

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos.1777 to 1779/Mum/2022  
(A.Ys. 2012-13 to 2014-15)**

Hemant Dombé Plot No. 26, Akshay Samarth Nagar Karjat 410201	Vs.	The DCIT, Panvel Plot 2 & 2A, Opposite Khanda Colony, Panvel, East, Navi Mumbai - 410206
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABEPD2362H		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Tejindar Pal Singh

Date of Hearing	01.09.2022
Date of Pronouncement	02.09.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeals filed by the assessee are directed against the order passed by the NAFC, Delhi. All these appeals of the assessee i.e ITA No. 1777/Mum/2022 to 1779/Mum/2022 are based on similar facts and identical issue, therefore the for the sake of convenience all these appeals are adjudicated together by taking ITA No. 1778/Mum/2022 as lead case and its finding will be applied to the other two cases as mutatis mutandis. The assessee has raised the following grounds before us:

*“The appellant contends that, the learned CIT(A) erred in law and on facts by dismissing the present appeal at a pre-mature level, without taking into consideration the fact that, the application filed by the appellant under the Vivad se Vishwas Scheme could not get concluded. As such, the appellant requests that, the present appeal may kindly be restored back to the CIT(A) for an adjudication on merits”*

2. The fact in brief is that return of income declaring total income of Rs.19,63,920/- was filed on 16.02.2015. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 10.09.2015. During the course of scrutiny assessment the A.O observed that the assessee had given his land admeasuring 2890 sq. mtr. At survey no. 3, Hissa No. 2, Mudre Budruk, Tq: Karjat for development to M/s Vastu Developers, Mumbai vide development agreement dated 07.07.2008. As per development agreement the assessee had received rights on developed area on 808.25 sq. mtr. and have received flats of area 801.870 sq. mtr till date. The assessee also got sanctioned from municipality Karjat for construction of the said land. The assessee had also got approval for conversion of agricultural land to non agricultural land vide collector Raigad order dated 30.06.2008. Thereafter on 07.07.2008 the assessee had given the land for development to M/s Vastu Development Mumbai. On the basis of the aforesaid facts and material submitted by the assessee the A.O observed that the assessee was liable for capital gain/business income. Therefore, the A.O had assessed the business income and capital gain income totaling to Rs.1,92,65,437/- as elaborated at para 3 to 4 of the assessment order.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). On different ground of appeal as incorporated in the form No. 35 dated 30.01.2017 filed before the ld. CIT(A). However, the ld. CIT(A) dismissed the appeal of the assessee.

4. Heard the ld. Departmental Representative (for short 'D.R') and perused the material on record. Without reiterating the facts as discussed supra in this order, the ld. CIT(A) had not adjudicated the appeal of the assessee on merit but simply dismissed the appeal of the assessee holding that the assessee opted for Vivad se Vishwas Scheme 2020 and on pursuant to the assessee's application to withdraw the appeal, the appeal treated as dismissed for statistical purpose. On perusal of form no. 36 dated. 05.07.2020 filed by the assessee before the ITAT it is particularly pointed out that application filed by the assessee under Vivad se Vishwas Scheme 2020 could not get concluded, therefore, requested that matter be restored back to the ld. CIT(A) for an adjudication on merit. In this regard we consider that ld. CIT(A) in the findings had not brought on record the status of the application filed by the assessee under Vivad se Vishwas Scheme 2020. Even there was not reference to the acceptance of any Forms under Vivad Se Vishwas Scheme 2020 i.e Form No. 3, Form 4 and Form No. 5 etc. It is demonstrated from the facts as discussed supra that ld. CIT(A) has dismissed the appeal of the assessee in a summary manner without adjudicating it on merit. As contemplates u/s 250(6) of the I.T. Act ,the ld. CIT(A) is required to determine point in dispute and therefore, record reasons of such point in support of his conclusion. The ld. CIT(A) has failed to determining those points and record detailed finding. Therefore, we restore this case to the file of the ld. CIT(A) for adjudicating the matter on merit after affording due opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

**ITA No. 1777/Mum/2022**

6. As the facts and the issue involved in this appeal are the same as mentioned supra in ITA No. 1778/Mum/2022, therefore, applying the same mutatis mutandis, this appeal of the assessee is also dismissed.

**ITA No. 1779/Mum/2022**

7. As the facts and the issue involved in this appeal are the same as mentioned supra in ITA No. 1778/Mum/2022, therefore, applying the same mutatis mutandis, this appeal of the assessee is also dismissed.

8. Resultantly, all the appeals of the assessee stand dismissed.

Order pronounced in the open court on 02.09.2022

Sd/-

(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 02.09.2022

PS: Rohit

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

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

आदेशानुसार/BY ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai