

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 8/MUM/2024 (A.Y: 2011-12)

DCIT – 15(1)(1) Room No. 126B, First Floor Aayakar Bhavan, Mumbai – 400020	v.	Athul Singhi 1401, 1402, Raheja Empress Veer Savarkar Marg Prabhadevi, Mumbai – 400025 PAN: AAPPS7176N
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Haridas Bhat
Department Represented by	:	Shri Mirza Azhar Beig
Date of conclusion of Hearing	:	22.05.2024
Date of Pronouncement	:	22.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against order dated 02.11.2022 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2011-12.

2. The grievance of the revenue read as under: -

"1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in giving relief to the assessee without considering Question No. 10 of Circular no. 17/2016 dated 20.05.2016 which states that 'no immunity will be available in respect of the undisclosed income which is not declared? Hence, penalty is leviable.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in giving relief to the assessee without appreciating the question no. 11 of Circular No. 24 of 2016 which states that "such declaration will be valid if it has not been made by suppression of facts or misrepresentation" and since the assessee under IDS Scheme offered income lesser than what he has received, it amounts to suppression of facts or misrepresentation and therefore the assessee is not covered by the question no. 11 of Circular No. 24 of 2016?

3. The appellant prays that the order of Ld CIT(A) on the above ground be set-aside and that of the Assessing Officer be restored."

3. At the very outset, the counsel for the assessee brought to our notice that the quantum addition has been deleted by this Tribunal vide order dated 05.09.2019 in ITA No. 7269/MUM/2018. The Ld. DR could not bring any distinguishable decision in favour of the revenue.

4. We have given a thoughtful consideration to the orders to the authorities below. We find force in the contention of the counsel that this Tribunal in ITA No. 7269/MUM/2018 vide order dated 05.09.2019

quashed the assessment of the income declared under the scheme of
IDS. The relevant findings of the Coordinate Bench read as under: -

"12. Considering the facts and circumstances of the present case, we find that in this case, notice u/s 148 was issued on 17.08.06 and the assessee had declared the amount under the income disclosure scheme IDS 2016 as income and accordingly filed required Form on 31.10.17 i.e. after 31.05.16, therefore in such circumstances, as per question no. 11 of Circular 24 of 2016, the AO could not have passed the order by superseding the provisions laid down under the scheme of IDS 2016. Notably, Form No. 4 issued by the Pr. CIT-15, Mumbai on 29.11.07 has also been referred to, a copy of which is placed at page no. 26 of the paper book. Therefore, the assessment to the income declared under the scheme of IDS made by the AO is bad in law as the AO does not have jurisdiction over making assessment to the income offered under the provisions of IDS and is thus stands annulled. Resultantly this ground raised by the assessee stands allowed."

5. Since the foundation has been removed, the super structure must fall. We decline to interfere with the findings of the Ld. CIT(A).
6. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 22.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum