

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND  
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No. 730/Lkw/2019  
Assessment Year 2015-16

Income Tax Officer-1(2), Range-1, Kanpur	Vs.	Smt. Kavita Gupta, 66/72, Kahoo Kothi, Flat No.401 Pram Ratan Vatiaka, 7/180, Swaroop Nagar, Kanpur. PAN –ABUPG 0888M
(Appellant)		(Respondent)

Assessee by	Application for disposal of appeal under VSVS
Revenue by	Shri Pankaj Sachan, DR
Date of hearing	02/06/2022
Date of pronouncement	03/06/2022

**ORDER**

**PER T.S. KAPOOR, A.M. :**

This appeal has been filed by the Revenue against the order of Id. CIT(A)-1, Kanpur dated 30.11.2018 pertaining to A.Y. 2015-16.

2. The Id. DR at the outset invited our attention to the fact that there is a delay in filing the appeal of three hundred twelve days. The reason for delay in filing the appeal has been explained by the Revenue in its application dated 16.12.2019 for condonation of delay, which is reproduced as under:

*"In this connection, it is submitted that Order of Commissioner of Income Tax(Appeals)-1, Kanpur in the case of Smt. Kavita Gupta, A.Y.-2015-16 has been received in the office of the Principal Commissioner of Income Tax-1, Kanpur on 11.12.2018 and last date of filing departmental appeal was 07.02.2019. Proposal for filing of appeal before the Hon'ble ITAT, Lucknow was sent to the Principal Commissioner of Income Tax-1. Kanpur. The Tax*

effect involve in the case is Rs. 8,11,954/-. The Principal Commissioner of Income Tax-1, Kanpur vide letter dated 11.01.2019 had not recommended the proposal for filing an appeal before the Hon'ble ITAT, Lucknow on the ground that the tax effect involved in the case is below the monetary limit prescribed by the CBDT. New Delhi vide instruction no 03/2018 dated 11.07.2018.

*In this case the sale of shares is not a natural phenomenon but an arrangement of dubious design of providing accommodation entry of Long Term Capital Gain to introduce unaccounted own money as exempt income in the form of LTCG on sale of shares.*

*Later on the CBDT, New Delhi vide Circular No. 23 of 2019 dated 06.09.2019 and O.M. dated 16.09.2019 has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeal may be filed on merits as an exception to said circular, where Board, by way of special order direct filing appeal on merit in cases involved in organized tax evasion activity. In the O.M. dated 16.09.2019 the following instruction has been given:*

*"The undersigned is directed to refer la Circular No.23 of 2019 dated 6th September, 2019 and to say that by virtue of powers of the Central Board of Direct Taxes u/s 268A of Income-tax Act, 1961, the monetary limits fixed for filing appeals before ITAT/HC and SLPs appeals before Supreme Court shall no! apply in case of assesses claiming bogus LTCG/STCL through penny stocks and appeals/SLPs in such cases shall be filed on merits. "*

*Therefore, the delay caused in filing of appeal within the limitation period i.e. 07.02.2019 beyond control of the undersigned. It is therefore requested to kindly condone the delay."*

3. Finding the reason plausible for delay in filing the appeal, the delay was condoned and Id. DR was directed to proceed with his arguments.
2. During the course of hearing, it was noticed that the assessee has submitted an application received by the Registry of this Office on 17.11.2021 vide which it has been submitted that the assessee has opted for Vivad se Viswas Scheme and Income Tax Department has passed order in Form No.5 on 13.5.2021 for AY 2015-16 under Vivad se Viswas Scheme. It is noticed that the order u/s. 5(2) r.w.s. 6 of the DTVSVA has been passed by the PCIT-1, Kanpur for full and final settlement of tax arrears. Since the assessee has opted for Vivad Se Viswas Scheme and tax payable on the Departmental appeal has been

deposited and order for final settlement of tax arrears has been passed by the designated authority, therefore, the appeal filed by the Department is liable to be dismissed as withdrawn. The Ld. DR has no objection. Accordingly, since order has been passed by PCIT-1, Kanpur for full and final settlement of tax arrears u/s. 5(2) r.w.s. 6 of DTVSVA, 2020 for AY 2015-16, the appeal of the Department is ordered to be dismissed as withdrawn.

3. In the result, appeal of the Revenue is dismissed.

(Order pronounced in the open court on 03/06/2022)

**Sd/-**  
**(A.D. Jain)**  
**Vice President**

**Sd/-**  
**(T.S. Kapoor)**  
**Accountant Member**

Aks -  
Dtd. 03/06/2022

Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

Assistant Registrar