

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 42/SRT/2021 (AY 2015-16)
(Hearing in Virtual Court)

Altret Biotech Ltd., 'Altret House' 12/2881 Saiyedpura Main Road, Surat PAN : AAFCA 9180 P	Vs	Assistant Commissioner of Income Tax, Circle-1(1) Surat
Appellant / assessee		Respondent / Revenue

Assessee by	Shri Mehul R Shah, C.A
Revenue by	Shri Deependra Kumar, Sr-DR
Date of hearing	09.11.2021
Date of pronouncement	09.11.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre (in short 'NFAC'), Delhi dated 07.12.2017, which in turn arises from DCIT Circle 1(1)(1), Surat passed order under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 07.12.2017 for assessment year (AY) 2015-16. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income Tax (Appeals) has erred in wrongly dismissing the appeal on the basis of DTVSV application, when no DTVSV application or letter of withdrawal was actually filed in respects to said application.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income Tax (Appeals) has

erred in passing ex-parte order without giving sufficient opportunity of being heard.

3. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in making addition of Rs.1,06,954/- on account of disallowance of interest payment to NBFCs u/s 40(a)(ia).

4. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in rejecting the book results of the assessee u/s 145(3) of the Act.

5. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in making addition of Rs.12,89,872/- on account of low gross profit ratio.

6. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in taking returned income at NIL while working out the total income although assessee claimed the loss of Rs.57,39,188/- in the audited accounts.

7. If the assessment results into the positive income after your decision, the exemption should be allowed u/s 10(1) for agriculture income.”

2. Brief facts of the case are that assessee is a company engaged in the business of seed and sapling sales of Jhatropha. The assessee filed its return of income for AY 2015-16 declaring nil income on 28.03.2017. The case was selected for scrutiny. The assessment was completed under section 143(3) of the Act on 07.12.2017 making additions on account of low gross profit (GP) of Rs.12,89,872/-. Aggrieved by the additions in the assessment, the assessee filed appeal before Ld. CIT(A) /NFAC. In the appeal the assessee raised specific grounds against the disallowance of interest payment to Non-banking Financial Company (NBFC for short) under section 40(a)(ia), rejection of books of account and against the addition on account of low GP. The appeal of the assessee was adjudicated vide order dated 12.04.2021, wherein the Ld. NFAC held that the

assessee obtained benefit of Vivad se Visvas Scheme -2020 (VSV-20) and furnished Form-5 of said scheme vide acknowledgement No.278835800020321 dated 02.03.2021 and thereby dismissed for statistical purposes. Aggrieved by the order of Ld. NFAC, the assessee has filed present appeal before this Tribunal.

3. We have heard the submission of Ld. Authorized Representative (AR) of the assessee and Ld. CIT-DR for the Revenue. The Ld.AR of the assessee submits that the quantum assessment was completed under section 143(3) on 07.12.2017. The Assessing Officer while passing assessment order proposed of initiation of penalty u/s 271E of the Act and referred the matter for Competent Authority. The Competent Authority vide separate order dated 17.04.2018 levied penalty of Rs.4.50 lakhs. The assessee availed the benefit of VSV-2020 Scheme in the matter of penalty levied under section 271E by filing application vide acknowledgement No.287150481030120. The application of assessee was allowed Competent Authority and the assessee received necessary relevant Forms under the said Scheme. The assessee vide require tax as calculated by Competent Authority. Ld. AR of the assessee submits that he has furnished acknowledgment of application filed under the VSV-2020 Scheme, Form-35 and Form-1 for availing benefit.
4. The Ld. AR of the assessee further submits that Ld. NFAC instead of verifying the fact considered that the assessee has obtained VSV-2020 schemed in the matter of quantum

assessment and dismissed the appeal of assessee by treating as withdrawal for statistical purposes. Ld. AR of the assessee submits that appeal of assessee require adjudication on merit and maybe restored to the file of Ld. NFAC for adjudication afresh in accordance with law with the direction to Ld. NFAC to service notice on assessee at the e-mail address furnished in Form-35. The Ld. AR of the assessee submits that assessee has very good case on merit and is likely to succeed if given opportunity of hearing and furnish necessary documentary evidence before First Appellate Authority.

5. On the other hand, Ld. Sr. DR for the Revenue fairly agreed with the matter may be restored back to the file of Ld. NFAC who adjudicate the appeal on merit in accordance with law.
6. We have considered the rival submission of both the parties and find that assessee-company has filed appeal before Ld. NFAC and challenged the addition made in quantum assessment. The assessee availed benefit of VSV-2020 scheme only in the matter of penalty levied under section 271E. The Ld. NFAC has wrongly treated that assessee settled the addition in quantum assessment. Therefore, we restore the matter back to the file of Ld. NFAC who decide the appeal of assessee on merit. The Ld. NFAC is further directed to grant opportunity of hearing by serving proper notice of hearing to the assessee, before passing order in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purpose in above terms.

Order pronounced in the open court on 09/11/2021 by placing the result on the Notice Board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 09/11/2021
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

// True Copy //

Assistant Registrar, ITAT, Surat