

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

BEFORE SHRI MAHAVIR SINGH, VP

&

SHRI M.BALAGANESH, AM

**ITA No.2881/Mum/2018
(Assessment Year :2011-12)**

&

**ITA No.2880/Mum/2018
(Assessment Year :2010-11)**

M/s. R D Jain & Company 507, Gpta Bhavan Sant Tukaram Road Mumbai – 400 009	Vs.	CIT(A)-28, Mumbai
PAN/GIR No.AABFR0957J		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Sanjay Sethi
Date of Hearing	08/02/2021
Date of Pronouncement	08/02/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.2881/Mum/2018 & 2880/Mum/2018 for A.Y.2011-12 & 2010-11 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/IT-287/ITO-17(3)(1)/2016-17 & CIT(A)-28/IT-286/ITO-17(3)(1)/2016-17 respectively dated 02/01/2018 (Id. CIT(A) in short) against the order

of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2016 by the Id. Income Tax Officer – 17(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. None appeared on behalf of the assessee. We find that assessee had already filed a letter dated 17/03/2020 stating that the company is contemplating to avail "Vivad Se Vishwas Scheme – 2020" to settle the tax dispute arising out of these appeals.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee had filed a letter dated 17/03/2020 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.”

2. 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 appeals 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.

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

4. In the result, the appeals of the assessee are dismissed

Order pronounced in open Court on 08/02/2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 08/02/2021
KARUNA, sr.ps

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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