

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

ITA No. 394/MUM/2023
Assessment Year: 2014-15

Shreeyam Power and Steel
Industries Ltd.,
621, Tulsiani
Chambers, Nariman Point,
Mumbai-400021.
PAN No. AAACM 7130 L
Appellant

Dy. CIT, Circle-3(3)(1),
Room No. 609, 6th floor,
Vs. Aayakar Bhavan, Maharshi
Karve Road,
Mumbai-400020.
Respondent

Assessee by : Mr. Harsh Bafna, AR
Revenue by : Mr. Anil Sant, DR

Date of Hearing : 20/04/2023
Date of pronouncement : 26/04/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 14.12.2022 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15 in relation to the reassessment order passed by the Assessing Officer u/s 147 of the Income-tax Act, 1961 (in short ‘the Act’). The grounds raised by the assessee are reproduced as under:



1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as CIT(A)] erred in passing the order u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as the Act] dismissing the appeal without granting opportunity of hearing to the Appellant during the course of appeal proceedings.

Your Appellant submits that the order of CIT(A) issued u/s 250 of the Act dated 14 December 2022 is passed without following the principle of natural justice and therefore the order of the CIT(A) ought to be quashed.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in dismissing the appeal filed against the Assessment Order issued u/s. 147 .w.s. 144B of the Act as withdrawn under the Direct Tax Vivad se Vishwas Act, 2020 (VS) without appreciating the fact that no dispute resolution under VS was sought in respect of this appeal by the Appellant.

Your Appellant submits that dispute resolution under VS was sought in respect of appeal filed against the order issued w/s 143(3) of the Act for which final certificate in Form 5 dated 05 July 2022 was issued, pursuant to which the learned CIT(A) order dated 07 September 2022 was passed dismissing the said appeal.

Your Appellant submits that the order of CIT(A) issued w/s 250 of the Act dated 14 December 2022 is barred by the provisions of the Act and the same must be remanded for adjudication on the facts and merits of the case.

2. We have heard rival submission of the parties on the issued-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has dismissed the appeal of the assessee under the impression that the assessee opted for the “Direct Tax Vivad Se Vishwas Scheme, 2020” in respect the appeal filed before him. The relevant finding of the Ld. CIT(A) is reproduced as under:



“During the course of appellate proceedings the appellant opted for DTVSVA 2020 and has filed an application/form-1 in this regard before the designated authority i.e. PCIT, Gujarat on 12.12.2020. A certificate no. 214410450150121 (form 5) dated 15.01.2021 has been issued by the PCIT, Mumbai. The appellant has paid the amount toward the full and final settlement of the tax arrears as determined in the order and VSV order us 5(2) has been issued on 05.07.2022 by the designated authority.

In view of the above and as per the mandate provided, in the DTVSVA 2020, the appeal of the appellant is dismissed as withdrawn due to DTVSVA2020.”

3. However, before us, the Ld. Counsel of the assessee submitted that in the case of the assessee, two assessments have been completed. Firstly, assessment was completed u/s 143(3) of the Act on 23.12.2016 and against which the assessee preferred appeal before the Ld. CIT(A) which was entered as acknowledgement No. 590017131120117 dated 12.01.2017. The assessee opted the “Direct taxes Vivad Se Vishwas Scheme” in respect of appeal filed before Ld CIT(A) against assessment u/s 143(3) of the Act. Before us, the assessee has also filed a Form No. 1 filed by the assessee before the designated authority for opting under Vivad Se Vishwas Scheme. From the said Form, it is evident that the appeal for VSV opted is having acknowledgment No. 590017131120117 as mentioned in Part-B Clause 1 of the Form No. 1. Whereas, the appeal before the Ld. CIT(A) in the present case was arising out of order u/s 147 of the Act dated 30.03.2022. Therefore, the Ld. CIT(A) has dismissed the appeal of the assessee under wrong impression that the assessee has opted for Vivad Se Vishwas Scheme in respect



of appeal before him. In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after taking into consideration submission of the assessee and pass a reasoned order. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 26/04/2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/04/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai