

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.148/Bang/2021 : Asst.Year 2006-2007

M/s.United Spirits Limited UB Tower, 10 th Floor, No.24, Vittal Mallya Road Bengaluru – 560 001. PAN : AACCM8043J.	v.	The Dy.Commissioner of Income-tax, Circle 7(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Mrs.Shreya Loyalka, CA
Respondent by : Sri.B.K.Singh, CIT-DR

Date of Hearing : 23.09.2021	Date of Pronouncement : 23.09.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 05.02.2021. The relevant assessment year is 2006-2007.

2. At the very outset, we noticed that the CIT(A) has dismissed the appeal *in limine*. The CIT(A) held that the assessee had opted for Vivad Se Vishwas Scheme and the appeal filed before him was treated as infructuous as per the provisions of Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV Act). The relevant finding of the CIT(A), reads as follows:-

"2. It is noted that the appellant has opted for the Vivad Se Vishwas Scheme vide application dated 26.06.2020. Pursuant thereto, the PCIT, Bengaluru-2 has certified the full and final payment of Rs.1197004321/- as taxes in terms of Form No.5 dated 01.01.2021. In view of the above, the appeal is treated

as infructuous as per provisions of the Direct Tax Vivad Se Vishwas Act, 2020.”

3. Aggrieved, the assessee has filed this appeal. The learned AR submitted that the CIT(A) has erred in treating the appeal as infructuous as per the provisions of DTVSV Act, when the assessee has not opted for the scheme for the appeal which was pending before the CIT(A). It was submitted that the CIT(A) has erred in considering Vivad Se Vishwas application (Form 1) for settling the appeal pending before the ITAT as an application for settling the appeal pending before him. The relevant grounds raised by the assessee with regard to the CIT(A)'s dismissal of appeal *in limine*, reads as follows:-

“1. For that upon facts and circumstances of the case, the order of the Ld.CIT(A) is bad in law and hence liable to be quashed.

2. For that upon facts and circumstances of the case, the Ld.CIT(A) erred in treating the appeal as infructuous as per the provisions of Direct Tax Vivad Se Vishwas Act, 2020 (“DTVSV Act”) when the appellant had not opted for DTVSV scheme for the appeal which was pending before CIT(A).

3. For that upon facts and circumstances of the case, the Ld.CIT(A) erred in holding that appellant opted for VSV scheme for the appeal before him vide application dated 26.06.2020 and that full and final payment of Rs.119,70,04,321 of taxes have been certified vide Form 5 dated 1.1.2021 when no such VSV scheme was opted by the appellant in respect of the appeal before the Ld.CIT(A).

4. For that upon facts and circumstances of the case, the Ld.CIT(A) erred in confusing himself and considering the VSV form filed by the appellant for one of its merged entities for an appeal pending before ITAT being ITA 1282/Bang/2018 and giving reference of the same while disposing off the appeal before him.

5. *Without prejudice to the above, the Hon'ble Tribunal may be pleased to pass an order on merits on the following grounds."*

4. Apart from the above grounds, the assessee has also raised grounds on various additions / disallowances.

5. The learned Departmental Representative was duly heard.

6. We have heard rival submissions and perused the material on record. The assessee has placed on record its application under Vivad Se Vishwas Scheme (application dated 26.06.2020). The assessee has filed an application for settling the appeal, which was pending before the ITAT in ITA No.1282/Bang/2018. In respect of the appeal pending before the ITAT, the assessee received Form 5 and the appeal of the assessee before the Tribunal was dismissed by the ITAT vide its order dated 16.12.2020. Copies of form 5 received by the assessee, assessee's application under Vivad Se Vishwas Scheme and the ITAT's order dismissing the assessee's appeal are placed on record. The CIT(A) had dismissed the appeal pending before him by mistake. The appeal pending before the CIT(A) was not sought by the assessee to be settled under Vivad Se Vishwas Scheme. Therefore, the CIT(A) has erred in dismissing the appeal *in limine*. Hence, the issues raised in the appeal are restored to the files of the CIT(A). The CIT(A) is directed to dispose of the matter in accordance with law after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 23rd day of September, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 23rd September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) – NFAC, Delhi
4. The Pr,CIT-2, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore