

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.1831/KOL/2019  
Assessment Year: 2011-12**

Income Tax Officer, Ward-1(2), Kolkata.	Vs.	M/s. Gabhawala Tax Advisors Pvt. Ltd. (Formerly known as M/s. Ostrich Tie Up Pvt. Ltd.) 33, C. R. Avenue, 9 <sup>th</sup> Floor, R. No. 916, Kolkata-12. Present Address: “Shobha Shree”, 3, Surya Nagar Colony, Luxa Road, Gurubagh, Varanasi-221 010 (U.P.) (PAN: AABCO1033H)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : N o n e

Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 18.04.2024

Date of Pronouncement : 19.04.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the revenue is against the order of Ld. Commissioner of Income Tax (Appeals)-1, Kolkata (hereinafter referred to as “the Ld. CIT(A)” vide Appeal No. 10300/CIT(A)-1/Kol/Ward-1(2)/2017-18 dated 03.05.2019 against the assessment order by Asst. CIT (OSD), Ward-1(2), Kolkata u/s. 147/144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2011-12.

2. Grounds of appeal raised by the revenue are reproduced as under:

*“1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the reopening of assessment u/s 147 of the IT Act made by the A.O. only on the premise that reason recorded for initiation of proceedings assessment u/s 147 of the IT Act, 1961 was not provided to the assessee and ignoring the fact that notice u/s 148 was issued after obtaining necessary approval and the order was passed after giving due opportunity of being heard to the assessee.*

*2. That on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in quashing the reopening of assessment u/s 147 of the IT Act and has erred in appreciating the facts that the A.O. has recorded his reason to believe that income chargeable to tax has escaped assessment while reopening the case for year under consideration for reassessment.*

*3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire additions on account of unexplained cash credit u/s 68 of RS.4,28,60,000/- and Rs.20,00,000/- made by A.O.*

*4. The appellant craves leave to amend, modify, alter or abrogate any grounds either before appellant proceedings or in the course of appellant proceedings.”*

3. In this case earlier the assessee had filed an application requesting to transfer the appeal to the Income Tax Appellate Tribunal, Varanasi Bench, Varanasi and vide order dated 27.12.2023 the Hon'ble President, ITAT had ordered as under:

*“ Shri Abhijit Kundu, CIT-DR appeared for the Revenue. Shri A M Gabhawala appearing for the applicant-assessee states that the assessee had opted for Vivad Se Vishwas Scheme' and in pursuance of the order passed therein, the appeal has become infructuous. In such circumstances, the learned counsel on instructions seeks leave to withdraw the application as nothing survives in the application for transfer. The application for transfer is disposed off as withdrawn. It will be open to the regular Bench at Kolkata to pass appropriate orders in the appeal in view of the statement made on behalf of the assessee.”*

4. When the case came up for hearing before us, it was observed that Form No. 5 dated 05.07.2022 has been issued by the Pr. CIT-1, Kolkata which is an order of full and final settlement of tax arrear u/s. 5(2) read with section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 (3 of 2020) read with the Direct Tax Vivad Se Vishwas Rules, 2020. Hence, in view of the fact that assessee has availed the benefit of the Direct Tax Vivad Se Vishwas Act, 2020, the appeal filed becomes infructuous in view of

Form No. 5 issued by the Pr. CIT-1, Kolkata and the same being infructuous is hereby dismissed.

5. In the result, the appeal of the revenue is dismissed being infructuous.

Order pronounced in the open court on 19<sup>th</sup> April, 2024.

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Rakesh Mishra)  
Accountant Member

***Dated: 19th April, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A)-1, Kolkata.
  4. The CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order  
Assistant Registrar  
ITAT, Kolkata Benches, Kolkata