

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos. 104 & 105/Del/2024
निर्धारणवर्ष/Assessment Years:2013-14 & 2015-16**

Deputy Commissioner of Income Tax, Circle 1(1), Room No.153A, C.R. Building, I.P. Estate, New Delhi.	बनाम Vs.	ADM Agro Industries India P. Ltd., Kaledonia (Hdil Building), Level 78, Wing Office No.4A, Sahar Road, Opp. Vijay Nagar, Housing Society, Andheri East, Mumbai, Maharashtra. PAN No.AAHCA6993E
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Ms. Ananya Kapoor, Adv.
Revenue by	Shri Amit Katoch, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	23.04.2024
उद्घोषणाकीतारीख /Pronouncement on	30.05.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

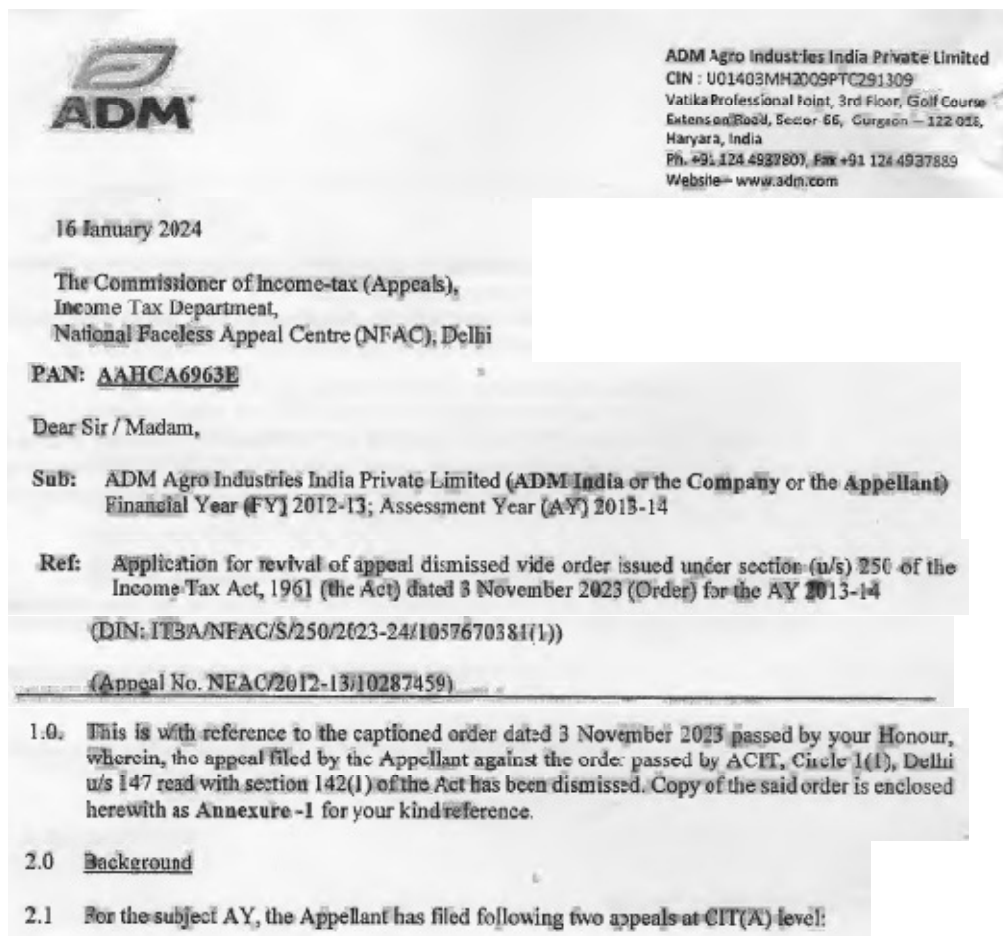
These two appeals are filed by the Revenue against different orders of the Ld. CIT(Appeals)-NFAC, Delhi dated 03.11.2023 for the assessment years 2013-14 & 2015-16. Revenue has challenged the orders of the Ld.CIT(Appeals) on the ground that the Ld.CIT(A) erred in dismissing the appeals of the assessee as infructuous as per

clause 4(2) of the Direct Tax Vivad se Vishwas Scheme (VSVS) Act, 2020 ignoring the fact that the order passed u/s 147 r.w.s. 142(1) of the Act was not settled under VSVS.

