

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

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

**ITA No. 5252/MUM/2017
Assessment Year: 2007-08**

**ITA No. 5253/MUM/2017
Assessment Year: 2008-09**

**ITA No. 5254/MUM/2017
Assessment Year: 2009-10**

**ITA No. 5255/MUM/2017
Assessment Year: 2010-11**

**ITA No. 957/MUM/2015
Assessment Year: 2011-12**

**ITA No. 5256/MUM/2017
Assessment Year: 2012-13**

&

**ITA No. 5257/MUM/2017
Assessment Year: 2013-14**

Navneet Prakashan Kendra, Navneet Bhavan, Bhavani Shankar Road, Dadar (West), Mumbai - 400028 PAN: AAAFN1085E	Vs.	The ACIT – 21 (2), Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Prashant Shah (AR)

Revenue by : Shri Sunil S. Deshpande (DR)

Date of Hearing: 28/12/2020
Date of Pronouncement: 30/12/2020

ORDER

PER BENCH

These appeals have been filed by the assessee against the common orders dated 03.05.2017 passed by the Commissioner of Income Tax (Appeals)-

33, (for short 'the CIT(A), for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2012-13 and 2013-14 and order dated 11.11.2014 passed by the Commissioner of Income Tax (Appeals)-29, Mumbai, for the assessment year 2011-12. Vide common order dated 03.05.2017, the Ld. CIT(A)- 33 has partly allowed the appeals filed by the assessee against the assessment orders passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act'), for the assessment years 2007-08 to 2009-10, 2012-13 and 2013-14 and dismissed the appeal pertaining to the assessment year 2010-11. Similarly, the Ld. CIT (A) - 29 has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Act, pertaining to the assessment year 2011-12. Since, these appeals pertain to the same assessee, the same were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience.

2. The assessee, a partnership firm, filed its return of income for the assessment years 2007-08 to 2009-10, 2012-13 and 2013-14. The returns were processed u/s 143 (1) of the Act and the assessment orders were passed u/s 143 (3) of the Act. Subsequently, the assessments were reopened by issuing notices u/s 148 of the Act and the assessment orders were passed u/s 143 (3) r.w.s. 147 of the Act after making various additions including enhancement of rental income of the assessee. Aggrieved by the assessment orders, the assessee challenged the assessment orders before the Ld. CIT (A). However, the Ld. CIT (A) partly allowed the appeals pertaining to the assessment years 2007-08 to 2009-10, 2012-13 and 2013-14 and dismissed the appeal pertaining to the assessment year 2010-11. Similarly, the assessee filed its return of income for the assessment year 2011-12 and the AO passed the assessment order u/s 143 (3) of the Act after making various additions. The assessee challenged the assessment order before the Ld. CIT (A), who after hearing the assessee partly allowed the same. The assessee is in appeal against the impugned orders passed by the Ld. CIT (A) - 33 and the Ld. CIT (A)-29. The assessee has challenged the impugned orders *inter alia* on the ground that the

first appellate authorities have erred in upholding the reassessment proceedings and confirming the additions made by the AO.

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 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 are dismissed as withdrawn.

Order pronounced on 30th December, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/12/2020

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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