

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

**BEFORE SMT BEENA PILLAI, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2285/Mum/2023
(Assessment Year: 2019-20)**

Priya Hiranandani C/o Price Waterhouse & Co. LLP (Toral Desai), Nesco IT Building III, 8 th Floor, Nesco-IT Park, Nesco Complex, Gate No.3, Western Express Highway, Goregaon (East), Mumbai-400063. PAN : AAAPH2877A	Vs.	ITO (International Taxation), Ward-2(2)(1), Air India Building Nariman Point, Mumbai-400021.
Appellant)	:	Respondent)

**I.T.A. No. 2521/Mum/2023
(Assessment Year: 2017-18)**

**I.T.A. No. 2522/Mum/2023
(Assessment Year: 2018-19)**

**I.T.A. No. 2523/Mum/2023
(Assessment Year: 2019-20)**

ITO (International Taxation), Ward-2(2)(1), Room No. 1725, 17th Floor, Air India Building Nariman Point, Mumbai-400021.	Vs.	Priya Niranjani Hiranandani 501, 5 th Floor, Supreme Business Park, Hiranandani Powai, Mumbai-400076. PAN : AAAPH2877A
Appellant)	:	Respondent)

Appellant / Assessee by : Shri J.D. Mistry, Sr. Adv.
Revenue / Respondent by : Ms. Sushma Nagaraj / Maansi
Bhavnani / Pooja Das, DR

Date of Hearing : 23.01.2025
Date of Pronouncement : 27.01.2025

ORDER

Per Bench:

These appeals by the Revenue and the assessee are arising out of the consolidated order of the Commissioner of Income Tax (Appeals)-56, Mumbai, (in short "the CIT(A)") dated 27.04.2023 for Assessment Year (AY) 2017-18, 2018-19 & 2019-20.

2. The assessee is a non-resident deriving income majorly from investments made in Indian Portfolio Companies and Mutual Funds in the form of interest, dividend income and Capital Gains on sale of investments. The assessee filed the return of income for the impugned AYs as per details given below:

AY	Date of filing of return of income	Income returned
2017-18	31.01.2018	Rs. 2,64,46,250/-
2018-19	31.08.2018	Rs. 18,58,49,430/-
2019-20	31.08.2019	Rs. 68,13,970/-

3. The assessee has entered into a Business Association Agreement (BAA) dated 14.05.2006 with Mr. Niranjana Hiranandani along with Mr. Darshan Hiranandani. The BAA laid down that the parties intent to jointly enter the business of construction, development in the Indian Real Estate Market and set out the structure through which such opportunities could be pursued. Dispute arose between the parties on the terms of BAA and arbitration proceedings were initiated by the assessee against the other two parties to the BAA for breach of relevant clauses of the BAA in February 2010 and the arbitral tribunal in its final award of

May 2016 quantified the assessee's economic loss and awarded principal damage and pre-award interest. Aggrieved by the said award Mr. Niranjan Hiranandani and Mr. Darshan Hiranandani, contested the said order before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide its interim order dated 14.10.2015 granted interim stay of the award with a direction to deposit a sum of Rs. 370,00,00,000/- with a liberty to the assessee to withdraw the said sum upon furnishing the bank guarantee on returnable basis in case the matter is decided against the assessee. Mr. Niranjan Hiranandani and Mr. Darshan Hiranandani complied with the directions of the Hon'ble High Court and deposited the sum of Rs. 370,00,00,000/-. The assessee withdrew the amount by furnishing a bank guarantee and placed the amount so withdrawn in fixed deposits in Central Bank of India. The dispute was finally decided by the Hon'ble Bombay High Court vide order dated 18.03.2019 in favour of the assessee by virtue of which the assessee is entitled to the following amounts.

AY	Particulars	Interest Income – Rs.
2017-18	Actual interest on FD created with Central Bank of India (13 February 2017 to 31 March 2017)	2,61,67,896
2018-19	Actual interest on FD created with Central Bank of India (1 April 2017 to 31 March 2018)	18,47,51,359
2019-20	Actual interest on FD created with Central Bank of India (1 April 2018 to 18 March 2019)	18,58,30,161
2019-20	Pre-High Court Order Interest (17 August 2016 to 17 November 2016)	6,46,00,000
2019-20	Interest on amount lying with Prothonotary (17 November 2016 to 18 March 2019)	4,10,63,693
2019-20	Principal damages plus pre-award interest, net of tax, if any	4,40,56,45,664

4. The assessee did not offer the above tabulated amount to tax for the reason that the amount received are in the nature of capital receipts not chargeable to tax.

The AO made additions as tabulated below while completing the assessments for AY 2017-18, 2018-19 and 2019-20:

Nature of income	Amount – Rs.	Taxable under the head	Year of taxability
Principal damages plus pre-award interest	4,40,56,45,664	Profits and gains from business and profession	AY 2019-20
Pre-High Court Order Interest 17 August 2016 to 17 November 2016	6,46,00,000	Income from other sources	AY 2019-20
Interest on amount lying with Prothonotary (17 November 2016 to 18 March 2019)	4,10,63,693	Income from other sources	AY 2019-20
Actual interest on FD created with Central Bank of India (13 February 2017 to 31 March 2017)	2,61,67,896	Income from other sources	AY 2017-18
Actual interest on FD created with Central Bank of India (1 April 2017 to 31 March 2018)	18,47,51,359	Income from other sources	AY 2018-19
Actual interest on FD created with Central Bank of India (1 April 2018 to 18 March 2019)	18,58,30,161	Income from other sources	AY 2019-20

5. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) held that the principal damages plus pre-award interest of Rs. 4,40,56,45,664 as capital receipt not chargeable to tax. The CIT(A) further held that the entire interest totalling to Rs.50,24,13,109 earned by the assessee as tabulated above as taxable in the AY 2019-20 and not as per the additions made by the AO across three AYs i.e. AY 2017-18, 2018-19 and 2019-20. Both the assessee and the revenue are in appeal before the Tribunal against the order of the CIT(A) contending the following issues –

- i. The appeal filed by the revenue for AY 2017-18 pertains to interest income added by the AO to the tune of Rs. 2,61,67,896/- which the CIT(A) has held as taxable in the year 2019-20.

- ii. The revenue's appeal for AY 2018-19 pertains to the FD interest of Rs. 18,47,51,359/- added by the AO as income which the CIT(A) has held to be the income of AY 2019-20.
- iii. The appeal by the revenue for AY 2019-20 is with regard to the CIT(A) holding the principal damages plus pre-award interest to the tune of Rs. 440,56,45,664/- as capital receipt not taxable in the hands of the assessee.
- iv. The assessee's appeal for AY 2019-20 is towards the total interest of Rs. 50,24,13,109/- which is added as income is not taxable since the interest bears the same character as that of the principal damages which is held as capital receipt not taxable.

6. At the outset the ld. AR submitted that the assessee has filed the relevant forms under Direct Tax Vivad se Viswas Scheme, 2024 (DTVSV) for all the years under consideration i.e. AY 2017-18, 2018-19 and 2019-20. The ld. AR further submitted that while submitting Form-1 for AY 2019-20 the assessee has considered the amount of principal and pre-award interest of Rs. 440,56,45,664/- and the entire interest of Rs. 50,24,13,109/- (Page No. 25 & 26 of PB) and that Form-2 determining the amount of tax paid/payable by the assessee has also been issued (page 27 of PB). The ld. AR also submitted that the assessee has discharged the tax liabilities to the tune of Rs. 79,03,72,831/- on the principal and pre-award interest (page 28 of PB) and the tax on the total interest amounting to Rs.18,02,65,824/- is discharged via withholding tax and regular assessment tax (page 29 to 46 of PB). Accordingly the ld AR submitted that the appeals of the revenue for AY 2017-18 and 2018-19 do not survive. The ld. AR further submitted since the assessee's application under DTVSV is accepted the appeal filed for AY 2019-20 by the assessee may be treated as withdrawn and the appeal of the revenue for AY 2019-20 would become infructuous.

