

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

BEFORE SHRI JUSTICE P P BHATT, PRESIDENT

&

SHRI M.BALAGANESH, AM

**ITA No.5324/Mum/2017
(Assessment Year :2009-10)**

The Income Tax Officer 11(1)(1), Room No.201, Aayakar Bhavan M.K. Marg, Mumbai – 400 020	Vs.	M/s. Rathi Retails India Pvt. Ltd., 302, Cliff Tower, Lokhandwala Complex, 3 rd Cross Lane, Andheri (West) Mumbai – 400 053
PAN/GIR No.AADCR7973B		
(Appellant)	..	(Respondent)

Revenue by	Shri Sanjay Sethi
Assessee by	None
Date of Hearing	09/02/2021
Date of Pronouncement	09/02/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.5324/Mum/2017 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-318/ITO-11(1)(1)/14-15 dated 11/04/2017 (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 23/03/2015 by the Id. Income Tax Officer – 11(1)(1), Mumbai (hereinafter referred to as Id. AO).

None appeared on behalf of the assessee

2. We find that Id. AR filed a letter dated 05/02/2021 mentioning that assessee had preferred to opt for direct tax 'Vivad Se Vishwas Scheme'-2020 and Form No.3 issued by the competent authority is placed on record.

3. We have heard rival submissions and perused the materials available on record. Since, the assessee had already filed an application under direct tax "Vivad Se Vishwas Scheme Act 2020", there is no need to keep the appeal pending before us in view of the decision of Hon'ble Madras High Court in the case of Nannusamy Mohan (HUF) vs. ACIT in T.C.A. No.372 of 2020 dated 16.10.2020, wherein the Hon'ble High Court after considering the intention of the assessee to avail the benefit of 'Vivad se Vishwas 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 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 with a liberty to get it recalled in the eventuality of assessee’s declaration not getting accepted by the Revenue.

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

Order pronounced in open Court on 09/02/2021.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 09/02/2021
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