

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No. 245/Rjt/2022  
निर्धारणवर्ष/Asstt. Year:2015-16

Dhaval Maheshbhai Ganatra Puka Park-1, B/H. Hudco Police Chowky, Nr. Krishna Chawk Kothariya Main Road, Rajkot-360002 <b>PAN: AOMPG8373G</b> <b>(Applicant)</b>	Vs.	ITO Ward-3(1)(1), Rajkot <b>(Respondent)</b>
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Assessee by :	Shri Vimal Desai, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **18/01/2023**  
घोषणाकीतारीख/**Date of Pronouncement**: **03/02/2023**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short "NFAC"), Delhi on 16.08.2022 arising in the matter of assessment order passed under Section 144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The assessee has raised following grounds of appeal:

"1. *The assessment order u/s. 144 of the Act is bad in law.*

2. *The Id. CIT Appeal (Faceless) has erred in law as well as on facts in disposing of the appeal on the erroneous premises that the appellant had opted for and closed this appeal in Vivad se Vishwas Scheme.*

3. *The learned Assessing Officer has erred in law as well as on facts in making addition of Rs. 43,56,319/- u/s. 144 of the Act."*

3. The effective issue raised by the assessee is that the Ld. CIT(A) erred in dismissing the appeal on the wrong assumption of fact that the assessee has settled the dispute under Vivad se Vishwas Scheme.

4. At the outset, the Ld. A.R. before us contended that the assessee has never settled the dispute arising in the year under consideration in ITA No. 245/Rjt/2022 under Vivad se Vishwas Scheme whereas the Ld. CIT(A) under wrong assumption of facts has dismissed the appeal of the assessee considering that the assessee has settled the dispute under Vivad se Vishwas Scheme. It was pointed out by the Ld. A.R. that the assessee has settled the dispute under Vivad se Vishwas Scheme with respect to the penalty levied by the Assessing Officer under Section 271(1)(b) of the Act. To this effect, the Ld. A.R. drawn our attention on Form 5 for settling the dispute under Vivad se Vishwas Scheme which is placed on record. However, the Ld. CIT(A) under the wrong impression has assumed that the assessee has settled the dispute under Vivad se Vishwas Scheme against the ITA No. 245/Rjt/2022. The Ld. A.R. to this effect has also filed the grievance letter to the Ld. CIT(A) which is placed on record. Thus, it was submitted by the Ld. A.R. that the appeal should be restored back to the Ld. CIT(A) for fresh adjudication as per the provisions of law.

5. On the other hand, the Ld. D.R. could not controvert the argument advanced by the Ld. A.R. for the assessee. However, the Ld. D.R. vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the material available on record. From the discussion, there remains no dispute that the assessee has not opted Vivad se Vishwas Scheme with respect to appeal in ITA No. 245/Rjt/2022 for the A.Y. 2015-16 and therefore the same needs to be adjudicated on merit. However, we note that the assessment in the case on hand has been framed under Section 144 of the Act which evidences that the assessee failed to raise his contentions even during the assessment proceedings. Therefore, in the interest of justice and fair play, we are inclined to restore the

issue to the file of the Assessing Officer for fresh adjudication as per the provisions of law. It is needless to mention that the assessee shall cooperate during the assessment proceedings and shall not see any adjournment without just cause. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

7. In the result, the appeal filed by assessee is allowed for statistical purposes.

**Order pronounced in the Court on 03/02/2023 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 03/02/2023  
*Tanmay/Manish, Sr. PS*