

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 5047/DEL/2019
[Assessment Year: 2014-15]**

YPO (Delhi Chapter), E-22, 2 nd Floor, Hauz Khas, New Delhi-110016. PAN- AAATY0347C	<u>Vs</u>	Income-tax Officer, Ward-2(3) (Exemptions), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Binod Gupta, CA	
Respondent by	Sh. T. Kipgen, CIT DR	
Date of hearing	07.06.2022	
Date of pronouncement	07.06.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Exemptions), New Delhi, dated 26.03.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Exemptions) (hereinafter referred as “CIT(E)”) under Section 263 of the Act is bad, both in the eye of law and on facts.
2. On the facts and circumstances of the case, the order passed by the learned CIT(E) assuming jurisdiction under section 263 is bad in law in the absence of twin conditions of the order passed by the A.O. being erroneous as well as prejudicial to the interest of the Revenue.

3(i). *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in ignoring the fact that the issue raised by him in notice under Section 263 were before the A.O. and the exemption having been granted by the A.O. after due application of mind, as such the jurisdiction on this issue under Section 263 cannot be assumed by him.*

(ii) *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in ignoring the contention of the appellant that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the learned CIT(E).*

4. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in invoking the provisions of Explanation 2 to section 263(1) of the Act, despite the fact that the conditions prescribed therein are not satisfied in the present case, that too without specifying the reason for invoking the same.*

5. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in setting aside the order of the A.O. in arbitrary and mechanical manner without himself giving a finding as to the error and prejudice caused to revenue by the assessment order.*

6. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and law in commenting on the objects of the assessee, on the basis of which registration under section 12A has been granted to the assessee, exceeding his jurisdiction.*

7(i) *Without prejudice to the above, tax having been deducted by the payers cannot be the reason for withdrawal of exemption under section 11.*

(ii) *That the levy of service tax being a statutory levy, same cannot be the reason for denial of exemption under section 11 of the Act.*

(iii) *That in any case claim of payment made by the payers, as expenditure cannot be a reason for denial of exemption under section 11 of the Act.*

(iv) *That the payments of professional fee having been made in India only, the provisions of section 11(1)(c) are not applicable on the same.*

8. *Without prejudice to the above and in the alternative, the income of the assessee is not taxable on the basis of doctrine of mutuality also.*

9. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. At the outset learned counsel for the assessee submitted that for the assessment year in question i.e. A.Y. 2014-15, the assessee has opted VIVAD SE VISHWAS SCHEME, 2020 and has already requested the Tribunal vide e-mail

dated 11.3.2021 for permission to withdraw the appeal. He submitted that the assessee has since been issued Form-5 for full and final settlement of tax arrears under the aforesaid scheme. The learned counsel has also filed an application dated 6.6.2022, stating as under:

“We are in receipt of a notice under the Act wherein the Appellant is requested to appear for hearing of Appeal for the above captioned AY. In this regard, we submit as under:

*1. The Appellant had opted for the scheme under Direct Tax - Vivad se Vishwas Act, 2020 (“VSV Scheme”) for the captioned assessment year. Accordingly Form 1 and Form 2 was filed by the Appellant on 25 December 2020 and Form 3 was issued by the department on dated 30 January 2021. The same is attached as **Annexure “A”**.*

*2. Basis this, the Appellant had paid the entire disputed tax liability. This was acknowledgement by the department by issue of Form 5 dated 12 April 2021. The same is attached as **Annexure “B”**.*

*3. Meanwhile, as required under the VSV scheme, the Appellant had filed a request with the Hon’ble Income-tax Appellate Tribunal (“ITAT”) Delhi Bench for withdrawal of appeal on 11 March 2021. Given the nationwide lockdown situation the said request was submitted over email. Copy of the said email along with the application are attached as **Annexure “C.1 and C.2”**.*

In light of the above facts and the enclosed documents, we reiterate that the Appellant does not wish to press the captioned appeal.”

3. Accordingly, the learned counsel submitted that in view of above the assessee does not wish to press the present appeal and prayed for permission to withdraw the appeal.

4. The learned DR has no objection to the request made by the assessee.

5. In view of the same and in absence of any objection from the side of the Ld. D.R, the request of the assessee seeking for withdrawal of the appeal is allowed.

6. In the result, appeal of the assessee is dismissed as withdrawn.

Order pronounced in open court on 07.06.2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI