

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.2822/M/2022

Assessment Year: 2014-15

Smith & Nephew Healthcare P.Ltd. Mumbai. 501-509B, Business Part, 5 th Floor, Kurla, Andheri East, Mumbai 400059 PAN: AAACS8136N	Vs.	CIT(APPEALS) NFAC, Mumbai. Aayakar Bhavan, M.K.Road, New Marine Lines, Mumbai 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Vijay Vaidya
Revenue by : Shri. Ashish Kumar Dehria

Date of Hearing : 02 . 01 . 2023

Date of Pronouncement : 17 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

1. Appellant, Smith & Nephew Healthcare P. Ltd. Mumbai.(‘here in after, referred to as the Assessee’) by filing aforesaid Appeal sought to set aside the impugned order dated 08.09.2022 passed by National Faceless Appeal Centre(NFAC), in for short CIT(A) on the grounds inter alia that:-

No opportunity of being heard

1. The learned CIT(A) erred in passing the Suo-moto order under section 250 of the Act and dismissing the appeal as withdrawn without

providing an opportunity of being heard and thereby denying the natural justice

Settlement under Direct Tax Vivad se Vishwas (VSV)

2. The learned CIT(A) erred holding that the appellant has opted for Direct Tax Vivad Se Vishwas Scheme, 2020 and has since been issued order in Form 5 for full and final settlement of tax arrears in the above appeal filed against order dated 24 March 2022.

Issues settled under the Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act') cannot be reopened

3. The learned CIT(A) erred in not appreciating that reopening the assessment on the issues already settled under the VSV Act, which is not permissible as per VSV Act.

Re-assessment proceedings are bad in law

4. The learned CIT(A) erred in not appreciating that the Additional/ Joint/ Deputy! Assistant Commissioner of Income-tax/ Income-tax Officer, National Faceless Assessment Centre, Delhi (learned AO) erred in re-opening the assessment merely based on change of opinion of details already available on the records during the original assessment proceedings as well as at the time of issuing rectification order.

The appellant prays that the reassessment order passed by the learned AO is bad in law and ought to be quashed.

Reasons for reopening

5. The learned CIT(A) erred in not appreciating that the learned AO erred in holding that the reasons for reopening were supplied on 28 December 2021 whereas the same were not received on 28 December 2021.

Delay in furnishing the reasons for reopening

6. The learned CIT(A) erred in not appreciating that the learned AO erred in supplying the reasons for re-opening of assessment after issue of show cause notice without appreciating the fact that the same should be furnished before the issue of show cause notice as per the procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd.

Carry forward of loss for AY 2012-13 at Rs 4,39,47,633 instead of Rs 6,31,80,323

7. The learned CIT(A) erred in not appreciating that the learned AO erred in restricting the carry forward of loss for AY 2012-13 at Rs 4,39,47,633 as per the assessed income instead of loss of Rs 6,31,80,323 as per the return of income without appreciating the fact that taxes have been paid and settled on the additions for AY 2012-13 under the VSV Act and accordingly as per Rule 9 of Direct tax Vivad se Vishwas Rules,

2020 (VSV Rules), original loss as per the return of income should be allowed to be carry forward.

Carry forward of loss for AY 2013-14 at Rs 20,34,25,670 instead of Rs 23,29,84,884

8. The learned CIT(A) erred in not appreciating that the learned AO erred in restricting the carry forward of loss for AY 2013-14 at Rs 20,34,25,670 as per the assessed income instead of loss of Rs 23,29,84,884 as per the return of income without appreciating the fact that taxes have been paid and settled on the additions for AY 2012-13 under the VSV Act and accordingly as per Rule 9 of VSV Rules, original loss as per the return of income should be allowed to be carry forward

Carry forward of Unabsorbed Depreciation (UAD) for AY 1997-98 to AY 2001-02

9. The learned CIT(A) erred in not appreciating that the learned AO erred in not allowing to carry forward UAD of AY 1997-98 to AY 2001-02, without appreciating the fact that the taxes have been paid and settled on the disputed UAD under the VSV Act and accordingly, as per Rule 9 of the VSV Rules, original loss as per the return of income should be allowed to be carry forward

Considering income from other sources twice

10. The learned CIT(A) erred in not appreciating that the learned AO has considered starting point at Rs 9,77,99,382 (includes income from other sources of Rs 32,00,188), and erred in separately adding the income from other sources of Rs 32,00,188, thereby considering the income from other sources of Rs 32,00,188 twice in the calculation of assessed income as per reassessment order.

Not set off of UAD against income from other sources

11. Without prejudice to the above grounds, the learned CIT(A) erred in not appreciating that the learned AO erred in not providing set off of UAD the income from the other sources

Not set off of UAD against income from other sources

12. Without prejudice to the above grounds, the learned CIT(A) erred in not appreciating that the learned AO erred in quantifying the carry forward of business loss and UAD.

2. Briefly stated facts necessary for consideration an adjudication of the issues at hand are :- The Assessee Company is into the business of trading, sales, marketing and distribution of medical devices and healthcare products. Declining the contentions raised by the Assessee, Assessing Officer proceeded to frame the assessment u/s 143(3) r.w.s.

144 (C)(13), of the Act, at the total income of Rs. 10,09,99,570/- and book loss of Rs.37,39,64,451/- u/s 115 JB.

3. Assessee carried out the matter before the Ld.CIT(A), by way of filing Appeal, who has dismissed the same as withdrawn. Feeling aggrieved Assessee has come up before the Tribunal by way of filing present Appeal.

4. I have heard the Ld. Authorized Representative of the parties to the Appeal. Perused the order passed by the Lower Revenue Authorities and documents available on record in the light of the law applicable thereto.

5. Ld. CIT(A) passed the impugned order by returning findings as under :

The appeal was instituted on 21.04.2022 against the order dated 24.03.2022 passed u/s 147 rws 144 of the Income Tax Act, 1961 by the MUM-C-(332) (1) for the AY 2014-15 Subsequently, the appeal was migrated to the NFAC in terms of Notification No. 76 of 2020 in S.O.3296(E) dated 25.09.2020 issued by CBDT.

During the pendency of appeal proceedings, the appellant has opted for the Direct Tax Vivad Se Vishwas Scheme, 2020 and has since been issued order in Form 5 for full and final settlement of tax arrears under section 5(2) read with section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 (3 of 2020) by PR.CIT-3, MUMBAI vide acknowledgement No. 338711110070421 dated 07.04.2021 certifying therein that a sum of Rs. 8,55,91,850/- has been paid by the declarant towards full and final settlement of tax arrears determined in the order No.225887020240121 dated 24.01.2021.

In view of the above, appeal filed by the appellant against the order dated 24.03.2022 passed u/s 147 rws 144 of the Income Tax Act,

1961 by the MUM-C-(332)(1) for the AY 2014-15 is deemed to have been withdrawn by the appellant in terms of the VSVS and accordingly, the appeal is hereby dismissed as withdrawn.

6. Ld.AR for the Assessee challenging the impugned order contended that the impugned order is liable to be set aside because Assessee has never filed application under Vivad Se Vishwas Scheme, 2020('VsV Act') in this case nor any such order was passed on the basis of Assessee's application that issue in question has been settled in full. for full and final settlement of tax arrier. This factual position has not been controverted, by the Ld. DR for the Revenue.

7. In view of what has been discussed above we are of the considered view that when no such application has been filed by the Assessee under VSV schemes 2020, Ld.CIT(A) has erred in, may be due to in- advertence, in dismissing the Appeal filed by the Assessee as withdrawn.

8. Assessee's Appeal was required to be disposed on merits. So this bench has no option except remad to remind this case back to the Ld. CIT(A) to decide Afresh on merit by providing opportunity of being heard to the Assessee.

9. Resultantly, present Appeal filed by the Assessee is allowed for the statistical purposes.

Order pronounced in the open court on 17.01.2023.

**Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 17.01.2023.

* Mrs. Urmila

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.