

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.147 & 148/Chny/2021
निर्धारण वर्ष/Assessment Years: 2007-08 & 2008-09

Shri Poosabban Thangaraju,
24/16A, Parinagar, Collectorate Post,
Palayapalayam, Erode 638 011.
[PAN:AFYPT1378K]

Vs. The Income Tax Officer,
Ward 1(4),
Erode.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate, Erode
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 27.04.2022
घोषणा की तारीख /Date of Pronouncement : 06.05.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], New Delhi dated 26.03.2021 & dated 01.04.2021 relevant to the assessment years 2007-08 and 2008-09.

2. At the outset, the Id. Counsel for the assessee has submitted that the Id. CIT(A) [NFAC] has dismissed both the appeals of the assessee on the ground that the assessee has already opted for VSVS scheme and Form No. 5 dated 25.03.2020 has already been issued to the assessee. The Id.

Counsel for the assessee has further submitted that Form No. 5 has been issued in respect of penalty levied under section 271A of the Act alone and therefore, the Id. CIT(A) [NFAC] was not correct in dismissing the appeals of the assessee.

3. On the other hand, the Id. DR has not raised any objection, but relied on the orders of authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessment for the assessment years 2007-08 and 2008-09 were completed under section 143(3) r.w.s. 147 of the Act both dated 09.11.2018 separately. Against the assessment order, the assessee preferred further appeal before the Id. CIT(A) and subsequently, the appeals were migrated to Id. CIT(A) [NFAC] for adjudication. However, the Id. CIT(A) [NFAC] dismissed both the appeals on the ground that the assessee has opted for VSVS and Form No. 5 has been issued by the designated authority towards settlement of disputed tax.

4.1 On perusal of the Form 5 dated 25.03.2021 issued under VSVS by the Designated Authority for both the assessment years, we find that the Form 5 has been issued for full and final payment of ₹.6,250/- as taxes in terms of VSVS order under section 5(2) dated 05.02.2021 pertains to disputed

penalty levied under section 271A of the Act, against which, vide order dated 31.03.2021 for the AY 2007-08 and dated 01.04.2021 for AY 2008-09, the Id. CIT(A) [NFAC] has passed separate orders by referring to the same Form 5, whereas, the present appeals were preferred by the assessee against the assessment order under section 143(3) r.w.s. 147 of the Act. In view of the above facts, we are of the considered opinion that the Id. CIT(A) [NFAC] was not correct in dismissing the appeals for both the assessment years on the ground that the assessee has already opted for VSVS and Form 5 has been issued. In view of the above, the order passed by Id. CIT(A) [NFAC] is set aside for both the assessment years and remit the matter back to the file of the Id. CIT(A) [NFAC] to adjudicate the appeals on merits in accordance with law.

5. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 06th May, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 06.05.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.