

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘A’

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1816 and 1817/Ahd/2019**

**निर्धारण वर्ष/ Asstt.Year: 2013-14 and 2014-15**

Shivam Water Treaters P.Ltd. Shivam House-3 Kahan Krupa Dr.Jivraj Mehta Hospital Road Vasana Ahmedabad 380 007. PAN : AAFCS 5613 R	Vs.	DCIT, Cir.4(1)(1) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri M.S. Chhajed, AR
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 29/09/2021

घोषणा की तारीख /Date of Pronouncement: 5 /10/2021

**आदेश/O R D E R**

**PER RAJPAL YADAV, VICE-PRESIDENT**

Present two appeals are directed at the instance of the assessee against separate orders of the ld.CIT(A)-8 dated 4.10.2019 passed for the Asstt.Years 2013-14 and 2014-15.

2. These appeals were listed before on 29.9.2021. On 29.9.2021 we have passed the following orders:

**“INTERIM ORDER**  
**ITA Nos. 1816 & 1817/Ahd/2019**

*The present two appeals are directed at the instance of the assessee against the separate orders of learned CIT(A) dated 04.10.2019 passed for Assessment*

Years 2013-14 and 2014-15. It emerges out from the record that the learned CIT(A) has dismissed both the appeals on preliminary issues viz. :-

- a. That the assessee failed to demonstrate that it has paid taxes on the returned income. According to the learned CIT(A), as per Section 249(4), if assessee failed to pay the taxes on the returned income, then its appeal cannot be entertained on merit;
  - b. The appeals are time barred;
  - c. Form No.35 has not been duly signed and verified.
2. The learned Counsel for the assessee submitted that the taxes have been paid along with return in form of TDS deducted at source of its income. As far as the delay is concerned, it is to be taken up after the first hurdle is removed.
3. We have concluded the hearing with the assistance of both the representatives; but, in order to satisfy ourselves prima facie as to whether the assessee has paid the taxes or not so that we can remit the issue for verification and adjudication to the learned First Appellate Authority. However, we deem it appropriate that the authorized signatory of Form No.36 on behalf of the assessee should file an affidavit deposing therein that the taxes have been paid and the manner in which the taxes have been paid so that this fact can be verified by the learned First Appellate Authority for entertaining the appeals. Therefore, we further provide 10 days time to the learned Counsel for the assessee to file the affidavit in both the Assessment Years. In case the assessee failed to submit such affidavit, then we will decide the appeals in accordance with law.
4. With the above observations, these appeals are treated as heard and the orders reserved. Copy of this order-sheet may be supplied to both the parties.

Sd/-  
(Pradip Kumar Kedia)

Sd/-  
(Rajpal Yadav)

Accountant Member

Vice President

3. In compliance to the above order, the ld.counsel for the assessee filed an affidavit of Shri Gaurav Dave, which reads as under:

**AFFIDAVIT**

*I Shri Gaurav Dave, Director of Shivam Water Treaters Private Limited (herein after referred as 'Assessee Company'), aged adult, residing at A/G/I, Parshwa Padmavati Apartment, Opp. Madhuvan Avenue, Vasna, Ahmedabad-380007, Gujarat, India do hereby solemnly affirm and state as under: ::*

*A.Y. 2013-14*

*Assessee company has filed return of income for AY 2013-14 showing total income of Rs.10,33,450/-. Tax Payable on total income was Rs.3,10,035/-, Education cess of Rs.6,201 and Secondary and Higher Education cess of Rs.3,100/-Total Tax liability was Rs.3,19,336/-.Assessee company has discharged its tax liability as under:*

<i>Particulars</i>	<i>Amount</i>
<i>TDS</i>	<i>1,27,441</i>
<i>Self assessment tax</i>	<i>2,16,920</i>
<i>TOTAL</i>	<i>3,44,361</i>
<i>AY 2014-15</i>	

*Assessee company has filed return of income for AY 2014-15 showing total income of Rs.10,75,170/-. Tax Payable on total income was Rs.3,22,551/-, Education cess of Rs.6,451 and Secondary and Higher Education cess of Rs.3,226/-.Total Tax liability was Rs.3,32,2287-.Assessee company has discharged its tax liability as under:*

<i>Particulars</i>	<i>Amount</i>
<i>TDS</i>	<i>2,01,664</i>
<i>Self assessment tax</i>	<i>1,50,200</i>
<i>TOTAL</i>	<i>3,51,864</i>

*Assessee company has paid tax as per return of income along with return of income, hence Section 249(4) of the Income Tax Act, 1961 would not apply.*

*I solemnly verify that facts stated above are true to the best of my knowledge and belief and that nothing material has been concealed by me.*

*Date : 30.09.2021*

*Place : Ahmedabad.*

*Sd/-*

4. Without going into further details, we would observe that sub-section (4) of section 249 contemplates as under:

*“249. (1) Every appeal under this Chapter shall be in the prescribed form<sup>49</sup> and shall be verified in the prescribed manner and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—*

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*(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—*

*(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*

*(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:*

*Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.*

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5. A perusal of our above interim order dated 29.9.2021 would reveal that appeals of the assessee have been dismissed by the Id.CIT(A) on the ground that conditions enumerated in section 249(4) have not been fulfilled. In other words, the assessee failed to pay taxes on the returned income. However, stand of the assessee is that it has paid taxes, and therefore, we have directed the assessee to file an affidavit to that effect. The director of the assessee-company has filed the affidavit which we have taken cognizance. In view of the stand of the assessee that it has already paid taxes, and therefore, its appeal should have been heard on merit. We deem it appropriate to set aside the impugned orders, and relegate this issue to the file of the CIT(A). The Id.CIT(A) would verify the claim made in the affidavit and if satisfied that conditions

contemplated in section 249(4) are fulfilled, then the assessee be given an opportunity to remove all other irregularities, if any, i.e. submission of a signed form no.35, application for condonation of delay etc. be provided. The Id.CIT(A) after satisfying himself about fulfillment of all requirements, decide the appeal in accordance with law.

6. With the above observation, both appeals of the assessee are allowed for statistical purpose.

**Order pronounced in the Court on 5<sup>th</sup> October, 2021 at Ahmedabad.**

**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Ahmedabad;

Dated

5/10/2021

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE-PRESIDENT**