

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

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

**ITA No. 5771/MUM/2017
Assessment Year: 2010-11**

**ITA No. 5772/MUM/2017
Assessment Year: 2011-12**

**ITA No. 5773/MUM/2017
Assessment Year: 2009-10**

&

**ITA No. 18/MUM/2018
Assessment Year: 2012-13**

Silver Spark Apparel Ltd., Ground Floor, New Hind House, Narottam Morarjee Marg, Ballard Estate, Mumbai - 400001 PAN: AACCR1288G	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 44, (now known as Dy. Commissioner of Income Tax, Central Circle – 8(1), Mumbai), 6 th Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Kunal Pandey (AR)

Revenue by : Shri Srinivas Botta (CIT DR)

Date of Hearing: 09/12/2020
Date of Pronouncement: 09/12/2020

ORDER

PER BENCH

The assessee has filed the captioned appeals against the three orders dated 30.06.2017 pertaining to the assessment years 2009-10, 2010-11, 2011-12 and one order dated 10.10.2017 pertaining to the assessment year 2012-13, passed by the Commissioner of Income Tax (Appeals)-50 (for short 'the CIT(A), Mumbai. Vide impugned orders dated 30.06.2017, the Ld. CIT(A) has partly allowed the appeals filed by the assessee against the assessment

orders passed u/s 153A r.w.s 143 (3) of the Income Tax Act, 1961 (for short the 'Act') for the assessment year 2009-10, 2010-11, 2011-12 and vide order dated 10.10.2017 the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) r.w.s. 144C (3) of the Act, for the assessment year 2012-13. Since, these appeals pertain to the same assessee for the different assessment years and the issues raised by the assessee are identical, the same were clubbed and heard together for the sake of convenience and are being disposed of by this common and consolidated order.

2. Vide ITA No. 5771/Mum/2017 to 5773/Mum/2017, the assessee has challenged the action of the Ld. CIT (A) in confirming the disallowance of expenses and depreciation to the extent of 50% in respect of the luxury sports car owned by the assessee company. Similarly, vide ITA No. 18/Mum/2018, the assessee has challenged the action of the Ld. CIT (A) in confirming the addition on account of depreciation to the extent of 50% in respect of luxury sports car owned by the assessee.

3. At the outset, the Ld. counsel for the appellant/assessee submitted that assessee has opted to settle the dispute under Vivad se Vishwas Act, 2020, therefore these appeals may be kept in abeyance.

4. The Ld. departmental representative did not oppose the aforesaid submissions made by the Ld. counsel.

5. In the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT, TCA 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 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.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.”*

6. In the light of the said judgment, the Ld. counsel further submitted that the present appeals may be disposed of in terms of the decision of the Hon’ble High Court. Hence, respectfully following the decision of the Hon’ble Madras High Court in the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT (supra)*, we dismiss the present appeals as withdrawn. However, the appellant/assessee is at liberty to file miscellaneous application for restoration of appeals as discussed by the Hon’ble Madras High Court in paragraph 7 of the judgment.

In the result, appeals filed by the assessee for assessment years 2009-10, 2010-11, 2011-12 and 2012-13 are dismissed.

Order pronounced on 9th December, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 09/12/2020

Alindra, PS

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

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