

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “C”, MUMBAI**

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

**ITA No.2918/M/2022
Assessment Year: 2016-17**

M/s. Priority Jewels Pvt. Ltd., Plot No.121, Road No.15/18, Chakala MIDC S.O., Mumbai – 400 093 PAN: AAEC4118K	Vs.	Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : Shri R.K. Sinha, A.R.
Revenue by : Shri Rajesh Meshram, D.R.

Date of Hearing : 16 . 01 . 2023
Date of Pronouncement : 19 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Priority Jewels Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 16.09.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2016-17 on the grounds inter-alia that :-

“Being aggrieved by order of the Learned Commissioner of income tax (Appeals)-NFAC, ITD, New Delhi, this appeal is submitted on

the following grounds, which are independent of and without prejudice to one another. 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred, both in law and on facts, in linking the appeal filed against the assessment order u/s 147 read with section 144

B of Income Tax Act, 1961 dated 10.03.2022 with the earlier appeal which we have filed and thereafter opted for the DTVSV act 2020: 1.1 On the facts and circumstances of the case and in law, the Learned CIT (A) erred in linking the earlier appeal filed for respective assessment year with the appeal filed against the assessment order u/s. 147 read with section 144B of the IT Act, 1961. 1.2 On the facts and in the circumstances of the case and in law, the CIT (Appeals) erred in confirming the dismissal of this appeal instituted on 01.04.2022 for statistical purposes as appellant.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee's company is into the business of manufacturing of diamond studded jewellery and other related products. The assessee's return of income filed for the year under consideration declaring the total income of Rs.2,16,38,290/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently by initiating the proceedings under section 147/148 of the Act assessment was reopened after recording the reasons. The Assessing Officer (AO) declining the contentions raised by the assessee made addition of Rs.4,64,950/- under section 14A read with rule 8D and thereby framed the assessment under section 143(3) read with section 147/148 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

5. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that instead of deciding the appeal by the Ld. CIT(A) on merits appeal has been dismissed in limine on the pretext that "this appeal has become infructuous as the assessee has already opted for Vivad Se Vishwas Scheme (VSVS) vide application dated 11.11.2020". The Ld. A.R for the assessee contended that no such application has ever been moved by the assessee for settlement of demand under VSVS nor any such scheme was there in operation on 04.01.2022 when the appeal was instituted before the Ld. CIT(A).

6. From all these facts it is proved on record that the Ld. CIT(A) has erred in dismissing the appeal in limine, may be due to inadvertence, on the pretext that the issue has been settled under VSVS. In fact there was no such application moved by the assessee. Consequently, impugned order passed by the Ld. CIT(A) is set aside and file is remitted back to the Ld. CIT(A) to decide afresh on merits after providing opportunity of being heard to the assessee.

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

Order pronounced in the open court on 19.01.2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 19.01.2023.

* Kishore, Sr. P.S.

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.