

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.8164/Del/2018
[Assessment Year : 2015-16]**

Innovative Cafes LLP A-11/5, Vasant Vihar, New Delhi PAN: AADF19635G	vs	The Commissioner of Income tax (Appeals)-II, Delhi, Room No. 507, D Block, Civic Centre New Delhi-110092
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. T. Kipgen, CIT DR	
Date of Hearing	21.12.2021	
Date of Pronouncement	21 .12.2021	

ORDER

PER C. N. PRASAD, JM :

This appeal is filed by the assessee against order dated 26/10/2018 passed by CIT(A)- 11, New Delhi for assessment year 2015-16.

2. Assessee in its appeal raised the following grounds of appeal:-

1. *That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-I 1, New-Delhi [hereinafter referred to as 'the Ld. CIT(A)'] has*

grossly erred in confirming the addition of Rs. 5,41,516 as computed by Ld. Income Tax Officer, Ward 33(2), New Delhi ([hereinafter referred to as 'the Ld. AO'] vide order dated 30.12.2017 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

- 2. That the Ld. CIT(A) has grossly erred both in facts and in law in confirming the addition of Rs. 2,23,562 on account of difference between turnover in VAT and Service Tax return, without understanding the fact that the income of Rs. 2,23,562 was duly offered to tax by the Appellant by way of deduction from expense thereby reducing the expense instead of being reflected as income.*
- 3. That the Ld. CIT(A) has grossly erred both in facts and in law in confirming the action of the Ld. AO of making an addition of Rs. 3,17,952 on account of difference in turnover of VAT and Service Tax Return, which is based on irrelevant consideration, conjectures and not supported by any evidence on record.*
- 4. That the Ld. CIT(A) while confirming the above addition on mere conjectures and surmises, failed to appreciate the fact that mere non filing of service tax return cannot lead to a presumption that the income has not been offered to tax. That while doing so the Ld. CIT(A) completely disregarded the factual dictum of the case and the documents placed on record, and therefore, the action of the Ld. CIT(A) was not only unjust, unreasonable but also against the principle of natural justice and is liable to be quashed.*
- 5. That the Ld. CIT(A) while confirming the addition, failed to appreciate the fact that merely agreeing to the additions to buy peace of mind and to avoid litigation and penalty*

proceedings does not lead to presumption that the addition is correct and acceptable to the Appellant.

6. *The above grounds are independent and without prejudice to each other.”*

3. The assessee has moved an application dated 20/12/2021 thereby stating that the assessee is interested to resolve the pending issue through Direct Tax “Vivad se Vishwas Scheme” (VSV) Act, 2020, and has filed Declaration Form No. 1 & 2 and received Form No. 3 dated 09/02/2021 and consider this letter as withdrawal application of the above appeal.

4. In view of the aforesaid facts and after considering the submissions of the assessee, we dismiss the appeal of assessee subject to a caveat that in case the dispute relating to tax arrears for the captioned assessment year is not ultimately resolved in terms of the aforesaid Act, the assessee shall be at liberty to approach the Tribunal for reinstatement of the appeal and the Tribunal shall consider directions the appeal of the assessee is dismissed.

5. In the result, appeal of the assessee is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 21st December, 2021.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
21/12/2021

R. N

Sd/-

(C. N. PRASAD)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI