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

BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.6890/MUM/2019
C.O. No.76/Mum/2021
(Assessment Year: 2011-12)

Income-tax Officer-32(2)(5) 719, 7th Floor, Kautilya Bhavan, C-41 to C- 43, G Block BKC, Bandra East, Mumbai – 400 051	Vs.	Shri Prashant Gajanan Redji A-2 Shri Sadguru Darshan CHS, Fitwala Road, Elphinston West, Mumbai 400 013

PAN No. ADNPR2157F

(Revenue)	**(Assessee)**

Assessee by : Shri Dilip Bapat, A.R
Revenue by : Shri Shreekala Pardeshi, D.R

Date of Hearing : 24/08/2021
Date of pronouncement : 24/08/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-44, Mumbai dated 05.08.2019, which in turn arises from the order passed by the A.O u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'Act') dated 22.03.2018 for A.Y. 2011-12. Also, the assessee is before us as a cross-objector.

2. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the quantum appeal of the assessee for the year in question was disposed off by the Tribunal vide its order

passed in ITA No.6247/Mum/2017, dated 01.11.2017. It was submitted by the ld. A.R that the assessee being aggrieved with the aforesaid order of the Tribunal had preferred an appeal u/s 260A of the Act before the Hon'ble High Court of Bombay, which had been numbered as ITA No. 1369/Mum/2018. It was stated by the ld. A.R that the aforesaid appeal is pending before the Hon'ble High Court. It was submitted by the ld. A.R that the assessee in the meantime has filed an application under the Direct Tax Vivad se Vishwas Act, 2020 in order to settle the aforesaid matter pending before the Hon'ble High Court and had received the certificate under sub-section (1) of Sec. 5 from the designated authority. In support of his aforesaid claim the ld. A.R had drawn our attention to 'Form 5' issued by the designated authority. It was stated by the ld. A.R that now when the assessee had opted for the Direct Tax Vivad se Vishwas Act, 2020 qua its quantum appeal for the year under consideration, therefore, the captioned appeal of the revenue arising from the order passed by the A.O under Sec. 271(1)(c) of the Act as is pending before the Tribunal is rendered as infructuous and would be required to be withdrawn by the department. Insofar the cross-objection filed by the assessee is concerned, it was submitted by the ld. A.R that consequent to the withdrawal of the aforementioned appeal of the revenue the same would be rendered as infructuous.

3. The ld. D.R did not controvert the aforesaid factual position as was canvassed before us.

4. We are of the considered view that now when the assessee had qua its quantum appeal for the year under consideration that is pending before the Hon'ble High Court of Bombay in ITA No.1369/Mum/2018 opted for the Direct Tax Vivad se Vishwas Act, 2020, therefore, as a result thereof the appeal filed by the revenue against the order of the CIT(A) quashing the penalty imposed by the A.O u/s 271(1)(c) of the Act cannot survive on a standalone basis. Accordingly, we dismiss the captioned appeal of the revenue as withdrawn, subject to a rider

that in the unlikely event of the matter under consideration not being resolved under the Vivad se Vishwas Scheme, 2020, then, the revenue shall have liberty to approach the Tribunal for restoration of its appeal. Also, a similar liberty would stand vested with the assessee to seek restoration of its cross-objection in case the aforesaid matter is not resolved under the Vivad se Vishwas Scheme, 2020.

5. Resultantly, the appeal filed by the revenue is dismissed as withdrawn subject to the observations recorded hereinabove. On the same terms the cross-objection filed by the assessee is also dismissed as having been rendered as infructuous.

Order pronounced in the open court on 24.08.2021

Sd/-	Sd/-
(S.Rifaur Rahman)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 24.08.2021
PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai