

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'G' BENCH MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VP

&

SHRI M.BALAGANESH, AM

**ITA No.285/Mum/2019
(Assessment Year :2014-15)**

M/s. Shining Star Solutions & Services Pvt. Ltd., B-408, Naman Mid Town, Senapati Bapat Marg Elphinston road (West) Mumbai – 400 013	Vs.	ITO- 13(2)(3), Mumbai
PAN/GIR No.AATCS5817P		
(Appellant)	..	(Respondent)

Assessee by	Shri Jishaan Jain
Revenue by	Shri T.S.Khalsa
Date of Hearing	19/11/2020
Date of Pronouncement	19/11/2020

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.285/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-21, Mumbai in appeal No.CIT(A)-21/ITO-13(2)(3)/IT-391/2016-17 dated 10/09/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated

14/12/2016 by the Id. Income Tax Officer – 13(2)(3), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance of interest expenditure made in the sum of Rs.95,13,021/- by the Id. AO u/s.36(1)(iii) / 37 of the Act.

2.1. The second issue to be decided is with regard to disallowance u/s.14A of the Act r.w.Rule 8D of the Rules.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee had filed a letter dated 17/11/2020 stating that they are in the process of opting to prefer an application under direct tax "Vivad Se Viswas Scheme Act 2020" and accordingly, sought adjournment. We find there is no need to keep this appeal pending before us in view of the decision of Hon'ble High Court of Madras in the case of Nannusamy Mohan (HUF) vs. ACIT in T.C.A. No.372 of 2020 dated 16.10.2020, wherein Hon'ble High Court after considering the intention of the assessee to avail the benefit of 'Vivad Se Viswas Scheme-2020' (VSV Scheme), had dismissed the appeal by observing in Para 7 to 9 as under: -

"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 6 (6) weeks from the date on which the declaration is filed in the proper form.

9. *With this declaration, the Tax Case appeal stands disposed of with the aforementioned liberty and Consequently the Substantial Question of Law are left upon. No costs."*

4. In the light of the view taken by Hon'ble Madras High Court cited (supra), we also give liberty to the assessee to get the appeal restored in the event that the assessee does not succeed on the declaration filed by the assessee under direct tax "Vivad Se Viswas Scheme-2020". In other words if the assessee's declaration to be filed is not accepted by the Revenue for any reason whatsoever, the assessee can make a prayer before the Bench for recalling of the order by filing a miscellaneous application for restoration of appeal. The Registry will place such petition before the Bench concerned.

5. In view of the aforesaid observations, we dismiss this appeal of assessee with a liberty to get the appeal recalled in the eventuality of assessee's declaration (to be filed) not getting accepted by the Revenue.

6. **In the result, the appeal of the assessee is dismissed.**

Order pronounced in the open Court on 19/11/2020.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 19/11/2020
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai