

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.3561/Mum./2023**

**(Assessment Year : 2013-14)**

M/s. Ratnadeep Multitrade Pvt. Ltd.  
12, 3<sup>rd</sup> Floor, Haji Kasam Building  
Mudhana Shetty Marg, Fort  
Mumbai 400 001 PAN – AADCR0282M

..... Appellant

v/s

Income Tax Department  
National Faceless Appeal Centre, Delhi

..... Respondent

Assessee by : Shri Ravikant S. Pathak

Revenue by : Smt. Mahita Nair

Date of Hearing – 20/02/2024

Date of Order – 21/02/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 15/07/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2013-14, which in turn arose from the order dated 30/03/2022 passed under section 147 r/w section 144B of the Act.

2. In its appeal, the assessee has raised the following grounds:-

*"1. (a) The Hon'ble Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC] [hereinafter referred as "CIT(A)] erred in dismissing an appeal filed by the Appellant against the assessment order dated 30/03/2022 passed u/s 144B r.w.s 147 of the Income Tax Act, 1961 (Act) by stating that "appellant has opted for Vivad Se Vishwas Scheme".*

*(b) The CIT(A) erred in dismissing the appeal without providing an opportunity of being heard which is in gross violation of principle of natural justice.*

*The Appellant submits that it has opted for Vivad se Vishwas Scheme against the impugned assessment order. Hence, the order passed by the Hon'ble CIT(A) deserves to be set aside and appeal may be restored.*

*The Appellant craves leave to add, amend, modify, substitute the above grounds of appeal."*

3. The present appeal is delayed by 494 days. Along with the present appeal, the assessee has filed an application seeking condonation of the aforesaid delay duly supported by an affidavit of the Director of the company. In the aforesaid application, the assessee submitted that the return filed for the year under consideration was selected for scrutiny assessment, which was completed vide order dated 30/03/2016 passed under section 143(3) of the Act. Being aggrieved, the assessee filed an appeal before the learned CIT(A), which was disposed of vide order dated 31/03/2018. In further appeal, the coordinate bench of the Tribunal disposed of the appeal filed by the assessee vide order dated 19/12/2019 in ITA No. 2589/Mum/2018. It is further submitted that during the pendency of filing the appeal before the Hon'ble Bombay High Court, the Direct Tax Vivad Se Vishwas Act, 2020 ("the VSV Act") was introduced whereby the appeal pending as on 31/01/2020 can be settled by the assessee. Accordingly, the assessee filed the application under section 4 of the VSV Act, which was accepted, and Form 5 was issued on 03/03/2022 by the learned PCIT.

4. It is further submitted that meanwhile, notice under section 148 of the Act was issued and an assessment order under section 144B r/w section 147 of the Act was passed on 30/03/2022. In further appeal, the learned CIT(A), vide impugned order dismissed the appeal filed by the assessee by treating the same as infructuous on the basis that the assessee has opted for settlement of tax dispute under VSV Act and pursuant thereto Form No. 5 has been issued. The assessee submitted that it was not eligible to make an application under the VSV Act against the assessment order passed on 30/03/2022, however, the aforesaid fact could not be brought to the notice of the learned CIT(A) as the impugned order was passed and the tab to file any reply was closed on the

portal. The assessee further submitted that its earlier tax consultant was following up with the office of PCIT-1, Mumbai to communicate with the NFAC for restoration of the appeal. It is further submitted that while preparing for appeal for the assessment year 2015-16 the new tax consultant advised the assessee to file the appeal before the Tribunal. It is submitted that immediately thereafter the present appeal was drafted and filed before the Tribunal. Accordingly, it was submitted that due to the aforesaid circumstances the present appeal is filed after a delay.

5. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee does not stand to benefit from the late filing of the appeal. In view of the above and having perused the application, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

6. From the submissions made by the assessee in its application seeking condonation of delay and the documents forming part of the paper book, we find that the assessee's application in Form-1 under the VSV Act was in respect of the order dated 19/12/2019 passed by the coordinate bench in assessee's appeal for the assessment year 2013-14. The aforesaid application was accepted and Form-5 dated 03/03/2022 was issued by the learned PCIT in respect of full and final settlement of tax arrears under section 5(2) r/w section 6 of the VSV Act. It is not anybody's case that the assessee was entitled to file an application under the VSV Act against the assessment order dated 30/03/2022 passed under section 147 r/w section 144B of the Act. Such being the facts, we are of the considered view that the learned CIT(A) erred in dismissing the appeal filed by the assessee against the aforesaid assessment order dated 30/03/2022 as infructuous on the basis that the assessee has

opted under the VSV Act. Accordingly, the impugned order passed by the learned CIT(A) is set aside. Since the learned CIT(A) has not adjudicated the grounds raised by the assessee in its appeal, therefore we deem it appropriate to restore the appeal to the file of the learned CIT(A) for adjudication on merits. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 21/02/2024

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 21/02/2024**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

By Order

Assistant Registrar  
ITAT, Mumbai