

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4264/M/2023
Assessment Year: 2013-14**

M/s. Macrotech Developers Limited, 412, Floor-4, 17G Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001 PAN: AAACL1490J	Vs.	Deputy Commissioner of Income Tax, Central Range-7(3), Room No.655, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sahil Shah, A.R.
Revenue by : Smt. Sanyogita Nagpal, D.R.

Date of Hearing : 30 . 04 . 2024
Date of Pronouncement : 30 . 04 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 31.03.2022, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. At the outset, both the parties have submitted that there is inadvertent mistake apparent from impugned order, as the Ld.

Commissioner has decided the appeal against the order dated 30.12.2016 passed by the Assessing Officer (AO) under section 143(3) of the Act on the ground that the Assessee has opted for Vivad Se Vishwas Scheme in this case, whereas the assessee never opted for Vivad Se Vishwas Scheme in this case.

3. In fact, the Assessee during the pendency of appeal before the Ld. CIT(A)-49, Mumbai against the assessment order dated **24.12.2019 under section 153C read with section 147 of the Act**, has opted for VSV Scheme and paid the relevant taxes and Revenue Department issued Form no 3 and 5 which were taken into consideration the said Ld. CIT(A) who, vide order dated 14.12.2021, dismissed the appeal of the assessee as dismissed as withdrawn on the ground that the assessee has opted for Vivad Se Vishwas Scheme.

4. Therefore, inference can be drawn that the Ld. Commissioner while passing the impugned order which is under consideration, may have taken into consideration availing the VSV Scheme in the case emanated from Assessment order dated 24.12.2019 u/s **153C read with section 147 of the Act**. And therefore, the impugned order is liable to be set aside, as the assessee never opted for Vivad Se Vishwas Scheme in the instant case relevant to the assessment order dated **30.12.2016 u/s 143(3)** of the Act.

5. Considering the peculiar facts and circumstances stated above, the impugned order is set aside and the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.