2. During the course of hearing the Ld. DR submits that the Ld.CIT(A) dismissed the appeals of the assessee which were filed against the reassessment orders passed in pursuant to the provisions of section 147 of the Act on a mistaken impression that the disputes in these appeals were settled under VSVS, whereas the fact of the matter is that the assessee settled the disputed taxes under VSVS which were raised while completing the assessment u/s 143(3) of the Act. Ld. Counsel for the assessee also submitted that the assessee never settled the dispute in these appeals under VSVS. It is submitted that as a matter of fact the assessee has written a letter to the Ld.CIT(A)-NFAC, Delhi to revive the appeals and adjudicate the same on merits.

3. Heard rival contentions, perused the orders of the authorities below and the letter furnished by the assessee before the Ld.CIT(Appeals)-NFAC, Delhi dated 16.01.2024. Perusal of the Ld.CIT(A) order shows that the appeals of the assessee were dismissed as infructuous on the ground that the assessee has opted under VSVS and settled the disputed taxes. Subsequently by letter

dated 16.01.2024 the assessee requested the Id.CIT(A)-NFAC, Delhi stating that these appeals were not settled under VSVS by the assessee and the disputes arise from the orders passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act. It was the contention of the assessee that what was settled under VSVS was the disputed taxes emanated from the orders passed u/s 143(3) of the Act by the AO. The contents of the letter are as under: -



- **First Appeal** - Against the regular assessment order dated 30 December 2016 passed by ACIT, Special Range - 1, New Delhi u/s 143(3) of the Act. The same was concluded by erstwhile CIT(A)-32, New Delhi in the favour of the Appellant vide order dated 27 January 2017 however tax department had preferred an appeal before the Hon'ble Income-tax Appellate Tribunal (ITAT) against the said order. In respect of above, the Appellant opted for Vivad se Vishwas Scheme to settle the ongoing appeal. The case of the Appellant was settled vide Form 5 dated 14 June 2021 passed by Designated Authority determining no tax payable / refundable. Copy of Form 5 is enclosed herewith as Annexure -2.
- **Second Appeal** - The Appellant's case was selected for scrutiny under re-assessment proceedings and order dated 31 May 2023 was passed u/s 147 read with Section 142(1) of the Act by ACIT, Circle 1(1), Delhi against the Appellant. Aggrieved from the said order, the Appellant had filed an appeal before your Honour.

3.0 Our Submission

- 3.1 In respect of the captioned order dated 03 November 2023 passed under section 250 of the Act your Honour have inadvertently disposed the appeal mentioning the below:

"It is noted that the appellant opted for the Vivad-Se Vishwas Scheme vide application dated 12.11.2020. Pursuant thereto, the Pr.CIT-1, Delhi has certified the full and final payment of Rs. 0 as taxes on 29.12.2020 in terms of Form No.5 issued dated 14.06.2021. In view of the above, the appeal is treated as infructuous as per clause 4(2) of the Direct Tax Vivad-Se Vishwas Act, 2020."

In this regard the appellant humbly submits that the appeal of the Assessee has been dismissed on the ground that the same has been settled via Vivad se Vishwas Scheme however, the Appellant has filed the captioned appeal against the re-assessment order dated 31 May 2023 passed u/s 147 read with Section 142(1) of the Act and not against the regular Assessment order. To corroborate the Appellant's aforesaid contention Form 35 along with reassessment order are enclosed herewith as Annexure -3 for your kind reference.

4.0 Prayer

- 4.1 Given the above, your Honour is requested to kindly revive the appeal (bearing Appeal No. NEAC/2012-13/10287459) filed by the Appellant and adjudicate the same.
- 4.2 We request your Honour to take the above submission on record and accede to our request. Should your Honour require any further information, clarifications, we shall be pleased to provide the same.

Thanking You.

Yours faithfully,

For ADM Agro Industries India Private Limited



Authorised Signatory

Name: Abhishek Chuttani
Designation: Senior Manager Taxation

4. The assessee also filed a similar letter for the AY 2015-16 before the Ld.CIT(A)-NFAC, Delhi for revival of the appeal. All these goes to show that assessee never settled the disputes in these

appeals which were emanated out of the order passed by the AO u/s 143(3) r.w.s. 147 of the Act. We observed that the Ld.CIT(A) under the mistaken impression that the disputed taxes in these two appeals were settled under VSVS these appeals of the assessee were dismissed as infructuous.

5. In view of the above, these two appeals are restored to the file of the Ld.CIT(A) for deciding the grounds on merits after providing reasonable opportunity to the assessee.

6. In the result, appeals of the Revenue are allowed for statistical purpose.

Order pronounced in the open court on 30.05.2024

**Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 30.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi