

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

डॉ मनीष बोरोड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

आयकर अपील संख्या: 394/कोल/2022

निर्धारण वर्ष: 2011-12

I.T.A. No.: 394/Ko1/2022

Assessment Year: 2011-12

***Bisseswarlal Mannalal & Sons.....Appellant
[PAN: AACFB 7736 L]***

Vs.

ACIT, Circle-33, Kolkata.....Respondent

Appearances by:

Sh. Chirag Desai, A/R, appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : September 21st, 2022

Date of pronouncing the order : September 30th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2011-12 is directed against the

order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. “CIT(A)”] dated 12.05.2022 which is arising out of the assessment order framed u/s 147/143(3) of the Act dated 24.11.2016.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. That the Ld. CIT (Appeals), NFAC erred in holding that the Appeal preferred by the Appellant against the Assessment Order passed by the Assessing Officer on 24.11.16, u/S 147 read with Section 143(3) of the Income Tax Act, 1961, was covered by the Vivad Se Vishwas Scheme.

2. That the Appellant's option under the Vivad Se Vishwas Scheme vide Declaration dated 20.03.21 was against the original Assessment Order passed by the Assessing Officer on 10.03.14, u/S 143(3) of the Act.

3. That on the facts of the Case, the Ld. CIT (Appeals) erred in treating the Appeal of the Appellant as deemed to have been withdrawn as per Section 4(2) of the above Scheme.

4. That the Order passed by the Ld. CIT (Appeals) on 12.05.2022 be kindly set-aside and the Appeal restored to him for fresh adjudication after granting personal hearing to the Appellant.

5. That the Assessment Order passed by the Assessing Officer u/S 147/143(3) of the Act, is bad in law.

6. That the Appellant craves leave to submit further grounds and to amend, alter or otherwise modify the grounds already taken, if necessary, before or at the time of hearing of the Appeal.”

3. At the outset, Sh. Chirag Desai on behalf of the assessee submitted that Id. CIT(A) erred in dismissing the assessee’s appeal observing that the assessee has opted for *Vivad Se Vishwas Scheme* vide declaration dated 28.03.2021. He submitted that in the case of the assessee two assessment orders have been framed;

firstly, u/s 143(3) of the Act dated 10.03.2014 and secondly, u/s 147 r.w.s. 143(3) of the Act dated 24.11.2016. The subject matter of the instant appeal is the assessment framed u/s 147 of the Act dated 24.11.2016 and the additions made thereunder were challenged before ld. CIT(A).

4. It is further, submitted that as regards the assessment order framed 143(3) of the Act dated 10.03.2014, the assessee opted for *Vivad Se Vishwas Scheme* and filed the Form no. 1 and thereafter, has also deposited the tax liability calculated under the *Vivad Se Vishwas Scheme* and finally deposited the disputed sum of Rs. 3,43,502/- towards full and final settlement of the tax arrear for which Form no. 5 has been issued. However, ld. CIT(A) inadvertently dismissed the assessee's appeal as withdrawn filed against the order passed u/s 147 of the Act dated 24.11.2016 observing that the assessee has settled the dispute under *Vivad Se Vishwas Scheme*. He, therefore, prayed that necessary directions may be given so that ld. CIT(A) can adjudicate the issue on merits of the case raised before it in Form no. 35 wherein various grounds of appeal have been raised.

5. Ld. D/R failed to controvert the submissions made by the ld. Counsel for the assessee.

6. We have heard rival contentions and perused the records placed before us. We observe that assessment framed u/s 143(3) of the Act in the case of the assessee was framed on 10.03.2014 for AY 2011-12. The assessee opted for *Vivad Se Vishwas Scheme* for the tax arrears in this said assessment order and has finally issued Form no. 5 on 16.01.2022. So, as far as the assessment

order framed u/s 143(3) of the Act dated 10.03.2014 is concerned the dispute stands settled under the *Vivad Se Vishwas Scheme*. Further, we find that the case of the assessee was re-opened and the assessment u/s 147 of the Act was framed on 24.11.2016 and additions were made to the assessed income of the assessee. The assessee challenged these additions before ld. CIT(A). However, ld. CIT(A) dismissed the appeal of the assessee as withdrawn observing as follows:

“It is noted that the appellant opted for the Vivad Se Vishwas Scheme vide declaration dated 20.03.2021. Pursuant thereto the concerned PCIT has certified the full and final payment of Rs. 1463783 as taxes in terms of Form No 5 dated 16.01.2022. In view of the above, the appeal is treated as deemed withdrawn as per clause 2 of Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020.”

7. From perusal of the above finding, we find that ld. CIT(A) inadvertently made a mistake which is apparent from the records and ld. CIT(A) erred in dismissing the assessee’s appeal as withdrawn by wrongly mentioning the details of *Vivad Se Vishwas Scheme* declaration dated 28.03.2021 which were actually not meant for the assessment order framed u/s 147 of the Act dated 24.11.2016 but the *Vivad Se Vishwas Scheme* opted by the assessee is against the assessment order framed u/s 143(3) of the Act dated 10.03.2014.

8. We, therefore under the given facts and circumstances of the case, are of the considered view that ld. CIT(A) erred in wrongly dismissing the assessee’s appeal as withdrawn and, therefore, restore the issues raised before us in the instant appeal to ld. CIT(A) and direct ld. CIT(A) to adjudicate the grounds raised before

it in Form no. 35 which includes legal grounds as well as grounds raised on merit against disallowing of revenue expenditure at Rs. 52,05,943/- as well as the claim of deduction u/s 80IC of the Act for afresh adjudication and to pass a speaking order. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed not to take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance before the ld. CIT(A), then ld. CIT(A) can pass the order in accordance with law.

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

Kolkata, the 30th September, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 30.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Bisseswarlal Mannalal & Sons, 12, Pretoria Street, Kolkata-700 071.**
- 2. ACIT, Circle-33, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata