

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

BEFORE SHRI SANJAY ARORA, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 915/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

Vijaya Kumar Janardhanan Nair X-15-1299, Sree Janardhana Complex, Residency Road, Kollam-691001.	बनाम/ Vs.	ACIT, Kollam Kerala.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACRPN5993Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri G. Surendranath Rao, (CA)	
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 16/05/2023
घोषणा की तारीख /Date of Pronouncement: 19/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee an individual against the order of the Ld. CIT(A)/NFAC dated 12.08.2022 for AY. 2016-17.

2. The assessee for AY 2016-17 had filed his return of income reflecting an income of Rs.83,97,670/- which was scrutinized u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) and assessment order was passed on 10.12.2018 by making an addition of Rs.51,52,151/- u/s 68 of the Act. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) of the Act and after hearing the assessee, the penalty of Rs.17,01,706/- was levied by order dated 27.06.2019. Penalty levied by AO was assailed before the Ld. CIT(A) on 20.07.2019 and while the appeal was adjudicated before the Ld. CIT(A), the assessee offered for settlement of dispute under the Direct Taxes Vivad Se Viswas Scheme, 2020 on 20.02.2021. And the Ld.



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CIT(A) taking note that the assessee had opted for Vivad Se Viswas Scheme was pleased to treat the appeal as infructuous and dismissed the appeal vide order dated 12.01.2022. However, meanwhile since the assessee could not remit the amount within the prescribed time as per the scheme (Vivad Se Viswas Scheme, 2020), it failed; and assessee is before us praying that appeal before Ld CIT(A) be revived.

3. We have heard both the parties and perused the records. The aforesaid facts are not in dispute, therefore, the same are not repeated for the sake of brevity. We note that the assessee had assailed the action of the AO levying penalty u/s 271(1)(c) of the Act to the tune of Rs.17,01,706/- before the Ld. CIT(A); and when the appeal was pending before the Ld. CIT(A), the assessee opted for the settlement of dispute under the Direct Taxes Vivad Se Viswas Scheme, 2020 on 20.02.2021. Taking note of the fact that assessee had opted for the Vivad Se Viswas Scheme, the Ld. CIT(A) dismissed the appeal as infructuous. However, even though the assessee opted for the scheme and pursuant to it filed the declaration under the Vivad Se Viswas Scheme, due to financial constrain the assessee could not remit the payment as prescribed. Therefore, the declaration made by the assessee under the Vivad Se Viswas Scheme as per sub-section (6) of section 4 of the Direct Tax Vivad Se Viswas Scheme, 2020 need to be presumed as never to have made [i.e. declaration made by assessee under sub-section (1) of section 4 Vivad Se Viswas Scheme, 2020 to have been never made]. We find force in the contention of Ld AR that when the foundation on which the Ld. CIT(A) has dismissed the appeal has been removed, so the appeal has to be restored or deemed to have been



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revived. Therefore, in the light of the aforesaid facts discussed, the appeal of the assessee against impugned penalty levied by AO u/s 271(1)(c) of the Act dated 27.06.2019 before the Ld. CIT(A)/NFAC stands revived by operation of law. Therefore, the assessee succeeds and the impugned order of the Ld. CIT(A) is set aside and the appeal restored back to the file of the Ld. CIT(A) with a direction to adjudicate the appeal in accordance to law after hearing the assessee.

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

Order pronounced in the open court on this 19/05/2023.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Cochin; Dated : 19/05/2023.

Vijay Pal Singh, (Sr. PS)

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Trichur.
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst. Registrar/ITAT, Cochin