2) Assessing Officer
- (3) Concerned Principal Commissioner of Income-Tax
- (4) Concerned Appellate Forum

**SUMEET** Digitally signed by  
**SUMEET KUMAR**  
**KUMAR** Date: .....

Acknowledgement Number : 287407300110321

PAN : AACCG2107K

**FORM-5**  
[ See rule 7 ]

**ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2)  
READ WITH SECTION 6 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)  
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020**

*Part A - General Information*

Whereas **GTL INFRASTRUCTURE LIMITED** having PAN /TAN AACCG2107K Aadhaar No. (hereinafter referred to as the declarant) had made a declaration under section 4 of the Act;

And whereas the designated authority by Certificate No. **832660280171220** dated **17/12/2020** determined the amount of Rs. **0** rupees payable by / refundable to the declarant in accordance with the provisions of the Act and granted a certificate setting forth therein the particulars of the tax arrear and the amount payable / refundable after such determination towards full and final settlement of tax arrear;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, it is hereby certified that -

(a) a sum of Rs. **0** has been paid by the declarant towards full and final settlement of tax arrear determined in the order No **832660280171220** dated **17/12/2020** and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment[as per section 6 of the Act], in respect of the tax arrear as detailed in the table below:

Sl. No.	Assessment Year / Financial Year	Details of dispute settled (Appeal reference number)	Nature of tax arrear (disputed tax /disputed penalty /disputed interest / disputed fee)	Amount of tax arrear
1	2017-18	297285181290120	Disputed Tax	0

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Place : MUMBAI  
Date : 11/03/2021

Name of the Designated Authority : **SUMEET KUMAR**  
Designation of the Designated Authority : **PCIT, Mumbai-3**

To  
(1) The declarant  
(2) Assessing Officer  
(3) Concerned Principal Commissioner of Income-Tax  
(4) Concerned Appellate Forum

**SUMEET KUMAR** Digitally signed by  
**SUMEET KUMAR**  
Date: .....  
.....

8. We noticed from the perusal of the appeal filed before the CIT(A) in Form-35 that the Acknowledgement No. of the appeal for AY 2016-17 is 601962550290422 and for AY 2017-18 is 602093040290422. A combined perusal

of the above details makes it clear that the impugned appeals filed before the CIT(A) for both AY 2016-17 & 2017-18 are not covered under the declaration made by the assessee under VSVS. Therefore, we see merit in the submission of the Id. AR that the CIT(A) is not correct in dismissing these appeals as withdrawn. Accordingly, we remit the appeal bearing Acknowledgement No. 601962550290422 for AY 2016-17 and Acknowledgement No. 602093040290422 for AY 2017-18 back to the CIT(A) for a denovo consideration. Needless to say that the assessee be given an opportunity of being heard. It is ordered accordingly.

9. In the result, the appeal for AY 2016-17 & 2017-18 are allowed for statistical purposes.

*Order pronounced in the open court on 10-06-2024.*

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**