

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2934/Del/2022
Assessment Year: 2015-16

Harsha Shah, 101, Vikas Marg, Gujarat Vihar, Delhi 110092 PAN AAPPS 0800 B	vs.	ITO Ward 59(3), Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Nitin Sharma, CA
Revenue For :	Shri Shankar Gupta, Sr. DR

Date of Hearing :	12.06.2023
Date of Pronouncement :	18.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of NFAC, New Delhi dated 28.10.2022 for AY 2015-16.

2. The grounds of assessee are as follows:-

1. On the facts and circumstances of the case and in law, the Ld. CIT-A has grossly erred, in dismissing appeal of the assessee stating that "Assessee has opted for Vivad se Vishwas Scheme, accordingly such appeal is treated as infructuous as per the Direct Tax Vivad Se Vishwas Act,2020" without appreciating the facts that assessee has opted for Vivad se Vishwas Scheme and in such a case no penalty shall be levied on the assessee, however, Ld. AO ignoring such facts passed order imposing penalty on the assessee and Ld. CIT-A has dismissed the appeal without going through the ground of appeal and providing any opportunity of being heard to the assessee.

2. On the facts and circumstances of the case, the penalty order passed under section 270A of the Act is time barred and passed without applying the statutory time limit prescribed under section 275 of the Act and therefore such order is erroneous and bad in law.

3. The Id. counsel of assessee submitted that the Ld. CIT-A has grossly erred, in dismissing appeal of the assessee stating that "Assessee has opted for Vivad se Vishwas Scheme, accordingly such appeal is treated as infructuous as per the Direct Tax Vivad Se Vishwas Act,2020" without appreciating the facts that assessee has opted for Vivad

se Vishwas Scheme and in such a case no penalty shall be levied on the assessee, however, Ld. AO ignoring such facts passed order imposing penalty on the assessee and Ld. CIT-A has dismissed the appeal without going through the ground of appeal and providing any opportunity of being heard to the assessee. He further submitted that therefore penalty may kindly be cancelled.

4. Replying to the above, the Id. Senior DR supported the order of the authorities below. However, he did not controvert that the coordinate bench of ITAT Delhi by order dated 25.01.2021 in ITA No. 393/Del/2019 for same AY 2015-16 has dismissed appeal of assessee as withdrawn under Vivad se Vishwas Scheme 2020. Therefore, when the matter has been settled under said scheme then no penalty is leviable on the assessee u/s. 271(1)(c) of the Act and hence the penalty is cancelled only on this count.

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

Order pronounced in the open court on 18.07.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 18th July, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi