

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 5664/MUM/2011 (A.Y: 2008-09)

M/s. C.G. International Pvt. Ltd., Shop No. 10, Kukreja Estate Plot No. 36, Sec-11 CBD Belapur, Navi Mumbai - 400614 PAN: AAACC4505B	v.	ACIT – Circle – 10(3) Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Shri Amod Prabhudesai
Department by	:	Shri Anand Mohan
Date of Hearing	:	18.03.2021
Date of Pronouncement	:	18.03.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 13.06.2011 for the A.Y. 2008-09.

2. At the time of hearing the appeal virtually Ld. Counsel for the assessee submitted that assessee opted for Vivad Se Vishwas Scheme and filed declaration and undertaking in Form-1 to settle the litigation and

Form 3 is awaited from the Revenue. Further, Ld. Counsel for the assessee filed a letter dated 18th March, 2021 submitted as under:

**Re: C. G. International Private Limited (the appellant)
(Now amalgamated with M/s. Trio Jewels Pvt. Ltd.)
PAN: AAACC4505B
Appeal No: 5664/Mum/2011
Assessment Year 2008-09
Hearing held today i.e. 18th March. 2021.**

1. We refer to the hearing of the above appeal petition held today i.e. 18th March, 2021. In this context, under instructions from the appellant, we submit as under:

2. In the course of the hearing, it was submitted that the appellant has opted for Vivad Se Vishwas Scheme, 2020 (VSVS) in respect of the captioned appeal and accordingly filed a declaration and an undertaking in Form No. 1 & 2 respectively u/s. 4(1) of the Direct Tax Vivad Se Vishwas Act, 2020 on 29th December, 2020; a copy whereof is enclosed herewith for the sake of your easy reference. **[Annexure "A" & "B"]** Kindly note that the appellant has been amalgamated with M/s. Trio Jewels Pvt. Ltd. vide Order of the Hon. NCLT dated 16th June, 2020 w.e.f. 1st April, 2018 and accordingly, a declaration under VSVS has been filed in the name of M/s. Trio Jewels Pvt. Ltd. (Transferee Company)

3. In view of the very fact that the appellant has opted for VSVS in respect of the captioned appeal, in the course of the hearing, Your Honours have informed the appellant that the captioned appeal is being disposed off as dismissed. Accordingly, we humbly request Your Honours to mention in the Order as may be passed disposing off the captioned appeal that in the event, the appellant's declaration under VSVS is rejected by the Ld. CIT, then the appellant will be given a liberty to file Miscellaneous Application against the said Order for restoration of the captioned appeal for adjudication on merits.

4. We trust Your Honours will be pleased to accede to our above request and oblige."

3. On a perusal of the above letter filed by assessee it is noticed that assessee has already filed application under Vivad-Se-Vishwas Scheme and Form 3 is awaited from the Revenue. In view of the submission of

the Ld. Counsel for the assessee 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, this 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 this appeal is dismissed as withdrawn.

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

Order pronounced in the virtual court on 18.03.2021.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai / Dated 18/03/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL 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, Mum