

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

BEFORE SHRI M.BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.916/Mum/2019
(Assessment Year :2006-07)**

The Assistant Commissioner of Income Tax-24(1) Room No.604, Piramal Chambers Jeejeebhay Lane Lalbaug, Parel Mumbai-400 012	Vs.	M/s. Dhantak & Company 601, Dhantak Plaza Makwana Road Andheri (E) Mumbai – 400 059
PAN/GIR No. AAAFD0781F		
(Appellant)	..	(Respondent)

Revenue by	Shri Sanjay Sethi
Assessee by	Ms. Ritu Punjabi
Date of Hearing	11/02/2021
Date of Pronouncement	11/02/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.916/Mum/2019 for A.Y.2006-07 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-36, Mumbai in appeal No.CIT(A)-36/IT-83/Addl. CIT 20(2)/2008-09 dated 30/11/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated

31/12/2008 by the Id. Addl. Commissioner of Income Tax, Range 20(2), Mumbai (hereinafter referred to as Id. AO).

2. Assessee submitted a letter through email dated 10/02/2021 wherein it has been stated that assessee had filed an application under 'Vivad-se-Vishwas Scheme 2020' which has also been approved by the competent authority and assessee is required to pay tax by 31/03/2021.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee had already availed "Vivad Se Viswas Scheme 2020" and filed necessary declaration. 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."

4. 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 appeal 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.

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

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in open Court on 11/02/2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/02/2021
KARUNA, sr.ps

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