

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.995/Bang/2023
Assessment Year : 2006-07

M/s. Texas Instrument (India) Pvt. Ltd., 66/3, Bagmane Tech Park, C. V. Raman Nagar, S. O, Bengaluru – 560 093. PAN : AAAC 5445 M	Vs.	DCIT, Circle – 7(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ketan Ved, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.01.2024
Date of Pronouncement	:	19.01.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 05.10.2023, passed under section 250 r.w.s. 254 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2006-07.

2. The grounds raised read as follows:

1. *The order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Assessment Centre [the learned CIT(A)] under section 250 r.w.s 254 of the Act is bad in law and on facts and liable to be set aside.*
2. *The learned CIT(A) erred in dismissing the appeal on the inaccurate assumption that the Appellant opted for the Vivad*

- Se Vishwas ('VSV') Scheme under the Direct Tax Vivad Se Vishwas Act, 2020 ('the VSV Act'), in relation to such appeal.*
3. *The learned CIT(A) erred in making an incorrect reference to the VSV settlement under the VSV Act related to a separate appeal for the same assessment year, despite being informed to the contrary.*
 4. *The learned CIT(A) erred in treating the appeal as "dismissed / withdrawn" despite no such withdrawal by the Appellant.*
 5. *The learned CIT(A) erred in not adjudicating the appeal despite a specific direction of the Hon'ble ITAT in the order dated 22 July 2021.*
 6. *The learned CIT(A) erred in not granting an opportunity of being heard despite a specific request made in the response dated 6 September 2023 and despite a specific direction of the Hon'ble ITAT in the order dated 22 July 2021.*
 7. *The learned CIT(A) erred in not appreciating the Appellant's submission on merits and erred in not deleting the disallowance of INR 5,53,12,436 made under section 40(a)(i)/(ia) of the Act in the order under section 143(3) r.w.s 263 of the Act.*
 8. *The learned CIT(A) erred in not appreciating that a significant portion of the amount of INR 5,53,12,436 reduced in the computation by the Appellant represented reversal of expenses / provisions which should not be subjected to disallowance under section 40(a)(i)/ 40(a)(ia) of the Act as reversal of expenses does not warrant any tax withholding.*
 9. *The learned CIT(A) erred in not appreciating that reversal of the provision made was with respect to amounts previously disallowed under section 40(a)(i)/(ia) in earlier years and hence, was revenue neutral over the years.*
 10. *Without prejudice to the above, the learned CIT(A) erred in not appreciating that the learned Assessing Officer ('the learned AO') in his remand report had recommended an amount of INR 4,38,44,566 to be allowed (out of the disallowance of INR 5,53,12,436) based on the evidence filed before the learned AO.*

3. At the very outset, we notice that CIT(A) has dismissed the appeal *in limine* without adjudicating on merits by observing that assessee had opted for Vivad-se-Vishwas Scheme, 2020 (VSV) vide application dated 29.12.2020 and pursuant thereto, the PCIT had certified the full and final payment of 'Rs.Nil' as taxes in terms of Form No.5 dated 05.03.2021. Therefore, the appeal is treated as

infructuous as per section 4(2) of the Direct Tax Vivad-se-Vishwas Act, 2020 (DTVSVA).

4. The learned AR submitted that the present appeal arising out of proceedings under section 143(3) r.w.s. 263 of the Act has not been settled under the DTVSVA. The learned AR submitted that what has been settled is a matter which was pending before the Hon'ble Karnataka High Court in ITA No.69/2017 arising from Final Assessment Order dated 14.10.2010 passed under section 143(3) r.w.s. 144C of the Act. Therefore, it was submitted that CIT(A) has erred in dismissing the appeal *in limine* by observing that assessee had settled the matter under the DTVSVA, 2020.

5. The learned DR, by referring to section 4(2) of the DTVSVA, 2020, submitted that when certificate is issued for the full and final payment by the designated authority, the appeal is deemed to be infructuous and same is to be dismissed as withdrawn.

6. We have heard the rival submissions and perused the material on record. In the instant case, the Final Assessment Order was completed under section 143(3) r.w.s. 144C of the Act on 14.10.2010. The said Final Assessment Order was challenged before the Tribunal and the Tribunal adjudicated the matter vide its order dated 19.05.2017. Assessee being aggrieved by the said order of the Tribunal dated 19.05.2017, filed an appeal before the Hon'ble High Court of Karnataka under section 260A of the Act on 11.10.2017. When the appeal was pending before the Hon'ble jurisdictional High Court in ITA No.769/2017, the assessee had filed application for settling the issue that was pending before the Hon'ble jurisdictional High Court under DTVSVA, 2020, vide application dated 29.12.2020. Copy of Form No.1 for settling the matter under the VSV scheme, 2020, was enclosed along with the written submissions filed before the CIT(A) [in

the present proceedings before the CIT(A)]. On perusal of Form No.5 issued by the designated authority for the full and final settlement of tax arising under section 5(2) r.w.s. 6 of the DTVSVA, 2020, we find that the reference was made to the details of the dispute that was pending before the Hon'ble High Court in ITA No.769/2017 (the amount of tax arising in the said proceedings was Rs.5,17,78,058/-).

7. During the intervening period, it is to be mentioned that the PCIT by invoking his revisionary powers under section 263 of the Act had revised the Final Assessment Order dated 14.10.2010. The order of the PCIT passed under section 263 of the Act is dated 21.03.2013. The AO, vide order dated 30.03.2015, gave effect to the order passed by the PCIT under section 263 of the Act. The said order of the AO dated 30.03.2015 was challenged in appeal before the CIT(A) and CIT(A) dismissed the assessee's appeal vide order dated 28.01.2020. Against the order of the CIT(A), assessee filed appeal before the Tribunal and the Tribunal remanded the matter to the CIT(A) for fresh adjudication. Pursuant to the order of the Tribunal, the CIT(A) passed the impugned order dated 15.10.2023. As mentioned earlier, the CIT(A) dismissed the appeal *in limine* without adjudicating on merits. The relevant finding of the CIT(A) reads as follows:

“2. It is noted that the appellant opted for the Vivad Se Vishwas Scheme vide application dated 29/12/2020. Pursuant thereto, the Pr. Commissioner of Income Tax, Bengaluru-2, Bengaluru has certified the full and final payment of Rs.Nil as taxes in terms of Form No. 5 dated 05/03/2021 (Certificate No. 282168800050321). In view of the above, the appeal is treated as infructuous as per clause sub-section (2) of section 4 of the Direct Tax Vivad Se Vishwas Act (DTVSVSA), 2020.”

8. We have already found that the assessee had only settled the matter under DTVSVA, 2020, in respect of proceedings that was pending before the Hon'ble

High Court in ITA No.769/2017 which had arisen from the Final Assessment Order passed under section 143(3) r.w.s. 144C of the Act. Whereas the present proceedings arise out of PCIT order passed under section 263 of the Act. The present proceedings have not been settled under the VSV Scheme, 2020. Hence, we are of the view that CIT(A) has erred in summarily dismissing the appeal of the appeal by observing that the matter has been settled DTVSVA, 2020. Therefore, the matter is restored to the files of the CIT(A). The CIT(A) is directed to decide the issue on merits. It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 19.01.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.