

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 299/Kol/2024
Assessment Year: 2012-13

Pujita Constructions Pvt. Ltd. Mezzanine Floor, Narayani Building 27, Brabourne Road Kolkata - 700001 [PAN : AAACP5112F]	Vs	Deputy Commissioner of Income Tax, Circle - 1(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Avinandan Yadav, on behalf of Shri Sanjay Kr. Kejriwal, FCA
Revenue by :	Shri Nicholas Murud, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 29/04/2024
घोषणा की तारीख /Date of Pronouncement: 03/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 05/01/2024, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. At the outset, the Id. Representative on behalf of the assessee made reference to the paper book and the written submission. Perusal of the same indicates that the Id. CIT(A) has dismissed the assessee's appeal filed for Assessment Year 2012-13 against the order of the Id. Assessing Officer dt. 12/12/2019 framed u/s 147/143(3) of the Act only on the ground that the assessee has opted for *Vivad Se Vishwas Scheme, 2020* and filed Form No. 1 & 2 on 23/03/2020. In the decisions of the Id.

CIT(A) appearing at para 7, the ld. CIT(A) has reproduced Form No. 2 filed by the assessee under the *Vivad Se Vishwas Scheme, 2020*, and has dismissed the appeal as withdrawn on 12/11/2020. Therefore, the only grievance of the assessee is that it had not made any payment of taxes under the *Vivad Se Vishwas Scheme, 2020*, and, therefore, the issues on merits may be restored to the file of the ld. CIT(A) for necessary adjudication.

On the other hand, the ld. D/R, vehemently argued supporting the order of the lower authorities but failed to controvert the contentions of the ld. Counsel for the assessee.

3. We have heard rival contentions and perused the material placed before us. We note that the ld. CIT(A) has dismissed the appeal of the assessee as withdrawn only on the ground that the assessee had filed Form No. 2 under the *Vivad Se Vishwas Scheme, 2020*. We observe that under the scheme of *Vivad Se Vishwas Scheme, 2020*. Form No. 2 is filed by the taxpayer voluntarily, undertaking to waive all the rights to seek or pursue any remedy or any claim in relation to the dispute for which the declaration is being filed. After filing Form 2, Form 3 is issued by the designated authority, as a certificate determining amount payable to settle the dispute. It is further followed by filing of Form 4 by the taxpayer intimating the payment of taxes made as per the amount calculated in Form 3 and finally Form 5 is issued by the designated authority as an order for full and final payments.

4. Now, in the instant case, the ld. CIT(A) has dismissed the assessee's appeal only on the basis of filing of Form 2 and failed to consider that process of *Vivad Se Vishwas Scheme, 2020*, completes at the

stage when Form 5 is issued by the designated authority. This action of the Id. CIT(A) is not in accordance with law and he ought not to have dismissed the appeal of the assessee as withdrawn on account of opting for *Vivad Se Vishwas Scheme, 2020*. Since it is an admitted fact that assessee has not paid the taxes and has not furnished Form 4, the procedure initiated by filing Form 2 did not come to the logical end and the assessee's application under *Vivad Se Vishwas Scheme, 2020*, automatically stands rejected. We, therefore, restore the issues raised on merits to the file of the Id. CIT(A) for necessary adjudication and to pass a speaking order.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 3rd June, 2024 at Kolkata.

Sd/-

**(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 03/06/2024

SC/SAP

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata