

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 5126/Mum/2019

(निर्धारण वर्ष / Assessment Year 2009-10)

Creation of publicity Pvt. Ltd. 4, 1 st , Floor, Parekh Vora Chambers, 66, Nagindas Master Road, Fort, Mumbaai-400 001	बनाम/ Vs.	The Income Tax Officer Room No. 543, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCC2192B		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Ms Shreekala Pardeshai, DR

सुनवाई की तारीख / Date of hearing:	17.03.2021
घोषणा की तारीख / Date of pronouncement:	17.03.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Mumbai, [in short CIT(A)], in Appeal No. CIT(A)-4/e-file-05/ITO-2(1)(2)/2018-19 dated 18.06.2019. The assessment was framed by the Income Tax Officer, Ward-2(1)(2), Mumbai (in short ITO/ AO), for the A.Y. 2009-10 vide order dated

23.12.2011 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, it is noticed that the assessee has opted for 'Direct Tax Vivad Se Viswas Scheme-2020' by filing the application form Nos. 1 and 2 with the Department and from No. 3. This appeal was filed before ITAT on 05/08/2019 and the appeal is pending for disposal. The appeal is pending and assessee is eligible for the 'Direct Tax Vivad Se Viswas Scheme-2020' and opted for the scheme. The learned DR Shri Vidhyadhar V has not objected for the same.

3. After hearing the learned Sr. DR and perusing the records, it is noticed that the assessee is opting for 'Direct Tax Vivad Se Viswas Scheme-2020' by filing form Nos. 1 and 2 and 3. In view of the decision of Hon'ble High Court of Madras in the case of Nannusamy Mohan (HUF) vs. ACIT in I.C.A. No.372 of 2020 dated 16.10.2020, wherein Hon'ble High Court after considering the intent of the assessee to avail the benefit of 'Direct Tax Vivad Se Viswas Scheme-2020' has 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 in the form No.1 and form No. 2 of the 'Direct Tax Vivad Se Viswas Scheme-2020'. In other words if the assessee's declaration is not accepted by the Revenue, 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 facts that the assessee has filed form Nos.1, 2 & 3 under direct tax 'Direct Tax Vivad Se Viswas Scheme-2020', we dismiss



this appeal of assessee with the aforementioned liberty to get the appeal recalled, in the eventuality the assessee declaration is not accepted by the Revenue.

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

Order pronounced in the open court on 17.03.2021.

Sd/-

(एस रिफ़ौर रहमान / S RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 17.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai