

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.377, 378 & 379/Hyd/2022		
Assessment Years: 2014-15, 2016-17 & 2017-18		
Smt. Aruna Pegatraju Nellore PAN:AEIPP6276R (Appellant)	Vs.	A.C.I.T. Central Circle Tirupati (Respondent)
Assessee by:	Shri P Vinod Advocate	
Revenue by:	Shri Jeeval Lal Lavidiya, CIT(DR)	
Date of hearing:	24/11/2022	
Date of pronouncement:	28/11/2022	

ORDER

Per LALIET KUMAR:

These appeals filed by the assessee are directed against the common orders dated 23.04.2021 of the learned CIT (A)-12, Hyderabad relating to A.Ys. 2014-15, 2016-17 & 2017-18. Since common issues are involved in all these appeals, for the sake of convenience, they were heard together and are being disposed of by this common order.

2. It is seen that there is delay in filing of these appeals by the assessee since the assessee was pursuing its case with the Department and also due to Covid Pandemic situation prevailing in the country. In this connection, the Id.AR had submitted that the delay in filing the appeal was also on account of lock down

imposed by the central government as preventive measures to contain the spread of Covid-19 from 23/03/2020, caused the impugned delay in filing the appeal belatedly. We rely on Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay in filing these appeals is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Cases are now taken up for adjudication on merits.

3. The learned AR for the assessee submitted that these appeals were dismissed by the learned CIT(A) on the pretext that the assessee has availed the vivad-se-vishwas-scheme and form-3 has been issued in favour of the assessee by the Department. The ld.CIT(A) in Para 2 of his order mentioned as under :

It is noted that the appellant opted for the Vivad Se Vishwas Scheme vide application dt.17.01.2021. Pursuant thereto, the PCIT (Central), Visakhapatnam, has issued Form No.3 dated 11.03.2021 as per Section 5(1) of Direct Tax Vivad Se Vishwas Act, 2020. The details of which, as received in this office, are as under :

Declaration Date	Certificate No.	Certificate date	Designed authority
11.03.2021	28750410110321	11.03.2021	PCIT (Central), Visakhapatnam

In view of the above, the appeal is treated as deemed to have been withdrawn as per Section 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020.

4. The learned AR, on the other hand, submitted that though the assessee has filed an application under vivad-se-vishwas on 11.03.2021. However, subsequently, has opted out from the said scheme and has not deposited the tax demand within the time granted by the authorities and therefore, the action on the part of the learned CIT(A) in dismissing the appeal of the assessee solely on the ground that the assessee has availed vivad-se-vishwas-scheme is without any basis.

5. Per contra, the learned DR vehemently opposed the admission of the appeals. It was the contention of the learned DR that once the assessee has opted vivad-se-vishwas-scheme, then the learned CIT (A) was correct in deciding the appeal and dismissing the appeal of the assessee as requisite tax certificate issued by the department .

6. We have heard the rival arguments made by both the sides and perused the records. Sections 4 and 5 of DIRECT TAX VIVAD SE VISHWAS ACT, 2020 provides as under :

4. (1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

(2) Upon the filing the declaration, any appeal pending before the Income-tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,—

(a) any material particular furnished in the declaration is found to be false at any stage;

(b) the declarant violates any of the conditions referred to in this Act;

(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

*5. (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, **determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.***

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.

(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

Explanation.—For the removal of doubts, 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.

7. From the reading of sections 4 and 5 of Direct Tax Vivad se Vishwas Act, 2020, it is abundantly clear that in case, the case/appeal, is pending adjudication before authorities mentioned therein and Form III/ certificate of tax demand under section 5(1) of the ACT, than the appeal shall deemed to have been withdrawn on issuance on such certificate. Law is fairly settled, that when the language of the Act is plain and unambiguous than law should be applied with its plain and grammatical meaning assigned to the statute. Considering the totality of the facts of the case and in the interest of justice, we found no reasons to interfere in the order passed by the learned CIT(A).

8. In the result, appeals filed by the assessee are dismissed.

Order pronounced in the Open Court on 28th November, 2022.

Sd/- (R.K. PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th November, 2022.

Vinodan/sps

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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order