

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 30/Rjt/2022

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Mrs. Swatiben Biharilal Parekh</b> Yamuna Behind Mahakali Lodge ST, Road Dhoraji, Rajkot-360410, Gujarat	<b>बनाम/</b> Vs.	<b>PCIT</b> Rajkot-1
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJVPP4177H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Jayesh Dadia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Shramdeep Sinha, CIT.D.R.

सुनवाई की तारीख / Date of Hearing	05/04/2023
घोषणा की तारीख /Date of Pronouncement	18/04/2023

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal at the instance of the assessee is directed against the order dated 31.01.2022 passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) by the Principal Commissioner of Income Tax, Rajkot-1 (hereinafter referred to as ‘the PCIT’), arising out of the order dated 27.12.2019 passed by the Learned ITO, Ward-2(1)(1), Rajkot under Section 143(3) r.w.s. 147 of the Act for Assessment Year 2012-13.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The brief facts leading to this case is this that initially the assessment was reopened by issuing notice under Section 148 of the Act on 27.03.2019 on account of income earned out of share/commodity transactions carried out on NSE to the tune of Rs.1,41,55,592/- by the assessee has not been offered to tax and remained unexplained. Such transaction was culminated into addition of estimated profit of 8% as per the provision of Section 44AD of the Act to the tune of Rs.11,32,448/- to the total income of the assessee.

4. However, the same was settled under VSV Scheme and the assessee paid taxes thereupon. As per the assessee, since the assessment has reached finality, the same cannot be the subject matter of further proceeding under Section 263 of the Act.

5. On the other hand, the view of the Ld. PCIT is this that the addition ought to have been much more than what was assessed. Further that, the Scheme does not debar the Ld. AO to make the addition of the remaining correct amount. In that view of the matter, the addition of the balance amount has to be made by the Ld. AO by reducing the addition of Rs.11,32,448/- which has already been settled under this Scheme. The transaction which remained unexplained also further required to be examined for addition and thus the Ld. PCIT set aside the issue to the Ld. AO for fresh assessment. The Ld. AO was directed to complete the assessment after due enquiry and verification only to the extent of issues discussed as above.

6. On this issue, the Ld. AR submitted before us, that the issue is squarely covered by the judgment passed by the Hon'ble Madras High Court in the case of GopalaKrishnan Rajkumar vs. PCIT, reported in (2022) 140 taxmann.com 394 (Mad.) a copy whereof has also been filed before us. Ld. Counsel for the assessee further drew our attention to Section 5 of VSV Scheme issued by the Income Tax Department, Government of India whereby and whereunder time and manner of payment has been prescribed the same is annexed at Page No.30 of the paper book filed before us. On the other hand, the Learned DR supported the order passed by the Ld. CIT(A).

7. We have carefully considered the facts of the matter and the judgment relied upon by the Ld. Counsel in the case of GopalaKrishnan Rajkumar vs. PCIT (supra). We find that the Hon'ble Court has been pleased to observe opting the VSV Scheme and finalizing thereof is nothing but the closure of disputes in respect of tax arrears which cannot be subsequently reopened by issuing notice under Section 263 of the Act for revising the assessment order. Needless to mention that the view is squarely applicable in favour of the assessee before us.

8. Furthermore, Section 5 of the VSV Act prescribes as follows:

*“5. (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.*

*(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.*

*(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of*

investment or otherwise, entered into by India with any other country or territory outside India.

*Explanation.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.”*

9. A bare reading of the above Section, particularly, sub-section (3) of Section 5 clearly rejects restriction in reopening in any other proceeding under the Income Tax Act or under any other law for the time being in force in any matter covered by such order which has been passed under sub-section (1) determining the amount payable under this Act which has been said to be conclusive. In that view of the matter, the impugned order passed by the Ld. PCIT, is according to us, lacks jurisdiction and the same is, therefore, not sustainable in the eye of law. Thus, the impugned order is quashed.

10. In the result, assessee's appeal is allowed.

**This Order pronounced on 18/04/2023**

Sd/-

(ANNAPURNA GUPTA)

**ACCOUNTANT MEMBER**

Ahmedabad; Dated 18/04/2023

S. K. SINHA

True Copy

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

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

Sd/-

(MADHUMITA ROY)

**JUDICIAL MEMBER**

By order/आदेश से,

Deputy/Asstt. Registrar  
ITAT, Rajkot