

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 58/Asr/2022
Assessment Year: 2016-17

A.N.V. Foods Pvt. Ltd.,
47-B-The Mall, Amritsar

[PAN: AAECA 0993P]

(Appellant)

Vs. The Deputy Commissioner of
Income Tax, Circle-V-Amritsar

(Respondent)

Appellant by : Sh. P. N. Arora, Adv.

Respondent by: Sh. Girish Bali, CIT DR

Date of Hearing: 31.08.2022

Date of Pronouncement: 12.09.2022

ORDER

Per Dr. M. L. Meena, A.M.:

This appeal is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Amritsar, dated 19.04.2021, in respect of the Assessment Year 2016-17.

2. The assessee has raised the followings grounds of appeal:-

- “1. That the order passed u/s 250 by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 19/04/2021 against the appeal instituted on 22/12/2018 is against the facts of this case and is untenable under the law.
2. That no reasonable and proper opportunity of being heard was allowed before passing the said order. As such the order passed is bad in the eyes of law and the same is liable to be cancelled.
3. That the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi did not appreciate that before rejecting the appeal he should have allowed reasonable opportunity of being heard. The CIT(A) did not appreciate that two appeals were filed during the year under consideration, first appeal was filed against quantum on 22/12/2018 in connection with AY 2016-17 and its hearing has taken place several times in person and later on this appeal was transferred to CIT(A) NFAC Delhi. The Ld. CIT(A) without affording any opportunity of being heard decided the appeal on 19/04/2021 thereby treating the appeal as infructuous and it was observed as under:

“The appeal was instituted on 22/12/2018 against the order dated 10/12/2018 passed u/s 143(3) of the Income-tax Act, 1961 by the AC1T/DCIT, Circle-5, Amritsar-Punjab, for the A.Y. 2016-17. Subsequently, the appeal was migrated to the National Faceless Appeal Centre in terms of Notification No.7 6 of 2020 dt. 25.09.2020 in S.O. 3296(E) issued from the CBDT (A&J Division).

2. It is noted that the appellant has opted for the Vivad Se Vishwas Scheme vide application dated 07/08/2020. Pursuant thereto, the PCIT, Amritsar-1 has certified the payment of Rs.2500/- as taxes in terms of Form No. 5 dated 01/12/2020, which has been paid by the appellant. In view of this, the appeal is treated as infructuous as per the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

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

The second appeal relating to AY 2016-17 against levy of penalty at Rs. 10000/- u/s 271(l)(b) was filed on 05/06/2019 and in this penalty order

the assessee availed Vivad Se Vishwas Scheme and on 19/01/2021 the CIT(A) NFAC u/s 250 cancelled the penalty appeal vide DIN & Order No: ITBA/NFAC/S/250/2020-21/1029907788(1) dated 19/01/2021, copy of which is enclosed herewith. Thus it is clear while passing order on 19/04/2021 the CIT(A) also has taken into consideration Vivad Se Vishwas Scheme.

4. *That Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has not properly appreciated the full facts of this case.*
5. *That in connection with AY 2016-17 we preferred two appeals in connection with AY 2016-17 in the case of ANV Foods (P) Ltd. as per details hereunder:*
 - (i) *One appeal in quantum case was filed before the worthy CIT(A) on 22/12/2018 and its personal hearing has taken place several times and at present this appeal is pending for hearing before CIT(A), National Faceless Appeal Centre, Delhi.*
 - (ii) *Second appeal was filed against penalty levied at Rs. 10,000/- u/s 271(l)(b) of the IT Act, 1961 on 05/06/2019 vide Acknowledgement No. 491532991050619 and this appeal is pending before CIT(A), National Faceless Appeal Centre, Delhi. In this connection, it is submitted that against levy of penalty at Rs. 10,000/- we availed Vivad Se Vishwas Scheme and a copy of Form No.5 is enclosed herewith for ready reference.*

Thus, it is clear that the assessee availed Vivad Se Vishwas Scheme only in penalty case where a penalty of Rs. 10000/- was levied and against that very order the appeal was filed on 05/06/2019 and not 22/12/2018 as taken by the CIT(A). The worthy CIT(A), National Faceless Appeal Centre, did not appreciate that the appeal against quantum was filed on 22/12/2018 and the appeal against penalty was submitted on 05/06/2019. Thus the worthy CIT(A) has mixed both the appeals together and accordingly the Ld. CIT(A) NFAC closed the proceedings of quantum appeal. Thus before rejecting/dismissing the quantum appeal the Ld CIT(A) should have allowed a proper opportunity of being heard. This is a clear case of violation of principle of natural justice. The CIT(A) passed the quantum order on 19/04/2021 and

passed the penalty order u/s 271(l)(b) on 19/01/2021. Thus grave mistake has taken place and the order of the Ld. CIT(A) in quantum appeal is bad in the eyes of law and deserves to be cancelled. The CIT(A) has also cancelled the penalty order on 19/01/2021 and whereas the CIT(A) NFAC passed order after considering Vivad Se Vishwas Scheme.

6. *That it is prayed that the worthy CIT(A) may kindly be directed to recall the order passed by him which is illegal, invalid and void abinitio in the eyes of law. The worthy CIT(A) has no right to dismiss the quantum appeal. It is prayed that the appeal of the assessee instituted on 22/12/2018 may kindly be allowed in the interest of natural justice and the same may be recalled as Vivad Se Vishwas has got no relevant in this connection. It is further relevant to point out that in this case the total demand created was Rs.10,75,49,214/- which is clear from the order passed u/s 250. Thus the Ld. CIT(A) has blown hot and cold in the same breath without appreciating the facts of this case and without affording any opportunity of being heard. As such it is prayed that the order of CIT(A) may be recalled as the order passed is illegal, invalid and void abinitio.*
7. *That any other ground of appeal which may be argued at the time of hearing of the appeal.”*

3. At the outset, the Id. counsel for the assessee has requested for condonation of delay of 284 days in filing the instant appeal vide the condonation petition dated 28.03.2022 filed on the record. The Id. counsel submitted that it was under its mistaken belief and impression, that the appeal has been accepted by following Vivad Se Vishwas Scheme, however, the appellant has come to know when its bank account had been attached by the department that the Id. CIT(A) has passed a wrong order in the quantum appeal. Considering one declaration of Vivad Se

Vishwas Scheme, in the penalty case, the Id. CIT(A) has disposed of the case in quantum appeal also. Whereas in quantum appeal, the demand was created to the tune of Rs.3,04,59,162/- . The counsel has requested that the appellant may not be penalized for the mistake of the counsel and bonafide of the appellant may be considered as a reasonable cause in filing the appeal by delay of 284 days. He humbly requested that the delay may kindly be condoned and appeal may be admitted and restored to the Id. CIT(A) to pass a speaking order on merits.

4. The Id. DR has no objection to the request of the assessee. Accordingly, the delay of 284 days is hereby condoned and the assessee's appeal is admitted on merits.

5. From the impugned order, it is evident that the Id. CIT(A), NFAC has mentioned the tax demand of Rs.3,04,59,162/-, however, he has adjudicated the appeal vide para 2 as follows:

"2. It is noted that the appellant has opted for the Vivad Se Vishwas Scheme vide application dated 07.08.2020. Pursuant thereto, the PCIT, Amritsar-1, has certified the payment of Rs.2500/- as taxes in terms of Form No. 5 dated 01.12.2020, which has been paid by the appellant. In view of this, the appeal is treated as infructuous as per the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

6. The Id. counsel for the assessee has submitted that the Id. CIT(A), NFAC, Delhi did not allow any reasonable opportunity of being heard and rejected the appeal of the appellant-assessee without appreciating the facts of the case by passing an order ex-parte qua the assessee. The counsel has argued that the Id. CIT(A) has disposed of the appeal in summary manner by holding that the appeal is dismissed as withdrawn, completely contradictory to the facts of the case as the appellant-assessee has neither withdrawn the appeal nor as availed benefit under Vivad Se Vishwas Scheme in the quantum appeal filed before the Id. CIT(A). Thus, this appeal has been decided without granting reasonable opportunity of being heard and appreciation of the facts on record. He prayed that the matter may be restored back to the file of the Id. CIT(A) for considering the whole matter afresh.

7. The Id. DR has no objection to the request of the assessee in remanding the matter back to the Id. CIT(A).

8. Having heard both the sides and perusal of the facts of the case, we are of the considered view that the Id. CIT(A) has dismissed the quantum of the appeal of the assessee in summary manner as infructuous under the mistaken belief that the assessee has availed benefit under the Vivad

Se Vishwas Scheme, in contradiction to the facts on record. We find merit and substance in the contention of the Id. counsel for the assessee, and accordingly, the matter is restored back to the file of the Id. CIT(A) to pass a speaking order after granting sufficient opportunity of being heard. The CIT(A) is also directed to consider the written submission filed on record and to be filed in appeal proceeding while adjudicating the quantum appeal afresh.

9. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.09.2022.

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order