

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.290/M/2022
Assessment Year: 2011-12**

M/s. Bhavna Automobiles Pvt. Ltd., Plot No.2 & 2A, Sector 17, Opp. Khanda Colony, New Panvel (E), Navi Mumbai – 410 206 PAN: AADCB0029Q	Vs.	ACIT, Central Circle-4(2), Air India Building, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri C.T. Mathews, D.R.

Date of Hearing : 16 . 06 . 2022
Date of Pronouncement : 05 . 07 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Bhavna Automobiles Pvt. Ltd. (hereinafter referred to as ‘the assessee company’) by filing the present appeal, sought to set aside the impugned order dated 07.12.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2011-12 on the grounds inter alia that:

“I. Not Opted Direct Tax Vivad Se Vishwas:

1. The learned CIT(A) has erred both in law and on facts & circumstances of the case in dismissing the appeal of the appellant by wrongly assuming that the appellant had opted "VSV" for the appeal filed. It is to be noted that the appellant had opted for the "Direct Tax Vivad Se Vishwas Scheme" for penalty appeal against order u/s 271(1)(C) having (Appeal No. CIT(A), Surat-1/10053/2019-20) for A.Y. 2011-12 and not for the appeal having (Appeal No. CIT(A), Surat-1/11405/2016-17) for A.Y. 2011-12. Hence, Ld. CIT(A) has wrongly assumed that the, appellant has opted "VSV" for regular appeal as well which is totally wrong.

2. The learned CIT(A) has erred both in law and on the facts & circumstances of the case by outrightly dismissing the appeal of the appellant without considering the detailed submission submitted online or giving any opportunity of being heard or any effort to recheck his assumption.

II. Miscellaneous:

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the original assessment in this case was framed by making addition of Rs.92,05,989/- under section 143(3) of the Income Tax Act (for short ‘the Act’). However, subsequently assessment was reopened. Declining the contentions raised by the assessee, Assessing Officer (AO) made disallowance of Rs.13,99,790/- by invoking the provisions contained under section 40(a)(ia) of the Act and further made addition of Rs.63,64,930/- on account of bogus purchases made by the assessee and thereby framed the assessment at the total income of Rs.1,40,92,285/- under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal for statistical purposes. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. At the very outset, it is brought to the notice of the Bench that the Ld. CIT(A) has proceeded to dismiss the present appeal on the wrong premise that since the assessee has settled the issue under Vivad Se Vishwas Scheme the present appeal has become infructuous by returning following findings:

“2. It is noted that the appellant opted for the Vivad Se Vishwas Scheme vide application dated 07.09.2020. Pursuant thereto, the PCIT-1, Thane has certified the full and final settlement of tax arrears of Rs. 1,52,900/- in terms of Form No. 5 dated 13.01.2021. In view of the above, the appeal is treated as infructuous as per clause 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020.

3. Accordingly, the appeal is treated as dismissed for statistical purposes.”

7. However, assessee has come up with specific ground that it has never opted to settle the issue under Vivad Se Vishwas Scheme but the Ld. CIT(A) has wrongly assumed this fact.

8. In view of the matter, we are of the considered view that since the assessee has never opted to settle the issue under Vivad Se Vishwas Scheme, dismissing the appeal on the basis of wrongly assumed fact is not sustainable, hence impugned order passed by the Ld. CIT(A) is hereby set aside and file is remitted back to the Ld. CIT(A) to decide afresh on merits after providing opportunity of being heard to the assessee. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05.07.2022.

**Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 05.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.