

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 604/CHD/2022
Assessment Year : 2011-12

Smt. Bimla Devi, H.No. 1123, St.No.1, Vishnu Puri, Civil Lines, Ludhiana.	बनाम VS	The ITO, Ward 7(1), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AVPPD2940Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Amarjit Kamboj,C.A.
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

तारीख/Date of Hearing : 21.11.2022
उद्घोषणा की तारीख/Date of Pronouncement : 15.12.2022

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee wherein the correctness of the order dated 24.06.2022 of NFAC, Delhi sitting as First Appellate Authority pertaining to 2011-12 assessment year is challenged on the following grounds :

- 1. The Ld. CIT (Appeals), NFAC has erred in law and on facts of the case by arbitrarily and wrongly treated the appeal as withdrawn as per section 4(2) of the Direct Tax Vivad se Vishwas Act, 2020 and accordingly dismissed the appeal inspite of the fact that appellant never opted for Direct Tax Vivad se Vishwas Scheme against the penalty of Rs.768380/- levied vide order dated 13.06.2019 passed u/s 271(l)(c) of the Income Tax Act, 1961.*
- 2. The assessee craves permission to file/raise/amend any other ground of appeal before or at the time of hearing.*

2. The ld. AR inviting attention to the impugned order submitted that the assessee's appeal has been incorrectly

dismissed as settled under 'Vivad Se Vishwas Scheme'. Reliance by the CIT(A) was incorrectly placed upon Certificate No.233768710300121 of Form No.5 to hold that the appeal of the assessee challenging the penalty imposed u/s 271(1)(c) of the Act before the First Appellate Authority was to be dismissed as withdrawn. Referring to the aforesaid order wherein the reference is made to Form No.-5 it was his submission that the assessee had gone for settling under the 'Vivad Se Vishwas Scheme' the appeals filed u/s 271(1)(b) and 271F of the Income Tax Act amounting to Rs.10,000/- and Rs.5,000/- respectively. Inviting attention to the penalty order in the present proceedings wherein penalty of Rs.7 lacs odd has been imposed, it was submitted, that the aforesaid Form No.5 attached would show that the amount of tax arrear was only Rs15,000/-. It was also his submission that before the passing of the order, the NFAC did not issue any notice to the assessee had such an opportunity been provided, the assessee would have clarified the fact. Accordingly, it was his limited prayer that the order may be set aside and the issues for consideration on merits be restored back to the First Appellate Authority for decision on merits.

3. The ld. AR was required to show and support with relevant documents as to which penalty order(s) were settled

in 'Vivad Se Vishwas Scheme'. The supporting documents have been filed.

4. The ld. Sr.DR did not oppose the said request.

5. Accordingly, on a perusal of the documents and in the light of the prayer of the parties, the impugned order is set aside back to the file of the First Appellate Authority with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. We have seen from the record that the impugned order which was an appeal against the penalty order u/s 271(1)(c) of the Act was incorrectly dismissed. The record shows that an addition of Rs.30 lacs was made in the hands of the assessee by an order passed u/s 144 read with Section 144 of the Act. The penalty u/s 271(1)(c) of the Act was imposed. The appeal against this order was incorrectly dismissed. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 15th December, 2022.

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/ Accountant Member
"Poonam"

Sd/-
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar