

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 4751/Mum/2018 (Assessment Year 2008-09)

Shri Daxesh D. Shah 14/16, Laxmi Pannalal Terrace, 3 <sup>rd</sup> Floor 7 <sup>th</sup> Lane, Khetwadi Mumbai-400 004.  PAN : AAPPS2621A (Appellant)	Vs.	ITO 19(1)(4) 1 <sup>st</sup> Floor Matru Mandir Tardeo Road Mumbai-400 007.  (Respondent)
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Assessee by	Shri Gunal Bansal
Department by	Ms. Smita Verma
Date of Hearing	11.11.2020
Date of Pronouncement	12.11.2020

ORDER

This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 4.5.2018 pertaining to Assessment Year 2008-09.

2. The grounds of appeal relate to addition u/s. 69 for capital gain sustained by the learned CIT(A).

3. At the outset, in this case the assessee contends by a written submission to apply for solution of dispute under the Vivaad Se Vishwas Scheme (in short VSVS1). In this regard, it has been submitted that Form Nos. 1 and 2 under VSVS1 is being filed.

4. I note that in a similar situation, Hon'ble Madras High Court has in an appeal in the case of M/s. Nannusamy Mohan (HUF) Vs. ACIT vide order dated 16.10.2020 held as under :-

“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. I.

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 17<sup>th</sup> March 2020 and published in the Gazette of India on 17<sup>th</sup> 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.I 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.”

Accordingly, respectfully following the above and noting the fact that in the present case, assessee intends to settle the dispute under VSVS1. I treat this appeal being disposed off as withdrawn.

5. The assessee is given liberty for restoration of appeal in accordance with paragraph 7 of the Hon'ble High Court order as above.

6. In the result, this appeal by the assessee is disposed of by treating the same as withdrawn.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 12.11.2020.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12/11/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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