

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2610/Del/2022
(Assessment Year : 2016-17)

Singhal Fincap Ltd. B-64/1, Wazirpur Industrial Area, North West Delhi, Wazir Pur-III, Delhi-110 052 PAN No. AAFCS 9851 F (APPELLANT)	Vs.	DCIT Circle – 37(2) New Delhi (RESPONDENT)
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Assessee by	Shri R. K. Kapoor, Adv.
Revenue by	Shri Sujit Kumar, CIT-D.R.

Date of hearing:	17.05.2023
Date of Pronouncement:	23.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 18.08.2022 of the Commissioner of Income Tax (Appeals)-NFAC, Delhi relating to Assessment Year 2016-17.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who filed its original return of income for A.Y. 2016-17 on 27.07.2016 declaring total income at Rs.1,89,94,350/-. The case was reopened and notice u/s 148 of the Act was issued on 31.03.2021 which was served on the assessee. Thereafter, the assessment was framed u/s 147 r.w.s 144B of the Act vide order dated 26.03.2022 and the total income was determined at Rs.9,39,94,350/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 18.08.2022 in Appeal No.NFAC/2015-16/10125198 dismissed the appeal of the assessee. The reason for dismissal as noted by CIT(A) was that the assessee had opted for Vivad Se Visvas Scheme 2020 and therefore the appeal was infructuous. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds of appeal:

1. *“That having regard to the facts and circumstances of the case and in law order dated 18/08/2022 passed by Ld. CIT (A), National Faceless Appeal Centre, Delhi against the order dated 26/03/2022 passed u/s 147 rws 144 of the Income Tax Act is arbitrary, against law and facts on record.*
2. *That having regard to the facts and circumstances of the case and in law the Ld. CIT (A), National Faceless Appeal Centre, Delhi, erred in dismissing the appeal filed by appellant against the order dated 26/03/2022 passed u/s 147 rws 144 of the Income Tax Act by wrongly holding that appellant opted for Vivad Se Visvas Scheme 2020 and hence impugned order passed by ld CIT(A) is liable to be quashed and appeal of the assessee is liable to be restored to Ld CIT(A).*

3. *The appellant herein craves its right to alter, amend, add and/or withdraw any grounds of appeal and/or to take any additional grounds of appeal.”*

5. Before us, at the outset, Learned AR submitted that the factual finding of CIT(A) that assessee had opted for VSV Scheme is factually incorrect. He submitted that CIT(A) has not decided the issue on merit. He therefore submitted that the issue may be remitted back to the file of CIT(A) for adjudication on merits.

6. Learned DR on the other hand did not seriously objected to the contention of the assessee to remit the matter back to the file of CIT(A).

7. We have heard the rival submissions and perused the material available on record. Before us, it is Learned AR's contention that the factual finding recorded by CIT(A) while dismissing the appeal about the assessee having opted for VSV Scheme is factually incorrect. Before us, Revenue has not placed any material on record to controvert the aforesaid submissions of Learned AR. In such a situation, since CIT(A) has not decided the issue on merits, we are of the view that the issue needs to be re-adjudicated by CIT(A). We accordingly restore the appeal back to the file of CIT(A) and direct him to decide the appeal on merits in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. **Thus the grounds of assessee are allowed.**

8. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 23.05.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.05.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI