

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.337/Ahd/2022
Assessment Year: 2016-17**

Bhavnaben Jigishbhai Doshi,
4, 5, 6, Shrushti Bunglows,
Behind Medilink Hospital,
Satellite,
Ahmedabad – 380 015.
[PAN – AAJPD 5189 Q]
(Appellant)

vs. Dy. Commissioner of Income Tax,
Circle - 3(1)(1), Ahmedabad.

(Respondent)

Assessee by : Shri Jignesh M. Shah, Advocate
Respondent by : Shri Mukesh Sharma, Sr. DR

Date of hearing : 16.11.2022
Date of pronouncement : 30.11.2022

ORDER

This appeal is filed by the Assessee against the order dated 05.07.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2016-17.

2. The assessee has raised the following ground of appeal :-

“1. *Under the facts, in law and circumstances of the case, levy of penalty of Rs.46,72,926/- is without verification of submission and records available on site and therefore be deleted.*”

3. The assessment order under Section 143(3) of the Income Tax Act, 1961 was passed on 07.12.2018 wherein total income of the assessee was determined at Rs.4,04,15,480/-. The assessee filed appeal before the CIT(A). The CIT(A) vide order dated 31.07.2019 dismissed the appeal of the assessee. In the meanwhile, penalty proceedings under Section 271(1)(c) of the Act was initiated. The assessee has opted for “Vivad Se Vishwas Scheme” (VSVS) on 17.12.2020 and filed quantum appeal prior to that on 01.10.2019. During the hearing of the penalty proceedings the

assessee submitted that Form Nos.1 & 2 of VSVS has been filed. The Assessing Officer proceeded with penalty proceedings and levied penalty of Rs.46,72,926/- on 25.03.2022.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that once the quantum appeal including the dispute has been settled through VSVS thereby Form No.5 has been issued on 19.10.2021 by the PCIT-3, Ahmedabad, then the penalty does not sustain as the very quantum has been settled. Ld. AR submitted that the CIT(A) also mentioned about the settlement of dispute but dismissed the appeal of the assessee on penalty issue.

6. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. The assessee has filed quantum appeal before the Tribunal on 01.10.2019 and the application of VSVS in Form No.1, 2 & 3 in quantum proceedings were filed before the Tribunal on 17.12.2020. Certificate in Form No.3 from Designated Authority was received on 29.12.2020. The assessee filed letter for withdrawal of quantum appeal on 04.01.2021 and filed Form No.4 under VSVS after payment of taxes of Rs.65,00,000/- on 08.01.2021. The assessee filed submissions letter on 19.05.2021 to National Faceless Appeal Centre (NFAC) in penalty proceedings along with Form Nos.1, 2, 3 & 4 of the VSVS on 19.05.2021. Subsequently, Form No.5 was issued by the PCIT-3, Ahmedabad on 19.10.2021 which means that before finalisation of penalty the dispute was settled in respect of oral quantum itself. Once the dispute is settled, the authority cannot continue with penalty proceedings but the same was rejected by the Assessing Officer without assigning any reason as to why the penalty has been imposed on the assessee vide order dated 25.03.2020. The CIT(A) simply dismissed the appeal of the assessee but the fact remains that since the penalty become infructuous the matter in respect of penalty has to be allowed. Hence, the present appeal filed by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 30th day of November, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 30th day of November, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad