

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1615/MUM/2024
Assessment Year: 2013-14**

Roselabs Finance Ltd., 412, Floor-4, 17G Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai -400001 (PAN : AAACR9134M)	Vs.	Joint Commissioner of Income Tax, Range-7, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sahil Shah
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 04.07.2024
Date of Pronouncement : 09.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-49, Mumbai, vide order no. ITBA/APL/S/250/2021-22/1033189574(1), dated 31.05.2021 passed against the penalty order by Joint Commissioner of Income Tax, Range-7, Mumbai, u/s. 271D of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.09.2016 for Assessment Year 2013-14.

2. Grounds taken by the assessee are reproduced as under:

“1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [‘CIT(A)’] erred in

a. disposing appeal having appeal no. CIT(A), Mumbai-49/10450/2016-17 filed by the appellant against penalty order dated 30 September 2016, passed under section 271D of the Act.

b. the learned CIT (A) erred in dismissing the appeal of the appellant stating that the appellant has opted for Vivad se Vishwas (‘VSV’) Scheme whereas the appellant had not opted for Vivad se Vishwas Scheme in respect of the said appeal.

c. Further, the appellant submits that a rectification letter dated 23 August 2021 was filed before the learned CIT(A) to rectify the aforesaid mistake apparent from records and restore the said appeal. Therefore, the learned CIT(A) erred in not considering the rectification application filed by the appellant.

d. It is submitted that for assessment year 2013-14, the appellant had also filed an appeal [appeal no. CIT (A) 49, Mumbai/10088/2018-19] before the learned CIT(A) against assessment order dated 21 December 2018, passed under section 143(3) r.w.s.147 of the Act.

e. For the aforesaid appeal no. CIT(A) 49, Mumbai/10088/2018-19, the appellant had opted for VSV Scheme. The learned CIT(A) passed an order dated 31 May 2021 under section 250 of the Act considering that the Pr.CIT(Central), Mumbai-4 had certified the full and final payment of taxes vide Form No.5 dated 5 April 2021 in terms of provisions of clause (2) of Section 5 of the Direct Tax Vivad se Vishwas Act, 2020. The learned CIT(A) in his order stated that the appeal became infructuous as per Clause 2 of Section 4 of the Direct Tax Vivad se Vishwas Act, 2020.

f. In view of the above, it is abundantly clear that two appeals were pending for assessment year 2013-14 before the learned CIT(A), details are summarized as under:

<i>Sr. No.</i>	<i>Appeal against order</i>	<i>Appeal No.</i>	<i>Whether Opted for VSV Scheme</i>	<i>Remark</i>
1	Section 271D of the Act	CIT (A), Mumbai-49/10450/2016-17	No	The learned CIT(A) erroneously passed an order dated 31 May 2021 disposing the appeal considering it as a case under VSV.
2	Section 143(3) r.w.s. 147	CIT (A) 49, Mumbai/10088/2018-19	Yes	The learned CIT(A) correctly passed order dated 31 May 2021, disposing the appeal pursuant to Form 5 issued under VSV.

g. In view of the above, disposal of appeal no. CIT (A), Mumbai-49/10450/2016-17 for assessment year 2013-14 is a mistake apparent from record. The appellant submits that order passed u/s 250 dated 31 May 2021 in respect of appeal no. CIT (A), Mumbai-49/10450/2016-17 is erroneous. The appellant requests your honour to treat the order passed by the learned CIT(A) as null and void and the said appeal be restored back to the files of the learned CIT(A) for fresh hearing on merits of the case.”

3. Brief facts of the case are that a penalty of Rs.1,19,74,148/- has been imposed u/s. 271D of the Act for violation of provisions of section 269SS vide order dated 30.09.2016. Assessee had filed an appeal before the ld. CIT(A) on 28.10.2016 against the aforesaid penalty order.

4. Assessment for the year under consideration was completed u/s.143 r.w.s. 147 of the Act vide order dated 21.12.2018, which was pending before the ld. CIT(A) for disposal. During the pendency of this appeal against the quantum assessment, assessee proceeded to take benefit under ‘Vivaad Se Vishwas’ Scheme, 2020 for which it filed Form No.1 and 2 on 01.10.2020. Ld. CIT(A) noted that assessee had opted for ‘Vivaad Se Vishwas’ Scheme and ld. PCIT (Central), Mumbai-4 had certified the full and final payment of Rs. Nil vide Form No.5 issued on 05.04.2021 in terms of provisions of clause(2) of Section 5 of the Direct Tax, ‘Vivaad Se Vishwas’ Act, 2020. Based, on this, ld.

CIT(A) held that the appeal has become infructuous and thus dismissed it.

4.1. To this effect, assessee made a submission before the ld. CIT(A) on 23.08.2021 stating that assessee had not opted any 'Vivaad Se Vishwas' Scheme in respect of disputed demand raised pursuant to the penalty order dated 30.09.2016 passed u/s.271D of the Act. Rather, assessee had opted for 'Vivaad Se Vishwas' Scheme in respect of disputed demand raised vide order dated 21.12.2018 passed u/s.143(3) r.w.s. 147 of the Act. In this respect, assessee furnished copy of form 3, certifying the amount of tax due for settlement of arrears for the aforesaid order. Accordingly, there was a mistake apparent from record committed by the ld. CIT(A) for treating the benefit availed by the assessee under the 'Vivaad Se Vishwas' Scheme against the assessment order u/s.143(3) r.w.s. 147 in respect to the impugned penalty order passed u/s.271D. However, ld. CIT(A) had not rectified his order which led assessee to come up in appeal before the Tribunal.

5. Ld. Counsel for the assessee before us, submitted that dismissal of the impugned appeal by the ld. CIT(A) against the penalty order passed u/s. 271D by referring to the option availed by assessee under the 'Vivaad Se Vishwas' Scheme for the demand raised under assessment order passed u/s.143(3) r.w.s. 147 is liable to be set aside. He requested that the matter may be restored back to the file of ld. CIT(A) for de-novo meritorious adjudication on the grounds of appeal taken before him. Ld. Sr. DR did not raise any objections on the submissions made by the ld. Counsel.

5.1. Considering the facts on record and submissions made before us, we are in agreement with the submission made by the ld. Counsel of the assessee to remit the matter back to the file of ld. CIT(A) for denovo meritorious adjudication on the grounds of appeal taken before him. We take note of the fact that dismissal by ld. CIT(A) of the appeal filed by the assessee as infructuous is on incorrect fact. The order of the ld. CIT(A) is set aside and matter is restored back. Needless to say, that assessee be given reasonable opportunity of being heard to substantiate its claim. Accordingly, ground taken by the assessee in this respect is allowed.

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

Order is pronounced in the open court on 09 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09 July, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai