

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1116/Del/2022
(Assessment Year: 2017-18)**

Omkar Singh Chauhan,
C/o E-1/77, Lower Floor,
YMCA Road, Sector 11,
Faridabad – 121 004 (Haryana).

vs.

Pr. CIT,
Faridabad.

(PAN : AKWPC2231M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Dushyant Kumar Bhati, CA
Shri Deepesh Garg, Advocate

REVENUE BY : Shri Subhra Jyoti Chakraborty, CIT DR

Date of Hearing : 21.02.2024

Date of Order : 27.02.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.

Pr.CIT, Faridabad dated 24.03.2022 for the assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. That Ld. Pr.CIT has erred both in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has further erred in holding the assessment order dated 22.12.2019 as erroneous as well as prejudicial to the interest of revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That Ld. Pr.CIT has erred both in law and on facts in setting aside the impugned assessment order dated 22-12-2019 and has further erred in directing Ld. AO to examine the issues afresh and that too by recording incorrect facts and findings, without providing adequate opportunity of hearing and by disregarding the submissions, evidences and material placed on record by the assessee at the time of assessment proceedings and more so when all the issues have been examined and dealt with during the course of assessment proceedings.

3. That Ld. Pr.CIT has erred both in law and on facts in passing the impugned order u/s 263 as the assessee has opted the VSV Scheme, 2020 and the matter was finally closed on 25-11-2021 and on the said date PCIT had issued the Form-5 of VSV.

4. That Ld. Pr.CIT has erred in observing as under:-

- That the assessing officer has not conducted the inquiries on the issue of full, true and correct income from house property.
- In applying the explanation 2 to sub-section (1) of section 263 in the present case.

5. That in any case and in any view of the matter, action of Ld. Pr.CIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and in violation of rudimentary principles of contemporary jurisprudence.”

3. At the outset, Ld. Counsel of the assessee stated that assessment order on which Ld. Pr.CIT has exercised jurisdiction under section 263 of the Income-tax Act, 1961 (for short ‘the Act’) has already been resolved under Vivad Se Vishwas Scheme, 2020 (for short ‘VSVS’) and the matter was finally closed on 25.11.2021 and on the said date, PCIT had issued the Form-5 of VSVS. In these circumstances, it has been pleaded that action of

ld. PCIT under section 263 of the Act is bad in law in the facts and circumstances of the case.

3.1 Ld. Counsel for the assessee further referred to the decision of Hon'ble Gujarat High Court in the case of Pr.CIT 1 vs. Mrs. Swatiben Biharilal Parekh in R/Tax Appeal No.641 of 2023 order dated 26.09.2023. Hon'ble Gujarat High Court has upheld the order of the Tribunal which contained the following :-

“7. We have carefully considered the facts of the matter and the judgment relied upon by the Ld. Counsel in the case of Gopala Krishnan Rajkumar vs. PCIT (supra). We find that the Hon'ble Court has been pleased to observe opting the VSV Scheme and finalizing thereof is nothing but the closure of disputes in respect of tax arrears which cannot be subsequently reopened by issuing notice under Section 263 of the Act for revising the assessment order. Needless to mention that the view is squarely applicable in favour of the assessee before us.”

Further, Hon'ble High Court in the said order also noted that the Tribunal has considered the decision of Gopalakrishnan Commissioner of Income Tax reported in (2022) 140 taxmann.com 394 (Madras) and the Division Bench of this Court while considering the issue of the finality of the benefit of the Vivad Scheme and Section 5 thereof. Accordingly, the said order of Tribunal was upheld by the Hon'ble High Court.

3.2 Ld. Counsel of the assessee submitted that facts in the present case are fully covered. In this case also, Form 5 has been received and dispute has been settled.

4. In view of the above, we agree with the submissions of the ld. Counsel of the assessee that exercise of jurisdiction of section 263 by the ld. PCIT is invalid. Hence, we hold that the order passed under section 263 of the Act on the assessment order which has already been settled under VSVS is invalid and the same is liable to be dismissed and quashed accordingly.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on this 27th day of February, 2024.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 27th day of February, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT, Faridabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**