

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI “B” BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.792/Mum./2024
(Assessment Year : 2009-10)

Spkyar Lifestyles Pvt.Ltd.,

19th Floor, A wing, Lotus Corproate Park,
Jaycoach Junction, Goregaon East,
Mumbai-400063.

..... Appellant

PAN – AA ECS3455N

v/s

DCIT,

Circle-13(2)(1),
Mumbai-400020.

..... Respondent

Assessee by :Shri Prateek Jha & Dr. Prayag Jha

Revenue by :Shri Ashok Kumar Ambastha, Sr.DR

Date of Hearing – 29/05/2024

Date of Order – 14/08/2024

ORDER

PER RAJ KUMAR CHAUHAN, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30.01.2024 passed under section 250 of the Income Tax Act, 1961 (“*the Act*”) by the Ld. Commissioner of Income Tax (Appeals)/ADDL/JCIT(A), Raipur, [“*learned CIT(A)*”], for the assessment year 2009-10 wherein the appeal of the assessee was dismissed, having become infructuous, holding that the appeal is deemed to have been withdrawn u/s 4(2) of the *Direct Tax Vivad se Vishwas Act, 2020*. Aggrieved by the said order, the assessee is in appeal before us and raised following grounds of appeal:-

1. *“The Ld Additional/JCIT(A) erred in dismissing the assessee's appeal filed against Assessment Order passed under section 143(3) r.w.s. 254 of the IT Act stating that the assessee had filed application under DTVSVA, 2020 making the appeal infructuous.*
2. *The Ld Additional/JCIT(A) erred in not appreciating that the appeal which was pending before him was against the Assessment Order involving additions of Rs.1,10,58,495/- and Rs.19,65,298/- and the assessee had not filed any application under the DTVSVA, 2020 in respect of this appeal.*
3. *The Ld Additional/JCIT(A) erred in not appreciating that the assessee had made application under the DTVSVA, 2020 in respect of appeal filed against order imposing penalty of Rs.1,70,000/- under section 271(1)(c) for the A Y 2009-10.*
4. *The Ld Additional/JCIT(A) erred in not appreciating that the appeal against the penalty order was pending before the Ld CIT(A), NFAC, and Appeal Number was CIT (A), Mumbai- 21/10345/2018-19 whereas the Appeal Number, for appeal pending before him was CIT (A), Mumbai- 21/10131/2018-19.*
5. *The Ld Additional/JCIT(A) erred in not deciding the Grounds of Appeal specifically raised in Form No. 35 in which disallowance of Rs.1,10,58,495/- and addition of Rs.19,65,298/- were contested.*
6. *The above grounds of appeal are without prejudice to one another.*
7. *The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.*
8. *The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

2. Facts in brief as culled out from the proceedings before the lower authorities, are that the assessee has filed return of income, declaring total income of INR 20,17,15,452/- on 30.09.2009. The return of income was taken up for

scrutiny and notice u/s 143(2) of the Act was issued on 18.08.2010 and duly served to the assessee on 23.08.2010. A detailed questionnaire was issued to the assessee on 28.11.2011 alongwith notice u/s 142(1) of the Act. The assessee has filed response to the said notice and after taking into consideration the reply and written submissions, the Assessing Officer (“AO”) made an addition of INR 1,15,71,330/- of the expenses claimed as capital expenditure by the assessee as enumerated below:-

S.No.	Expenses	Amount	Justification furnished
1.	ROC Charges	512835	Roc fees for increase in the Authorized Share Capital during the year. Copy of Form 5 duly Stamp Duty charges paid & copy of receipts of ROC charges paid towards the same is attached herewith for your reference. Stamp duty Rs.2,00,200/- ROC filing fees Rs.3,07,134/- and balance towards Digital Signature and filing fees Rs.5,501/-
2.	Aperion Architects	4,293,640	
3.	Milan Pole	1,548,545	
4.	N.Power & Co.	5,216,310	
	Total	11,571,330	

3. Further, a sum of INR 19,65,298/- was added to the total income of the assessee on account of non-declared interest income. Penalty proceedings u/s 271(1)(c) of the Act was also initiated.

4. Aggrieved against the order of AO, the assessee preferred appeal u/s 250 of the Act before Ld.CIT(A) which was disposed off by the impugned order by following order:-

“In this case, the appellant has submitted that the appellant has opted for Vivad se Vishwas Scheme 2020. The appellant has also submitted the Form-3 that is a certificate provided by the designated authority determining amount payable to settle the dispute. As per section 4(2) of the Direct Tax Vivad se Vishwas Act, 2020, the appeal is deemed to have been withdrawn if Form-3 is

issued to the appellant. The relevant sections 4(2) and 5(1) of the Direct Tax Vivad se Vishwas Act, 2020 and Rule-4 of the Direct Tax Vivad se Vishwas Rules, 2020 are reproduced for ready reference.

*"4.(1) **

4. (2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

5. (1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed."

"Rule 4. Form of certificate by designated authority. The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in Form-3".

As the appellant has submitted the Form-3 dated 10.12.2020 under the Direct Tax Vivad se Vishwas Act, 2020 and the Form No. 4 dated 23.04.2021 has been issued u/s 4(2) of the Direct Tax Vivad se Vishwas Act, 2020 to the appellant under Vivad se Vishwas Scheme, 2020. Hence, this appeal has become infructuous. Thus, appeal is dismissed as deemed withdrawn u/s 4(2) of the Direct Tax Vivad se Vishwas Act, 2020."

5. We have heard Ld. Authorized Representative of the assessee and Ld. Sr. DR for the Revenue and perused the material available on record. Ld. Counsel for the assessee submitted that Ld.CIT(A) has passed the impugned order, dismissing the quantum appeal on the ground that the same deemed to be withdrawn. The assessee having settled the appeal under *Direct Tax Vivad se Vishwas Act, 2020*. It is further submitted that inadvertently and by mistakenly, the assessee had filed

documents including the penalty order u/s 271(1)(c) of the Act vide order dated 27.11.2017 in Form No.35B as noticed in the Paper Book, submitted before the Tribunal. The assessee has filed a penalty order in detail but not filed quantum order. It is the case of the mistake in filing the wrong documents i.e. pertaining to penalty order instead of quantum order, Ld.CIT(A) has passed the impugned order. It is therefore, submitted that appeal of the assessee may be restored to Ld.CIT(A) that he had not filed necessary and correct documents relevant to the quantum appeal. On perusal of e-file and its annexures, it is noted that the assessee has uploaded the assessment order u/s 143(3) of the Act on 29.12.2010 passed by the AO for the Assessment Year 2009-10. From these documents, it is not clear whether the appeal as per submissions of the assessee challenging the quantum order dated 29.12.2010 has been filed within the period of limitation or not. Therefore, subject to the verification of said facts also by the Ld.CIT(A) and in view of the submissions of Ld.AR for the assessee, the matter is restored to the file of Ld.CIT(A) since the impugned order does not pertain to quantum appeal u/s 143(3) of the Act, same is accordingly set aside. The appeal is allowed for statistical purposes in above terms.

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

Order pronounced in the open Court on 14.08.2024.

Sd/-
[OM PRAKASH KANT]
ACCOUNTANT MEMBER

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

MUMBAI, DATED: 14/08/2024
Amit Kumar (Sr. PS on Tour)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai