

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

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1027/MUM/2022  
(A. Y.: 2017-18)**

Abhilasha Venture A/35, Patil Bhuvan, N.S.B Road, Mulund (West), Mumbai-400080	Vs.	Principal Commissioner of Income Tax- 17, Mumbai-400051
<b>Pan No. AANFA5123H</b>		
<b>Appellant</b>		<b>Respondent</b>

Appellant by	Shri.M.Subramanian.AR
Respondent by	Smt. Shailja Rai.DR.

Date of Hearing	19.09.2022
Date of Pronouncement	23.09.2022

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed an appeal against the order of the Principal Commissioner of Income Tax(Pr.CIT) Mumbai 17 passed under Section 263 of the Income Tax Act 1961 (hereinafter in short “the Act”).

The assessee has raised the following grounds of appeal.

	Grounds of Appeal	
1.	<i>On the facts and in the circumstances of the case and in law, the order passed u/s. 263 of the I. T. Act, 1961 is invalid and bad in law.</i>	
2.	<i>On the facts and in the circumstances of the case and in law, learned CIT erred in passing an order u/s. 263 of the I.T. Act 1961 and that too without appreciating fully and properly the facts of the case.</i>	
3.	<i>On the facts and in the circumstances of the case and in law, the learned CIT erred in holding that the order dated 26.12.2019 passed u/s. 143(3) of the Act by the AO is erroneous and prejudicial to the interest of revenue although the same was neither erroneous nor prejudicial to the interest of revenue.</i>	
4.	<i>On the facts and in the circumstances of the case and in law, the learned CIT erred in setting aside the order passed u/s 143(3) of the I.T Act on 26.12.2019 although the assessment order elaborately discusses the very same point raised in the Section</i>	

	<i>263 notice.</i>	
	<i>The appellant craves leave to add, alter, amend or delete all or any of the grounds of appeal at any time.</i>	

2. The brief facts of the case that, the assessee is engaged in business as builders and developers. The assessee has filed the return of income for assessment year 2017-18 on 28.02.2017 disclosing a total income of Rs.95,06,830/- subsequently, the case was selected for scrutiny and notice under Section 143(2) and 142(1) of the Act was issued. The AO on perusal of the facts and information observed that the assessee has not offered the rent on the unsold stock of the finished flats in the real estate project. The A.O. has called for the annual lettable value as per Section 23 of the Act for computation of house rent of the finished flats of real estate project and issued show cause notice.

3. The assessee has submitted the computation of the notional rent on unsold flats/shops referred at Para 4.2 of the assessment order. Whereas the A.O. considered the details of the assessee and observed that the assessee has not offered any rental income from the finished units of the residential property and shops under Section 22 of the Act in the F.Y.2016-17 and allowed standard deduction @30% of gross rent and taxed Rs.7,41,846/- under income from House property. Similarly, the AO has made disallowance of motor car expenses considering the personal usage(1/3) on adhoc basis Rs 57,308/- and assessed the total income of

Rs.1,03,05,984/- and passed the order under Section 143(3) dated 24.12.2019.

4. Subsequently, the Pr.CIT on perusal of the assessment records and the details of scrutiny assessment found that the assessee has disclosed the closing stock in the balance sheet in respect of 32 units completed and occupation certificate was received. The Pr.CIT is of the opinion that the AO has not verified the calculation of deemed rent on the finished stock at current market rate and should have adopted @8% of the closing stock of flats. Hence, the Pr.CIT is of the opinion that the order passed by the Assessing officer (A.O.) is erroneous and prejudicial to the interest of the Revenue and issued notice under Section 263 of the Act dated 03.03.2022. Since, there was no compliance by the assessee, the Pr.CIT relied on the judicial decisions and explanations under Section 263 of the Act and held at page 5 Para 10 & 11 of the order and passed the revision order u/sec 263 of the Act dated 15-03-2022 read as under:

*10. In view of the above, I am of the considered opinion that the assessment order dated 26.10.2019 passed by the AO u/s 143(3) of the Act is erroneous and prejudicial to the interest of Revenue, because the assessment was made without proper verification and inquires on the issued which the AO was expected to make in view of facts and circumstances discussed above.*

*11. Therefore, invoking the provisions of Section 263 of the Act, the assessment order dated 26.10.2019 passed u/s 143(3) of the Act, by the AO is set-aside. The AO is directed to frame the assessment de novo. He should make thorough verification regarding computation of deemed rent for 32 units held by assessee as closing stock and for which Occupancy Certificates (OC) were received by the assessee. Needless to say that the AO*

*shall give the assessee reasonable opportunity of being heard and pass a speaking order after taking into consideration the explanation and supporting evidence submitted by the assessee.*

Aggrieved by the order of the Pr.CIT , the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the learned AR submitted that the Pr.CIT has erred in directing the AO to frame the de nov assessment, overlooking the facts that the AO has applied his mind on the facts and the calculation of deemed rent under Section 22 r.w.s 23 of the Act and made in addition under income from house property after allowing the statutory deduction under Section 24 of the Act. Further, the learned AR also emphasized that assessee has filed an appeal against the assessment order u/sec143(3) of the Act with the CIT(A) and during the pendency of appeal before of CIT(A), the assessee has opted for VSVS 2020 on 11.11.2020 and received Form no 5 dated 1-05-2021. Therefore the action of the Pr.CIT on the similar issue pending before the CIT(A) is not in accordance with the Law and supported the submissions with the judicial decisions and prayed for allowing the appeal. Contra, the Learned DR relied on the order of the Pr.CIT.

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue as envisaged by the learned AR that the order passed by the A.O. does not satisfy the twin conditions that, it is erroneous and prejudicial to the interest of the revenue. The learned AR contentions are that the assessee against the addition made by the AO in respect of deemed rent

U/sec 22 r.w.s. 23 of the Act has filed an appeal with the CIT(A) and during pendency of the appeal. The assessee has opted for VSVS2020 and the CIT(A) vide order dated 26-05-2021 has observed at page 2 Para 2 &3 as under:

2.0. *It is noted that the appellant has opted for the resolution of its disputed tax/tax arrears and matters connected therewith or incidental thereto as per the provisions of **The Direct Tax Vivad Se Vishwas Act, 2020** and the **Direct Tax Vivad se Vishwas Rules, 2020** issued thereunder. The appellant has made an application in Form 1 dated **11.11.2020** before the **PCIT, Mumbai-17**, the Designated Authority under The Direct Tax Vivad Se Vishwas Act, 2020. The Designated Authority has issued the necessary Certificate in **Form No. 3 on 26.12.2020** certifying the amounts payable by the present appellant towards full and final settlement of its disputed tax/tax arrears. Pursuant thereto the appellant has made the necessary payments and as a result the Designated Authority has certified the full and final payment of disputed tax/tax arrears by issuing Form No 5 dated **01.05.2021** In view of the above fact, the present appeal is **DEEMED TO BE WITHDRAWN** w.e.f. 26.12.2020 in accordance with subsection (2) of **Section 4** of Direct Tax **Vivad se Vishwas Act, 2020**.*

3.0 *Accordingly, the appeal is treated as dismissed.*

7. We find that the assessee has made an application under Vivad Se Vishwas 2020 in form No. 1 on 11.11.2020 and has received the form no. 5 in respect of full and final payment of disputed tax vide order dated 01.05.2021 and CIT(A) considered these facts and has dismissed the appeal for statistical purpose. Now, the question arise that the assessee against the order under Section 143(3) of the Act in respect of the disputed issue has opted for VSVS2020 and received Form No. 5 which

is concluded proceedings. We find the assessment order under Section 143(3) of the Act was passed on 24.11.2019. On appeal, the CIT(A) considering the facts of VSVS 2020 by the assessee has passed the order U/sec 250 of the Act on 26-05-2021. Whereas, the Pr.CIT on the same facts, were the A.O. has applied the mind and made an addition and passed order, now the Pr.CIT has issued notice u/sec263 of the Act on 03-03-2022 and passed revision order on 15-03-2022. We are of the opinion that the Pr.CIT has invoked provisions of section 263 of the Act after conclusion of proceedings were the assessee has opted VSVS2020 and received Form.no.5 after payment of full/final disputed taxes on 1.05.2021. Hence the revision order passed U/sec263 of the Act is abated. We support the view relying on the decision of Hon'ble Madras High Court in 1.Gopalakrishnan Rajkumar and 2.Gopalkrishnan Ravim Vs. Principal Commissioner of Income Tax and others (22 April 2022)(445 ITR 577 (MAD) has observed as under:

*Direct Tax Vivad Se Vishwas Act, 2020-abatement of proceedings- Effect of settlement of dispute under Act-Revision proceedings initiated against assessee abate-Income Tax Act, 1961 Section 263 Direct Tax Vivad Se Vishwas Act, 2020.*

*The intention of parliament in enacting the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure to disputes in respect of tax arrears. Taxpayers whose appeals are pending at any level are entitled to avail of the benefit of the scheme. Once an assessee settles his or her case under the 2020 Act proceedings initiated against him or her under Section 263 of the income tax Act, 1961, abate.*

8. We considering the facts, circumstances and provisions of laws and the judicial decision as discussed above quashed the order of the Pr.CIT as abated and allow the grounds of appeal in favour of the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23<sup>rd</sup> day of, 2022.

Sd/-

**(BASKARAN BR)**

**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**

**JUDICIAL MEMBER**

Mumbai, Dated: 23/09/2022

M. Sonavane

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt.Registrar)ITAT,  
Mumbai

