

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 2172/MUM/2019  
Assessment Year: 2014-15**

Shelar Properties Pvt. Ltd., First Floor, Peter Plaza, J.S. Road, Dahisar (West), Mumbai - 400068 PAN: AAFCS0440N	<b>Vs.</b>	The Commissioner of Income Tax (Appeals) – 21, Aaykar Bhavan, 147/261A, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Shri T.S. Khalsa (Sr. AR)

Date of Hearing: 23/11/2020  
Date of Pronouncement: 26/11/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 03.12.2018 passed by the Commissioner of Income Tax (Appeals)-21 (for short 'the CIT(A), Mumbai, for the assessment year 2014-15, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. The only issue raised by the assessee is that the Ld. CIT (A) has erred in making addition of Rs. 38,75,80,069/- to the total income of the assessee u/s 35AD of the Act.

3. This case was fixed for hearing on 23.11.2020. However, when the case was called out for hearing, none appeared on behalf of the assessee. We notice that the Director of the assessee company has submitted an application dated 17.11.2020 stating that the assessee has opted to settle the dispute under Vivad se Vishwas Act, 2020, therefore the appeal may be kept in abeyance.

4. The Ld. departmental representative did not oppose the assessee's application. In the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT, TAC No 372 of 2020*, the Hon'ble Madras High Court has dismissed the appeal of the assessee as withdrawn in which the counsel had made the similar submissions before the Hon'ble Court. The observations of the Hon'ble High Court are 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.”*

5. Since, the intends to file declaration and undertaking in Form-1 and 2 under Direct Tax Vivad se Vishwas Act, 2020, we respectfully following the decision of the Hon’ble Madras High Court in the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT (supra)*, dismiss the present appeal as withdrawn. However, the appellant/assessee is at liberty to file miscellaneous application for restoration of appeal as discussed by the Hon’ble Madras High Court in paragraph 7 of the judgment.

In the result, appeal filed by the assessee for assessment year 2014-2015 is dismissed.

Order pronounced on 26<sup>th</sup> November, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

*Sd/-*  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 26/11/2020

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai