

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" B " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**And**

**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 305/AHD/2021

निर्धारण वर्ष/Asstt. Year:2012-2013

Shazz Developers Private Limited, 304, Jeet Complex, Opp. Aniket Building, C.G. Road, Navrangpura, Ahmedabad.  <b>PAN: AANCS3302B</b>	Vs.	Income Tax Officer, Ward-4(1)(3) Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by	:	Shri Chetan Agarwal, A.R
Revenue by	:	Shri R.R. Makwana, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **23/05/2022**

घोषणा की तारीख / **Date of Pronouncement**: **27/05/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-8, Ahmedabad, dated 25/08/2020 arising in the matter of assessment order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The assessee has raised the following ground of appeal:

*Ld.CIT(A) erred in law as well as in fact in passing order u/s.250 granting leave to withdraw appeal in view of assessee opting for VSV scheme 2020. He ought to have consider Form 5 before disposing of appeal.*

3. At the outset it was noticed that the assessee has moved an application before the learned CIT-A for the withdrawal of the appeal as it was contemplating to avail the benefit of the Vivad se Vishwas Scheme 2020. Accordingly, the learned CIT-A dismissed the appeal filed by the assessee as withdrawn.

4. However, the assessee against the finding of the learned CIT-A preferred an appeal before us. The learned AR before us contended that the assessee was not able to make the payment of the tax determined under VSV scheme. As such the assessee failed to avail the benefit of VsV Scheme. Thus the appeal has to be decided on merit. To this effect, the assessee approached the Department through the email for restoration of the appeal which was dismissed by the learned CIT-A. However, it was advised to the assessee to prefer an appeal before the ITAT through the email dated 27 April 2022. The learned AR has also filed the copy of the email which is placed on record.

5. In view of the above, the learned AR before us requested to issue the direction to the learned CIT-A for adjudicating the appeal filed by the assessee on merit afresh as per the provisions of law.

6. On the contrary, the learned DR did not raise any objection if the appeal is set aside to the file of the learned CIT-A for fresh adjudication as per the provisions of law.

7. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion we find that the

assessee has moved an application for the withdrawal of the appeal before the learned CIT-A as it was contemplating to avail the benefit of VSV scheme-2020. Thus the learned CIT-A was pleased to dismissed the appeal filed by the assessee. However, we find that the assessee could not avail the benefit of VSV Scheme 2020. Thus the only option available with the assessee to agitate its grievance against the assessment order by way of preferring an appeal before the learned CIT-A which has already been dismissed for the reasons as discussed above. In the interest of justice and fair play, we are setting aside the impugned appeal before the learned CIT-A for fresh adjudication in accordance to the provisions of law after giving due opportunity to the assessee. It is also pertinent to note that the assessee shall cooperate during the appellate proceedings. Thus the ground of appeal of the assessee is allowed for the statistical purposes.

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

**Order pronounced in the Court on 27/05/2022 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE,  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**(True Copy)**  
Ahmedabad; Dated 27/05/2022  
*Manish*