7. We heard the parties and perused the material on record. The assessee disputed the addition made by the AO Principal damages plus pre-award interest amounting to Rs. 4,40,56,45,664 and interest totalling to Rs. 50,24,13,109/- across AYs 2017-18, 2018-19 & 2019-20. The CIT(A) deleted the addition made towards Principal damages plus pre-award interest and held that the entire interest is taxable in the year 2019-20. We notice that the assessee has filed Form-1 under DTVSV and Form-2 determining the tax paid / payable by the assessee is already issued for AY 2019-20. The relevant Form 2 towards discharge of taxes on both Principal damages plus pre-award interest of Rs. 4,40,56,45,664 and the interest of Rs. 50,24,13,109 is extracted below –

Revised Form 2

PAN/TAN - AAAPH2877A

DIN/Acknowledgement Number:752593631131224

FORM-2
[See rule 5]
CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 92 OF THE
FINANCE (NO. 2) ACT, 2024
(UNDER THE DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024)

Whereas Mr./Mrs /M/s PRIYA HIRANANDANI (hereinafter referred to as the declarant) having PAN /TAN AAAPH2877A has filed a declaration under section 91 of the Finance (No.2) Act, 2024(15 of 2024) in Form 1 vide acknowledgment number 722737330221124 dated 22-Nov-2024. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 92 of the Act and after consideration of relevant material, the following amounts are hereby determined to be payable by the declarant towards full and final settlement of the tax-arrear covered by the said declaration under the Act

Sl. No.	Assessment year	Financial year (to be furnished only if TAN based appeal)	Details of dispute settled		Nature of tax-arrear (disputed tax / disputed penalty / disputed interest / disputed fee)	Tax arrear (Rs.)	Amount payable under section 90 of the Act (Rs.)	Amount already paid against tax-arrear	Balance amount payable / refundable after adjusting amount already paid
			Appeal Reference Number	Date of filing Appeal					
	(2)	(3)	(4a)	(4b)	(5)	(6)	(7)	(8)	(9) (7) (8)
1	2019-20	-	2523/M/2023	17-Jul-2023	Disputed Tax	₹ 1580745663	₹ 790372831	₹ 0	₹ 790372831
2	2019	-	ITA No 2285/MUM/2023	23-Jun-2023	Disputed Tax	₹ 180265824	₹ 180265824	₹ 180265824	₹ 0

Note
Balance amount payable as per column (9) of the above table should be paid under the "Minor head - 400" and for the Asst. Year mentioned in column (2)
For cases where Financial Year has been mentioned in column (3) of the above table, the Asst. Year relevant to the above Financial Year to be mentioned in the challan (i.e. A.Y = F.Y + 1)

Remarks
The declarant is hereby directed to make the payment of sum payable, if any, as provided in column (9) above within fifteen days from the date of receipt of this certificate
In case of non-payment of amount payable within the said period, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made

IP Address : 10.176.24.195 Name of the Designated Authority : VINOD TANWANI
Place : Mumbai Designation : COMMISSIONER OF INCOME TAX
Date : 13-Dec-2024 (विनोद तनवानी)
VINOD TANWANI
आयकर आयुक्त
(अन्तर्राष्ट्रीय करायान)-2, मुंबई
Commissioner of Income Tax
(International Taxation)-2, Mumbai



PAN/TAN : AAAPH2877A

DIN/Acknowledgement Number:733787201291124

FORM-2
[See rule 5]

CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 92 OF THE
FINANCE (NO. 2) ACT, 2024
(UNDER THE DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024)

Whereas Mr./Mrs./M/s PRIYA HIRANANDANI (hereinafter referred to as the declarant) having PAN /TAN AAAPH2877A has filed a declaration under section 91 of the Finance (No.2) Act, 2024(15 of 2024) in Form 1 vide acknowledgment number 722737330221124 dated 22-Nov-2024.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 92 of the Act and after consideration of relevant material, the following amounts are hereby determined to be payable by the declarant towards full and final settlement of the tax-arrear covered by the said declaration under the Act:

Sl.No	Assessment year	Financial year(to be furnished only if TAN based appeal)	Details of dispute settled			Tax-arrear (Rs.)	Amount payable under section 90 of the Act (Rs.)	Amount already paid against tax-arrear	Balance amount payable / refundable after adjusting amount already paid
			Appeal Reference Number	Date of filing Appeal	Nature of tax-arrear (disputed tax / disputed penalty / disputed interest / disputed fee)				
(1)	(2)	(3)	(4a)	(4b)	(5)	(6)	(7)	(8)	(9)-(7)-(8)
1	2019-20	-	ITA 2285/MUM/2023	23-Jun-2023	Disputed Tax	₹ 180265824	₹ 180265824	₹ 0	₹ 180265824
2	2019	-	2523/M/2023	17-Jul-2023	Disputed Tax	₹ 1580745663	₹ 790372831	₹ 0	₹ 790372831

Remarks :-
The declarant is hereby directed to make the payment of sum payable, if any, as provided in column (9) above within fifteen days from the date of receipt of this certificate.
In case of non-payment of amount payable within the said period, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made.

IP Address : 10.176.24.195
Place : Mumbai
Date : 29-Nov-2024

Name of the Designated Authority : VINOD TANWANI
Designation : COMMISSIONER OF INCOME TAX

विनोद तनवानी
VINOD TANWANI
आयकर आयुक्त
(अन्तरराष्ट्रीय कराधान)-2, मुंबई
Commissioner of Income Tax
(International Taxation)-2, Mumbai



8. From the combined perusal of the above forms it is clear that the assessee has paid the tax on the principal and pre-award interest of Rs. 440,56,45,664/- amounting to Rs. 79,03,72,831/- as well as the tax on the total interest of Rs. 50,24,13,109/- amounting to Rs.18,02,65,824/-. Therefore based on the submissions of the Id AR and considering the above facts the appeal filed by the assessee for AY 2019-20 contending the interest addition of Rs. 50,24,13,109/- is dismissed as withdrawn. Further the appeal filed by the revenue contending the

deletion of addition made towards principal and pre-award interest of Rs. 440,56,45,664/- is also dismissed in view of the fact that the impugned amount is declared by the assessee under DTVSV and that the assessee has paid the tax on the same.

9. The revenue preferred appeals for AY 2017-18 and 2018-19 contending the decision of the CIT(A) that the interest amount of Rs.2,61,67,896/- and Rs. 18,47,51,359/- added by the AO in these AYs respectively as taxable in the year 2019-20. The ld AR in this regard submitted that the said amounts are part of the total interest of Rs. 50,24,13,109/- declared under DTVSV and therefore the appeals of the revenue does not survive. The ld DR though did not dispute the said factual position submitted that the assessee has filed Form 1 for these two AYs and Form-2 has not yet been issued. Accordingly the ld DR submitted that the appeals cannot become infructuous since Form-1 filed by the assessee is pending disposal. The ld AR to counter the said arguments submitted that the time line for determining the tax payable by the authorities has expired as per section 92(1) of DTVSV and therefore the Form-1 filed is automatically become not accepted.

10. We notice that as per the provisions of section 92(1) of DTVSV as extracted below the time line for the designated authority is 15 days for determining the tax payable on the amount declared by the assessee under DTVSV –

Time and manner of payment.

92. (1) The designated authority shall, within a period of fifteen days from the 40 date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

11. In assessee's case, it is an undisputed fact that the interest additions made by the AO in AYs 2017-18 and 2018-19 are already included in the interest amount declared under Form 1 for AY 2019-20 and that the assessee has also paid the tax on the said amount as evidenced by the Form-2 as extracted in the earlier part of this order. Further the facts that Form-1 filed by the assessee for AYs 2017-18 & 2018-19 have not been processed by the designated authority within the time limit and that the tax on the amount declared is already paid in AY 2019-20 have not been controverted by the revenue before us. Therefore in our considered view, there is merit in the submission of the ld AR that the appeal filed by the revenue for AYs 2017-18 and 2018-19 do not survive and have become infructuous. Accordingly the said appeals are dismissed accordingly.

12. In result, the appeals by the Revenue for AYs 2017-18, 2018-19 & 2019-20 are dismissed as infructuous and the appeal of the assessee for AY 2019-20 is dismissed as withdrawn.

Order pronounced in the open court on 27-01-2025.

Sd/-
(BEENA PILLAI)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai