

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 7007/MUM/2018 (A.Y: 2009-10)

Vijay Pannalal Rathi 502/2A, Tirupati Darsah Balaji Nagar, Bhayander (W) Thane - 401101 PAN: AAAPR7411G	v.	ACIT – 17(3) Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Sreenivasa Raghvan
Date of Hearing	:	12.02.2021
Date of Pronouncement	:	12.02.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–28, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.09.2018 for the A.Y. 2009-10.

2. Assessee filed a letter dated 03rd November, 2020 and submitted as under: -

"Reg: Intimation for application filed under Vivad se Vishwas Scheme on 24/06/2020.

ITA No.7007/MUM/2018/ PAN NO AAAPR7411G A.Y.2009 -2010

This is to state that I filed application under vivad se Vishwas Scheme for A.Y.2009-2010 on 24/06/2020 for which form 3 is still awaiting from Department. Your honour fixed hearing for the same assessment year on 12/11/2020.

I want to state that hearing still to be kept in abeyance till finalization of my application filed under vivad se vishwas scheme on 24\06\2020 receipt no. 3661383 0240620. As soon as I receive certificate in form no.3 I will produce the same before you.

Therefore your honour is requested to keep this matter in abeyance till finalization of my application in form no. 1 &2 and receipt of certificate in form no.3

Enclosed herewith

- 1. receipt of application filed under vivad se vishwas scheme in form no.1 & 2*
- 2. Xerox of notice of hearing from your department date fixed on 12/11/202"*

3. On a perusal of the above letter of the assessee it is noticed that assessee has already filed application under Vivad-Se-Vishwas Scheme and Form 3 is awaited from the Revenue. Thus, since assessee has opted to settle litigation under Vivad se Vishwas scheme no purpose would serve keeping the appeal pending.

4. The Hon'ble Madras High Court in the case of M/s. Nannusamy Mohan (HUF) v. ACIT in T.C.A. No. 372 of 2020 dated 16.10.2020 on an appeal by the assessee u/s. 260A of the Act, held as under: -

"This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 03.12.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) in I.T.A.No.2576/CHNY/2017 for the Assessment Year 2011-12. The appeal is admitted on the following Substantial Questions of Law:

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was perverse in not considering all the grounds raised in Cross Objection, viz. (1) claim of exemption in respect of sale of agricultural land (2) claim of deduction by way of cost inflation Index and cost of plot of land purchased in computing deduction u/s.54F of Income Tax Act?"

2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the disallowance of cost of improvement in providing Modern Kitchen in the flats purchased?"

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 M/s.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.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 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.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. Following the above decision of the Hon'ble Madras High Court, the appeal is disposed off accordingly, with liberty to the assessee to file a miscellaneous application, in the event of either the assessee not opting

for Vivad se Vishwas scheme as contemplated by it before the due date of the scheme in operation or in the event of the department not accepting the application made by the assessee under the said scheme, the appeal of the assessee shall be recalled by the Tribunal and restored for adjudication on merits. It is further made clear that if the assessee seeks to restore the appeal in the event of assessee's declaration made under Vivaad se Vishwas scheme is not accepted by the Revenue, the Registry shall not insist for filing of application for condonation of delay, if the Miscellaneous Application for recalling the order is filed beyond time on account of delayed communication of outcome under Vivaad se Vishwas scheme in view of the decision of the Hon'ble Madras High Court in the case of M/s. Nannusamy Mohan (HUF) v. ACIT in T.C.A. No. 372 of 2020 dated 16.10.2020. With these observations the appeal is dismissed as withdrawn.

6. In the result, appeal of the assessee is dismissed as observed above.

Order pronounced in the virtual court on 12.02.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 12/02/2021
Giridhar, 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, Mum