

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.249/Mum/2024
(A.Y. 2011-12)**

Pramod Dhanaji Patil House No. 178, Kaulali Ghansoli, Navi Mumbai 400701	Vs.	Income Tax Officer, Ward-28(2)(4) Navi Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ALNPP8443Q		
Appellant	..	Respondent

Appellant by :	Satyaprakash Singh
Respondent by :	H.M. Bhatt

Date of Hearing	13.05.2024
Date of Pronouncement	21.06.2024

आदेश / ORDER

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of the First Appellate Authority passed u/s 250 of the Act dated 17.12.2018 passed u/s 144 r.w.s 147 of the Income Tax Act, 1961. The assessee has raised the following grounds before us:

- “1. The order dated 09/01/2024 bearing No. ITBA/APL/S/250/2023-24/1059498109(1) Passed under section 250 of Income Tax Act. 1961 by the Hon'ble CIT[Appeal], ADDL/JCIT (A) INDORE is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*
- 2. On facts and circumstances of the case, and in law, the Honorable ADDL/JCIT (A) Indore has erred in observing that the appeal of the Appellant has become infructuous upon the filing of Form No.3 under Direct Tax Vivad se Vishwas Act, 2020 as no Form no.5 was filed by the Appellant or issue by the designated authority*

3. *On facts and circumstances of the case and in law, the Honorable ADDL/JCIT (A) Indore has erred in not adjudicating the Grounds of Appeal raised by the Appellant*
4. *The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.”*

2. Fact in brief is that the assessee has not filed return of income for the assessment year 2011-12. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 26.03.2018. As per the information available on the Department's CIB/AIR data assessee had deposited cash of Rs.62,61,000/- and also received a contract receipt of Rs.2,19,33,363/-. The assessment was reopened for the reason that income to the amount of Rs.281,94,367/- chargeable to tax has escaped assessment for assessment year 2011-12 because of failure on the part of the assessee to make a return u/s 139 of Income Tax Act, within the meaning of Sec. 147 of the Act.

3. However, during the course of assessment the AO noticed that as per the AIR detail the assessee had deposited cash amounting to Rs.32,38,500/- only which remained unexplained by the assessee, therefore, the same was treated as unexplained money u/s 69A of the Act and added to the total income of the assessee.

4. Further on verification of the ITS detail the assessing officer noticed that assessee had received contract receipt of Rs.3,83,73,989/- instead of Rs.219,33,367/- in the F.Y. 2010-11 but not filed the Income Tax Return. During the course of assessment the assessee had also not responded to the notices issued u/s 148, 142(1) and show cause notice. Therefore, 10% of the total receipt of Rs.383,73,989/- which comes to Rs.383,73,989/- was added to the total income of the assessee.

5. During the course of assessment the assessing officer also noticed that as per the AIR details the assessee had received rent income of

Rs.54,92,746/-. However, it was not ascertained whether the rent income was received from movable property or immovable property, therefore, the AO has added the whole amount of Rs.54,92,746/- to the total income of the assessee. Since, the assessee had not made any compliance during the course of assessment, therefore, assessment order was passed ex-parte u/s 144 r.w.s 147 of the Act and total income was assessed at Rs.1,25,68,640/-.

6. The assessee filed the appeal before the ld. CIT(A). However, the Additional/JCIT(A) has dismissed the appeal of the assessee on the ground that assessee has availed 'Vivad se Vishwas Scheme, 2020' by withdrawing appeal.

7. During the course of appellate proceedings before us the ld. counsel submitted that assessee has neither withdrawn his appeal and nor availed Vivad se Vishwas Scheme, 2020 and the assessee has not paid any taxes under the scheme. Therefore, he submitted that the ld. CIT(A) is not justified in dismissing the appeal of the assessee without deciding the same on merit.

8. The ld. D.R is fair enough to could not controvert the fact reported by the assessee that he has neither withdraw his appeal nor paid any taxes under the Vivad se Vishwas Scheme, 2020.

9. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above in this order the assessing officer has finalised the assessment u/s 144 r.w.s 147 of the Act ex-parte as the assessee has not made any compliance during the course of reassessment proceedings. The assessee has filed appeal against the ex-parte order passed by the assessing officer for making addition of Rs.1,25,68,644/- under the different heads as discussed supra in this order. However, the ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee had withdrawn the appeal by availing Vivad

se Vishwas Scheme, 2020. The assessee has categorically submitted that he has neither withdrawn the appeal nor paid the taxes as per the Vivad se Vishwas Scheme, 2020 and requested for adjudicating the appeal of the assessee at the level of first appellate authority on merit. In the light of the above facts and circumstances we restore the appeal of the assessee to the file of the ld. CIT(A) for adjudicating on merit as contemplate u/s 250(6) of the Act after affording adequate opportunity of hearing to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.