

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 1239/AHD/2016 & 1052/AHD/2014 (AY 2005-06)
(Virtual hearing in Virtual Court)

M/s Prathmesh Agencies, Survey No. 693/2/2/2, Vad Palia Naroli Bhilad Road, Nr. Naroli Check Post, Post office –Silvasa 396230 e-prathmeshagencies@gmail.com Ph: 9833719354 PAN : AAHFP 4565 G	Vs	Assistance Commissioner of Income Tax, Circle- Vapi
APPELLANT		RESPONDEDNT

Assessee by	Sh. Manish J Shah Advocate
Revenue by	Ms Usha Shrote Sr DR
Date of hearing	06.042021
Date of pronouncement	06.04-2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These appeal by assessee are directed against the separate orders of ld. Commissioner of income tax (Appeals), Vapi, dated 18.03.2016 in quantum assessment and dated 13.02.2014 in the matter of penalty levied under section 271(1)(1)(c) for assessment year (AY) 2005-06. Initially, the appeal in ITA No. 1052/AHD/2014 was dismissed in *limine* for the want of non-prosecution vide order dated 10.03.2017. However, the order dated 10.03.2017 was recalled in MA No. 214/AHD/2017, vide order dated 19.10.2020.

2. The appeals came up hearing on 6th April 2021. The learned Counsel for the assessee submits that the assessee has settled the dispute with the department by availing the benefit under Vivad se Visvas Scheme -2020 (VSV-20). The learned Counsel for the assessee submits that the assessee has already received Form -1 & 2 of VSV-20, copy of which is placed on record. Form-3 is still awaited. The ld. Counsel for the assessee submits that the assessee may be allow to withdraw both the appeals with the liberty to get the appeal revive/ restored, in case some further dispute is left with regards to the grounds of appeal in any of the appeal. The assessing officer may be directed to pass consequential order as per CBDT Circular No. 3/2021 dated 04.03.2021.
3. On the other hand the ld. Senior Departmental (ld. DR) appearing for the revenue has no objection if the appeal of assessee is dismissed as withdrawn with the liberty to get the appeal revived as prayed for.
4. We have considered the submissions of the parties and have verified the facts from Form-1 & of VSV-20 is received by the assessee. Therefore, considering the submissions of the learned Counsel for the assessee that the assessee has settled the dispute with the department under VSV-20, the appeals of the are dismissed as withdrawn with liberty to the assessee that in case, if the application preferred by the assessee under VSV-20 does not get finally settled for any reason

- whatsoever, then the assessee is at liberty to prefer Miscellaneous Application before this Tribunal for restoration of these appeals and in such event, these appeals shall get restored.
5. The Hon'ble Madras High Court in the case of M/s Nannusamy Mohan (HUF) vs. ACIT (TCA No. 372 of 2020 dated 16.10.2020, also held that 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, the assessee is given liberty to restore its appeal in the event 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 (Para-7).
6. Considering the request of the learned Counsel for the assessee and the decision of Hon'ble Madras High Court (supra), both the appeal of the assessee are dismissed as withdrawn. The assessing officer is directed to pass consequential order as per CBDT Circular No. 3/2021 dated 04.03.2021.

Order announced at the time of hearing of appeal on 6th April 2021 in the Virtual Court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 06/04/2021
Copy to:
1. Appellant

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

2. Respondent
3. CIT(A)
4. CIT
5. DR

// True Copy //

By order

Assistant Registrar, ITAT, Surat