

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI M. BALAGANESH, AM

आयकर अपील सं/ I.T.A. No.2548/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2015-16)

Taruna Abhay Soi 4W Hari Bhavan Co-Op Soc 64 Peddar Road, Cumballa Hill, Mumbai- 400026.	बनाम / Vs.	National Faceless Appeal Centre (NFAC) New Delhi.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AUYPB2167K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Rahul Hakani	
Revenue by:	Shri Vaibhav Jain	

सुनवाई की तारीख / Date of Hearing: 13/12/2022
घोषणा की तारीख /Date of Pronouncement: 23/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 17.08.2022 for the assessment year 2015-16.

2. At the outset, the Ld. AR of the assessee brought to our notice that by passing the impugned order, the Ld. CIT(A) has erroneously dismissed the appeal of the assessee by treating the same as infructuous because the assessee has opted for Vivad Se Vishwaas Act 2020 (hereinafter "the scheme") for the relevant assessment year ie. AY 2015-16. However, according to the Ld. AR, the Ld. CIT(A) erred



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in assuming so, because he erred in such an assumption due to a confusion caused since there were two (2) assessments in this relevant assessment year. First assessment was the original assessment passed dated 29.12.2017 u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”); and the second assessment order was the re-assessment u/s 147/143(3) of the Act dated 29.03.2022. And that the assessee had opted for the Vivad Se Viswas Scheme for the original/first assessment order dated 29.12.2017 passed u/s 143(3) of the Act for AY. 2015-16. And to corroborates this fact drew our attention to the page no. 1 to 30 of the PB. Thereafter, he drew our attention to Form No. 1 & 5 which assessee had filed/received as per the Vivad Se Vishwas Scheme. He drew our attention to page no. 35 to 46 of the PB wherein we note that the assessee had opted for the Vivad Se Vishwaas Scheme in respect of assessment order dated 29.12.2017 (original/first assessment order). Thereafter, the Ld. AR, drew our attention to the re-assessment/second order of the AO passed for AY. 2015-16 u/s 147/144B of the Act dated 29.03.2022 which was impugned/appealed by assessee before the Ld. CIT(A); and the Ld. CIT(A) by passing the impugned Appellate Order has mistakenly on wrong assumption of fact that the assessee’s case has already been settled by Vivad Se Vishwaas Scheme (supra) has dismissed the appeal of the assessee which according to him was erroneous.



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3. Per contra, the Ld. DR could not controvert this fact. In the light of the aforesaid facts discussed, we find that the Ld. CIT(A) erred in summarily dismissing the assessee's appeal emanating from the re-assessment order of the AO dated 29.03.2022 passed u/s 147/144B of the Act on the wrong assumption that it has been settled as per the Vivad Se Vishwaas Scheme as demonstrated/discussed (supra); and as we noted earlier, the assessee had opted for Vivad-se-Viswas Scheme for the original/first assessment order dated 29.12.2017 and the assessee had not opted for Vivad Se Viswas Scheme against the re-assessment order dated 29.03.2022 and that the assessee had preferred an appeal against the re-assessment order dated 29.03.2022. Therefore, we set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) to be decided de-novo in accordance to the law.

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

Order pronounced in the open court on this 23/12/2022.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/12/2022.
Vijay Pal Singh, (Sr. PS)



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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai