

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

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

**ITA No. 4890/MUM/2019  
Assessment Year: 2008-09**

M/s B.M. Star, C/o Mitesh Mehta & Associates, Chartered Accountants, 432 Lamington Road, 2 <sup>nd</sup> Floor, Opera House, Mumbai - 400004 PAN: AAGFB5320C	<b>Vs.</b>	The Income Tax Officer – 23(1)(3), Room No. 108, 1 <sup>st</sup> Floor, Matru Mandir, Mumbai - 400007
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Shri Sunil Deshpande (DR)

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

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 29.05.2019 passed by the Commissioner of Income Tax (Appeals)-55 (for short 'the CIT(A), Mumbai, for the assessment year 2008-09, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

1. *"The learned CIT (Appeal) erred in law and on facts in confirming penalty u/s 271 (1) (c) of Rs. 1,66,637/-. The CIT (A) erred in law and on facts in not providing proper and reasonable opportunity to the appellant before passing the appellate order.*
2. *the learned CIT (A) erred in not considering the facts that, the assessing officer has not specified the specific charge/limb in*

*show cause notice for which he intends to impose penalty under section 271 (1) (c) of the Act.*

3. *The learned CIT (Appeal) erred in not appreciating facts of the case properly while confirming penalty.*
4. *The learned CIT (Appeal) erred in law and on facts in confirming penalty on estimated addition.*
5. *The learned CIT (Appeal) erred in not accepting/considering submission of appellant while passing an order.*
6. *The learned CIT (Appeal) erred in law in not following decision of jurisdictional Tribunal and High Court on similar issue.*
7. *The learned CIT (Appeal) erred in law in not considering judgments of various courts wherein it was held that, “the Assessing Officer while initiating penalty proceedings under section 271 (1) (c) of the Act has not recorded any satisfaction whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income and hence, entire penalty proceedings required to be quashed...”*

3. This case was fixed for hearing on 30.12.2020. However, when the case was called for hearing, none appeared on behalf of the assessee. We notice that the partner of the assessee company has submitted an application dated 28.12.2020, stating that the 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 assessee's application. 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 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. 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 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 2008-09 is dismissed as withdrawn.

Order pronounced on 30<sup>th</sup> 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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