

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1720/Del/2023
[Assessment Year : 2011-12]**

Vijay Kumar Gupta, 304 SSR Corporate Park, NHPC Metro Station, Faridabad, Haryana-121003. PAN-AAQPG5692J	vs	ACIT, Circle-II, Faridabad.
APPELLANT		RESPONDENT
Appellant by	Shri Vijay Kumar Singla, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	20.07.2023	
Date of Pronouncement	26.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”) dated 22.05.2023 for the assessment year 2011-12 .

2. The assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case and in law, Ld.CIT-A-NFAC grossly erred in sustaining the impugned penalty order u/s 271(1)(c) without appreciating that due taxes have been paid on VSVA-2020, and Form-5 (Order for Full & Final Settlement of Tax Arrear u/s 5(2)), and as such no penalty by the Ld.AO can be levied.*
2. *That the Appellant prays for the grant of permission to add, alter, delete, modify, any or all of the rounds of appeal at any time on or before or during the time of hearing before the Hon’ble ITAT.”*

3. The present appeal filed by the assessee is against the penalty of INR 16,57,425/- imposed by the Assessing Officer (“AO”) u/s 271(1)(c) of the Income Tax Act, 1961 (“the Act”) order dated 21.03.2022.

4. At the outset, Ld. Counsel for the assessee contended that the tax dispute has been settled under the “Vivad se Vishwas Scheme-2020”. Form No.5 has been issued by the Department. He has also filed a copy of Form No.5. He contended that Ld.CIT(A) instead of deleting the penalty, dismissed the appeal of the assessee on the basis that the appeal would be treated as ‘withdrawn’.

5. On the other hand, Ld. Sr. DR fairly conceded that the penalty should have been deleted. However, he submitted that the Revenue has been granted liberty if the Form No.5 issued by the Department, is found not to be related to Assessment Year under consideration.

6. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. I find that before Ld.CIT(A), it was categorically stated by the Ld. Counsel for the assessee that the assessee had opted for “Vivad se Vishwas Scheme-2020.” However, he dismissed the appeal by observing as under:-

“It is seen that the appellant has opted for Vivad Se Vishwas Scheme and has filed a declaration in accordance with the provisions of section 3 of the Direct Tax Vivad se Vishwas Act, 2020 (“the Act”) before the PCIT, Faridabad. Accordingly, Certificate under sub-section (1) of section 5 of the Act was issued to the appellant. Pursuant thereto, the PCIT, Faridabad has certified the full and final settlement of tax arrear and has

passed an order under sub-section (2) of section 5 of the Act on 22.10.2021.

Further, sub-section (2) of section 4 of the Act provides that the appeal shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 of the Act is issued by the designated authority. Since in the instant case a certificate under sub-section (1) of the section 5 of the Act is issued as discussed above, the appeal may be treated as withdrawn.”

7. In view of the terms of “Vivad se Vishwas Scheme-2020”, Penalty imposed u/s 271(1)(c) of the Act deserves to be deleted. I hold accordingly, and direct the AO to delete the penalty imposed u/s 271(1)(c) of the Act. However, it is clarified that if it is found that the Form No.5 issued by the Competent Authority pertains to different Assessment Year, the Revenue would be at liberty to approach Tribunal for recalling of the order and decision on merit. Grounds raised by the assessee are thus, allowed.

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

Order pronounced in the open Court on 26th July, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI