

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.3514/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2013-14)

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| Shri G.T.Sambandham, 40B, Thambuswaamy Road, Kilpauk, Chennai. | Vs | The Income Tax Officer, Corporate Ward 1(1) Chennai-34 |
| PAN:AIJPS 4599M | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | None |
| प्रत्यर्थीकीओरसे/Respondentby | : | Ms. R.Anitha, JCIT |

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| मुनवाईकीतारीख/Date of hearing | : | 09.11.2020 |
| घोषणाकीतारीख /Date of Pronouncement | : | 09.11.2020 |

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-1, Chennai dated 10.10.2018 and pertains to the assessment year 2013-14.

2. None appeared for the assessee. Since the matter is covered by 'Vivad se Vishwas Scheme, 2020', the adjournment petition filed by the counsel for the assessee is rejected and the appeal is taken up for disposal. We have heard the learned DR and perused the material available on record. The assessee intends to avail the benefit of Direct Taxes 'Vivad se Vishwas Scheme, 2020' to settle the pending dispute relating to Direct Taxes and in this regard

proposed to file declaration in Form No. 1 along with undertaking waiving rights for any remedy in Form 2 to the Designated Authority.

3. The Bench has examined the adjournment application filed by the assessee and found that the Government of India has announced in the Budget, 2020, a Direct Taxes Vivad se Vishwas Scheme, 2020 to settle the pending dispute relating to Direct Taxes at various appellate forums including the First Appellate Authority, Tribunal, High Court and Supreme Court. In this regard, the Scheme has been notified on 17th March, 2020 and became Direct Taxes 'Vivad se Vishwas Act, 2020'. As per the said Scheme, assessees are allowed to settle direct tax dispute in a manner and procedure prescribed therein by filing necessary declaration and undertaking. The Scheme has also specified the amount of taxes, interest, and penalty, if any payable under the Act. If an assessee files a declaration and pay the specified taxes as per the scheme and withdraw the appeal pending before appellate authorities, the Designated Authority shall pass an order in Form 5 confirming payment made under the scheme and grant immunity from penalty and prosecution.

4. In this case, the assessee intends to avail the benefit of the said Scheme by filing declaration in Form No.1 along with undertaking waiving rights for any remedy in Form No. 2 to Designated Authority. Therefore, once the assessee intend to file a declaration in Form No.1 along with undertaking and expressed his willingness to settle pending disputes regarding direct taxes, then there is no point in keeping pending appeal filed by the assessee. We further noted that recently the Hon'ble Jurisdictional High Court of Madras has considered an identical application filed by an assessee in the case of M/s. Nannusamy Mohan (HUF) Vs. ACIT in T.C.A No.372 of 2020 for availing the benefit of 'Vivad se Vishwas Scheme, 2020', where the Hon'ble High Court has dismissed the appeal filed by the petitioner as withdrawn, but allowed liberty to the assessee to restore the appeal in the event the designated authority for any reason reject application filed by the assessee under section 4 of the Act. The relevant portion of the observations of the Hon'ble High Court of Madras vide order dated 16.10.2020 are extracted as under:-

"2. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.T.R.SenthilKumar, learned Senior Standing Counsel and Ms. K.G.Usha Rani, learned counsel for the respondent/Revenue.

3. *The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme (' VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No. 1.*

4. *It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.*

5. *In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.*

6. *The First Proviso to Section 3 states that in case where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.*

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, We direct the appellant / assessee to file the Form No.1 on or before 20.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.”

5. The Bench has also taken note of the aforesaid decision of the Hon'ble High Court of Madras, wherein it has dismissed the appeal filed by the assessee on the pretext of application filed by the assessee in Form No.1 before the Designated Authority under 'Vivad se Vishwas Scheme, 2020' to settle its Direct Taxes dispute, but liberty is given to the assessee to restore the appeal in the event the application filed by the assessee is rejected by the Designated Authority for any reasons. Therefore, by taking note of the fact that the assessee intends to avail the said Scheme by filing declaration in Form No.1 along with Form No.2 to the Designated Authority and also taken note of the decision of Hon'ble Jurisdictional High Court in T.C.A No.372 of 2020 dated

16.10.2020 (supra), we dismiss the appeal filed by the assessee as withdrawn. However, a liberty is given to the assessee to restore this appeal, in the event of the Designated Authority, for any reason reject the application filed by the assessee under section 4 of the said Act.

6. In the result, the appeal filed by the assessee is dismissed as withdrawn.

Order pronounced in the open court on 9th November, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

Sd/-
(जी.मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th November, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.