

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 28/Vns/2019
Assessment Year:2009-10

PadumdevPathak, Dumaria, Distt. Ballia-277211,U.P.	v.	I.T.O., Ward-2(5), Ballia, U.P.
PAN:ABBPP5697A		
(Appellant)		(Respondent)

Appellant by:	None(E-mail dated 24.08.2022 along with Form No. 5 , received from assessee
Respondent by:	Shri A.K. Singh, Sr.(DR)
Date of hearing:	25.08.2022
Date of pronouncement:	25.08.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No.28/Vns/2019 for assessment year(ay) 2009-10, arising out of appellate order dated 31.08.2018 passed by learned Commissioner of Income Tax, Varanasi (hereinafter called "the CIT(A)"), for assessment year 2009-10. None appeared on behalf of the assessee, when this appeal was called for hearing before Division Bench, while ld. Sr. DR was present in the court on behalf of Department. This appeal was filed in 2019, and since then whenever this appeal was posted for hearing before DB , none appeared on behalf of the assessee. The registry has sent notices through speed post/RPAD as well email, but despite that none appeared on behalf of the assessee. However, Registry has placed on record email received from the assessee (email id sssbalia@gmail.com) on 24th August, 2022 12.59PM (placed on record in file) wherein the assessee has enclosed Form No. 5 issued by department bearing acknowledgement number 584367411110422 , dated 11.04.2022 , issued by ld.

PCIT, designated authority , Prayagraj, U.P. in favour of the assessee for assessment year 2009-10, which is placed on record in file, and request is made by the assessee vide aforesaid email that the assessee wants to withdraw its appeal in ITA no. 28/Vns/2019, for ay: 2009-10.

2. This is an appeal arising out of appellate order dated 31.08.2018 passed by ld.CIT(A), Varanasi . It is noticed that the assessee has availed VSVS to settle the dispute with the Department , against which Form No. 5 is issued by department bearing acknowledgement number 584367411110422 , dated 11.04.2022 , issued by ld. PCIT,designated/competent authority , in favour of the assessee for assessment year 2009-10, which is placed on record in file.

The Form-5 issued by ld. Pr. CIT , Prayagraj(placed on record in file), is reproduced hereunder:

PAN : PP5697A

Acknowledgement Number: 584367411110422

FORM-5

[See rule 7]

ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2)
READ WITH SECTION 6 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

Part A - General Information

Whereas PADM DEO PATHAK having PAN /TAN ABBPP5697A Aadhaar No. 301442805697 (hereinafter referred to as the declarant) had made a declaration under section 4 of the Act,

And whereas the designated authority by Certificate No. 473171271290322 dated 29-Mar-2022 determined the amount of Rs.-2771190 payable by / refundable to the declarant in accordance with the provisions of the Act and granted a certificate setting forth therein the particulars of the tax arrear and the amount payable / refundable after such determination towards full and final settlement of tax arrear;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, it is hereby certified that -

(a) a sum of Rs. 0 has been paid by the declarant towards full and final settlement of tax arrear determined in the order No 473171271290322 dated 29-Mar-2022 and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment[as per section 6 of the Act], in respect of the tax arrear as detailed in the table below:

Sl No	Assessment Year / Financial Year	Details of dispute settled (Appeal reference number)	Nature of tax arrear (disputed tax /disputed penalty / disputed interest /disputed fee)	Amount of tax arrear
1	2009-10	01	Disputed Tax	5747650
2	2009-10	01	Disputed Interest	3694920

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Signature :

Name of the Designated Authority : ABHA CHANDA

Designation of Designated Authority : PR CIT

Place / IP Address : 10.176.27.244

Date : 11-Apr-2022

- To
- (1) The declarant
 - (2) Assessing Officer
 - (3) Concerned Principal Commissioner of Income-Tax
 - (4) Concerned Appellate Forum

3. Since none appeared on behalf of the assessee, although email was received from assessee, on 24th August, 2022, as detailed above. The DB asked Id. Sr. DR that whether he has copy of this Form No. 5 issued by designated authority under VSVS Scheme, to which Id. Sr. DR submitted that he has the copy of Form No. 5 issued by designated authority under Section 5(2) r.w.s. Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 read with The Direct Tax Vivad Se Vishwas Rules, 2020. The Id. Sr. DR submitted that Department has no objection if the appeal of the assessee is dismissed.

4. We heard Id. Sr. DR and perused the material available on record. We noticed that the assessee availed VSVS, 2020 and Id. Pr. Commissioner of Income Tax, Designated Authority has now issued a certificate in Form No.5 on 11.04.2022, wherein declaration of the assessee has been accepted. A copy of such Form No. 5

dated 11.04.2020 has also been filed by the assessee, which is placed on record in file. Therefore, the appeal of the assessee has become infructuous and is dismissed as such. The Revenue is granted liberty that if at any stage it is found that this appeal is not covered by VSVS, 2020, Revenue can file MA for recall of this order. We order accordingly.

5. In the result, the appeal of the assessee in ITA No. 28/Vns/2019 for ay: 2009-10 is dismissed as withdrawn.

Order pronounced in the open court on 25.08.2022 at Varanasi, U.P., on conclusion of hearing in the presence of ld. Sr. DR, and reduced to writing and signed on 26.08.2022

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 26/08/2022

Aks/-

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant – PadumdevPathak, Dumaria Distt. Ballia- 277211, U.P.
2. CIT, Varanasi
3. The Sr. DR, ITAT, Varanasi
4. The CIT, Varanasi
5. The CIT(A), Varanasi, U.P.
6. The Guard File

Sr. Private Secretary