

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.3805/Mum/2013

(निर्धारण वर्ष / Assessment Years: 2008-09)

Mayur Vinod Faria Flat No.3, Fairy Manor, 13- Gunbow Street, Fort, Mumbai-400001.	बनाम/ Vs.	DCIT(OSD)-II, Central Range-7 Room No. 413, Aayakar Bhavan, M.K. Road, Mumbai-400002.
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आयकर अपील सं/ I.T.A. No. 5932/Mum/2017

(निर्धारण वर्ष / Assessment Year:2008-09)

Mayur Vinod Faria Flat No. 3, Fairy Manor, 13- Gunbow Street, Fort, Mumbai-400001. PAN NO. AAMPF4763B.	बनाम/ Vs.	DCIT (OSD-II), Central Range-7 Aayakar Bhavan, M. K. Road, Mumbai-400020.
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आयकर अपील सं/ I.T.A. No. 5933/Mum/2017

(निर्धारण वर्ष / Assessment Year:2009-10)

Vinod K. Faria Flat No. 3, Fairy Manor, 13- Gunbow Street, Fort, Mumbai-400001.	बनाम/ Vs.	DCIT (OSD-II), Central Range-7 Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPF1045J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Hiral Sejpal
Revenue by:	Shri Achal Sharma (DR) & Ms. Vranda U. Matkarni

सुनवाई की तारीख / Date of Hearing: 04/07/2022

घोषणा की तारीख /Date of Pronouncement: 20/07/2022

आदेश / ORDER

PER BENCH:

ITA. No. 3805/Mum/2013 for AY. 2008-09

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-40, Mumbai dated 25.02.2013 for AY. 2008-09.



*ITA No.3805/Mum/2013
5932 & 5933/Mum/2017
A.Y. 2008-09 & 2009-10
Mayur Vinod Faria & Vinod K. Faria*

2. At the outset, it has been brought to our notice that assessee in this case Shri Mayur Vinod Faria is the son of Shri Vinod K. Faria and the AO while framing the quantum assessment has made substantive assessment in the hands of the father Shri Vinod K. Faria and protective assessment in the hands of Shri Mayur Vinod Faria (assessee) in this case. And this Tribunal was pleased to restore the appeal of Shri Vinod K. Faria back to the file of Ld. CIT(A) vide order dated 23.07.2020 in ITA. No. 3803 & 3804/Mum/2013. Since the quantum appeal (substantive) has been restored back to the file of Ld. CIT(A), there is no point in keeping the appeal of the assessee against whom protective assessment order has been passed by the AO vide order dated 28.12.2020. In such a scenario, we are inclined to set aside the impugned order of the Ld. CIT(A) and direct the Ld. CIT(A) to decide the appeal of the assessee (Mayur Vinod Faria) after deciding the appeal of the father Shri Vinod K. Faria in whose hands substantive assessment has been made by the AO ITA. Nos. 3803 & 3804/Mum/2013.

In the result, the appeal of the assessee is allowed for statistical purposes.



*ITA No.3805/Mum/2013
5932 & 5933/Mum/2017
A.Y. 2008-09 & 2009-10
Mayur Vinod Faria & Vinod K. Faria*

ITA. No.5932/Mum/2017 for AY. 2008-09

3. At the outset, it has been brought to our notice by the Ld. DR that Shri Mayur Vinod Faria / assessee (ITA. No. 5932/Mum/2017) is the son of Shri Vinod K. Faria /assessee (ITA. No. 5933/Mum/2017) and the AO has made protective assessment in the hands of the assessee Shri Mayur Vinod Faria (son) and substantive assessment in the hands of the father (Vinod K. Faria). According to the Ld. DR, the quantum assessment pertaining to Shri Vinod K. Faria (substantive assessment) for AY. 2008-09 has already been restored back to the file of the Ld. CIT(A) by this Tribunal vide order dated 23.07.2020 in the case of Shri Vinod K. Faria in ITA. No.3803 & 3804/Mum/2013.

4. In such a scenario, we are inclined to set aside this appeal of the assessee Shri Mayur Vinod Faria against the penalty levied u/s 271AAA of the Income Tax Act, 1961 (hereinafter “the Act”) and restore the same back to the file of the Ld. CIT(A) to decide the same after taking a decision of the quantum appeal regarding Shri Vinod K. Faria (for AY. 2008-09) in whose hands substantive assessment has been made by the AO.

In the result, the appeal of the assessee is allowed for statistical purposes.

Coming to the ITA. No. 5933/Mum/2017 for AY. 2009-10.

5. This is an appeal preferred by the assessee/Shri Vinod K. Faria against the penalty levied by the AO u/s 271AAA of the Act dated 10.03.2014 pursuant to the assessment order passed by him u/s



ITA No.3805/Mum/2013
5932 & 5933/Mum/2017
A.Y. 2008-09 & 2009-10
Mayur Vinod Faria & Vinod K. Faria

153A/144 of the Act on 28.12.2010. It was brought to our notice that assessment (quantum) has already been restored back to the Ld. CIT(A) by this Tribunal vide order dated 23.07.2020 in ITA. No.3803 & 3804/Mum/2013. In the light of the aforesaid fact there is no point in keeping the penalty appeal of the assessee pending before us. Therefore, we set aside this order and restore it back to the file of the Ld. CIT(A) to decide the penalty appeal after deciding the quantum appeal for AY. 2009-10.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 20/07/2022.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 20/07/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai