

आयकर अपीलिय अधिकरण , ' सी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, CHENNAI

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन लेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

| Sl.No | ITA No: | AY | Appellant | Respondent |
|--------------|----------------|-----------|--|---|
| 1 | 3346/Chny/2019 | 2015-16 | Ms/. Akshaya JMB Properties Pvt. Ltd., No. 18, Paper Mills Road, Perambur, Chennai – 600 011. [PAN: AABCJ 1053E] AR: None | Dy. Commissioner of Income Tax, Corporate Circle 1(1), Chennai-34. DR: G. Johnson, Addl. CIT |
| 2 | 1293/Chny/2019 | 2011-12 | Smt. R.E. Vasumathi, No. 75/6-A, Ramamoorthy Road, ICA Colony, Virudhunagar 626 001. [PAN: ABMPV 6872E] AR: R.E. Vasumathi, assessee | Income Tax Officer, Ward -5, Railway Feeder Road, Virudhunagar 626 001. DR: G. Johnson, Addl. CIT |
| 3 | 1349/Chny/2019 | 2016-17 | V. Jeevanandham, D-4, Aparna Garden Apartment, Door No. 1/74, Pillayar Koil Street, Iyyappanthangal, Chennai – 600 056. [PAN: AXYPJ 3225F] AR: Ms. S. Vidya, CA | Commissioner of Income Tax, Central Circle 1(3), Chennai. DR: G. Johnson, Addl. CIT |
| 4 | 2650/Chny/2019 | 2015-16 | Smt. Pondurai Balaselvi, Old No. 13, New No. 33, Ranganathan Street, Chennai – 600 017. [PAN: AEEPB 8631A] AR: H. Yeshwanth Kumar, CA | Asst. Commissioner of Income Tax, Central Circle -1(2), Chennai. DR: G. Johnson, Addl. CIT |
| 5 | 2651/Chny/2019 | 2015-16 | Pondurai, Old No. 13, New No. 33, Ranganathan Street, Chennai – 600 017. [PAN: AAAPP 5750A] | Asst. Commissioner of Income Tax, Central Circle -1(2), Chennai. |

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| | | | AR: H. Yeshwanth Kumar, CA | DR: G. Johnson, Addl. CIT |
| 6 | 779/Chny/2017 | 2007-08 | DCM Hyundai Ltd., No.2, Ground Floor, Sri Ram Nagar, Prakash Nagar Main Road, Thiruninravur. [PAN: AAACD 2712K] AR: H. Yeshwanth Kumar, CA | Asst. Commissioner of Income Tax, Company Circle -1, Chennai 600 034. DR: G. Johnson, Addl. CIT |
| 7 | 1320/Chny/2018 | 2011-12 | M/s. FIH India Developer Pvt. Ltd., (Formerly known as Foxconn India Developer Pvt. Ltd.,) SIPCOT Industrial Park, Phase -II, Sunguvarchatram, Sriperumbudur, Kanchipuram – 602 106. [PAN: AABCF 0043Q] AR: S.P. Chidambaram, Adv. | Dy. Commissioner of Income Tax, Company Circle 2(1), Nungambakkam, Chennai – 600 034. DR: G. Johnson, Addl. CIT |
| 8 | 764/Chny/2019 | 2013-14 | Nihar Fathima Meera, Old No. 47, New No. 18, 3 rd Main Road, R.A. Puram, Chennai – 600 028. [PAN: AADPM 7536N] AR: T. Vasudevan, Advocate | Asst. Commissioner of Income Tax, Non Corporate Circle 1, Chennai. DR: G. Johnson, Addl. CIT |
| 9 | 3232/Chny/2017 | 2011-12 | M/s. Alagendran Exports Pvt. Ltd., C/o T.N. Seetharaman, Adv. #384 (Old No. 196), Lloyds Road, Chennai – 600 086. [PAN: AAACA 3128J] AR: R. Kumar, Advocate | Income Tax Officer, Company Ward 1(1), Chennai. DR: G. Johnson, Addl. CIT |
| 10 | 641/Chny/2019 | 2010-11 | M/s. Ramesh Flowers Pvt. Ltd., A-62(A), SIPCOT Industrial Complex, Therkku, Veerapandianpuram, Tuticorin – 628 008. [PAN: AAACR 9251P] AR: N. Devanathan, Advocate Xavier Fernando, CA | Income Tax Officer, International Taxation, Tuticorin. DR: G. Johnson, Addl. CIT |

सुनवाईकीतारीख/Date of Hearing : 05.01.2021
घोषणाकीतारीख/Date of Pronouncement : 05.01.2021

आदेश/ O R D E R

PER BENCH:

This bunch of 10 appeals filed by different assesseees and Revenue are directed against orders of the learned Commissioner of Income Tax (Appeals), even dated 15.10.2019, 19.02.2019, 01.02.2019, 19.07.2019, 22.08.2019, 30.01.2017, 15.12.2017, 14.12.2018, 31.10.2017 & 25.01.2019 for respective assessment years.

2. We have heard the counsels for the assesseees and the Id. DR and also perused the material available on record. At the time of hearing, learned counsels for the assesseees have made a statement at bar that the assesseees want to utilize the Direct Taxes 'Vivad se Vishwas Scheme, 2020' to settle pending dispute relating to Direct Taxes and in this regard some of assesseees have filed form No 1 and 2 and awaiting for form No. 3 from the designated authority. In some cases, the assesseees have received form No. 3 from the designated authority and in some cases, the assessee have filed letter and expressed their willingness to file form no. 1 and 2 before the designated authority.

3. The Bench has considered rival contentions of both sides and after hearing both parties, we found that the Government of India has announced in the Budget, 2020, a Direct Taxes 'Vivad se Vishwas Scheme, 2020' to settle pending dispute relating to Direct Taxes at various appellate forums including the First Appellate Authority, Tribunal, High Court and Supreme Court. In this regard, the Scheme has been notified on 17th March, 2020 and became Direct Taxes 'Vivad se Vishwas Act, 2020'. As per the said Scheme, assesseees are allowed to settle direct tax dispute in a manner and procedure prescribed therein by filing necessary declaration and undertaking. The Scheme has also specified the amount of taxes, interest, and penalty, if any payable under the Act. If an assessee filed a declaration and pay specified taxes as per the scheme and withdraw the appeal pending before the appellate authorities, the Designated Authority shall pass an order in Form 5 confirming payment made under the scheme and grant immunity from penalty and prosecution.

4. In these present appeals, some of the assesseees have filed declaration in Form No.1 along with undertaking waiving rights for any remedy in Form No. 2 to the designated Authority and has also received Form 3. In some cases, form no 1 and 2 have been filed and awaiting form no. 3 from the designated authority and in some cases, the assesseees have expressed their willingness to file form no. 1 and 2 and settle their dispute under the scheme.

Therefore, once the assessee intends to file a declaration in Form No.1 along with undertaking and expressed their willingness to settle pending disputes regarding direct taxes, then there is no point in keeping the appeal filed by the assessee. We, further noted that recently the Hon'ble Jurisdictional High Court of Madras has considered an identical application filed by an assessee in the case of M/s. Nannusamy Mohan (HUF) Vs. ACIT in T.C.A No.372 of 2020 for availing the benefit of 'Vivad se Vishwas Scheme, 2020', where the Hon'ble High Court has dismissed the appeal filed by the petitioner as withdrawn, but allowed liberty to the assessee to restore the appeal in the event the designated authority for any reason rejects application filed by the assessee under section 4 of the Act. The relevant portions of the observations of the Hon'ble High Court of Madras vide order dated 16.10.2020 are extracted as under:-

"2. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Ms. K.G.Usha Rani, learned counsel for the respondent/Revenue.

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. 1.

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.1 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. In the light of the above decision of the Hon'ble High Court of Madras, and by taking note of the fact that some assesseees have already filed declaration in Form No.1 along with Form No.2 to the Designated Authority and received Form 3 and some of the assesseees had already filed form no 1 & 2 and awaiting form no. 3 from the designated authority and also the fact that the remaining assesseees are willing to file form no 1 and 2 within the due date prescribed for this purpose, we dismiss the appeals filed by each of the assesseees, supra, as withdrawn. However, liberty is given to the assesseees to restore the appeals, in the event of the Designated Authority, for any reason reject the application filed by the assessee under section 4 of the said Act. We, further make it clear that in a case where the appeal is filed by the Revenue and the assessee's have for any reason opted out from the scheme or the applicants under the scheme misrepresent any fact which resulted in rejection of application filed under the scheme, then the provisions of section 4(6) of the Act, shall be applicable to all such appeals and in such cases, all the proceedings and the claims which were withdrawn under [section 4](#) and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived. We, further make it clear that the assesseees should promptly inform the Assessing Officer about their decision to opt out of the scheme or rejection of application by the designated authority to the Assessing Officer, so as to enable to file miscellaneous application to restore the appeal.

6. In the result, all the appeals filed by the assessee as well as the revenue are dismissed as withdrawn.

Order pronounced on 05th January, 2021 at Chennai.

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

Sd/-

(धुव्वुरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 05th January, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF