

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.970/M/2024  
Assessment Year: 2011-12**

<b>Mr. Rajiv Bidasaria,</b> 303 Sooraj Vila Palasia, Indore Madhya Pradesh- 452 001 <b>PAN: AEHPB0225P</b>	Vs.	<b>Income Tax Officer,</b> Aayakar Bhawan Main Building, Madhya Pradesh- 452 001
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri R.R. Makwana, Sr. DR.

Date of Hearing : 14 . 08 . 2024  
Date of Pronouncement : 26 . 08 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 03.01.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** At the outset, we observe that despite sending notice for the date of hearing on 14.08.2024 to the Assessee at the address mentioned in form No.36, the Assessee neither appeared nor filed any adjournment application and therefore we are constrained to decide this appeal as ex-parte.

**3.** Coming to the merits of the case, we observe that the Assessing Officer (AO) vide Assessment order dated 21.11.2018 u/s 143(3) r.w.s. 147 of the Act has made the additions of Rs.9,56,765/- and Rs.3,00,000/- respectively on account of taxable capital gain and household expenses.

**4.** The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner and during the appellate proceedings submitted that he has opted for Vivad Se Vishwas Scheme (VSVS), 2020 and filed the copies of Form nos. 1, 2 & 3. The Assessee subsequently failed to file the Form nos. 4 & 5 and therefore the benefit of the VSVS was automatically denied to the Assessee. Therefore the Ld. Commissioner by taking into account the fact that as the Assessee has failed to comply with the conditions in the Form No.3, therefore the benefit of the VSVS is automatically denied, and hence the Assessee's request for dismissal of appeal cannot be entertained. Consequently, the Ld. Commissioner issued the notice u/s 250 of the Act to the Assessee, in response to which the Assessee made no compliance and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal of the Assessee as ex-parte and ultimately by dismissing the same, affirmed the additions under consideration.

**5.** We have given thoughtful considerations to the peculiar facts and circumstances of the case. It appears from the record that the Assessee vide letter dated 13.08.2024 filed before the Tribunal has claimed that though the Assessee had submitted application in earlier VSVS, 2020 but due to financial crisis, he could not make the payment on due date, however, the Assessee still intends to avail the benefit of VSVS recently announced by the Government. As we

have already observed above that the impugned order passed by the Ld. Commissioner is an ex-parte order passed in the constrained circumstances specifically in the absence of relevant submissions/reply which the Assessee has been failed to file and therefore for the just decision of the case and ends of substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the Assessee to substantiate his claim before the Ld. Commissioner. The Assessee would be at liberty to avail the benefit of VSVS 2024 if desires so and would take appropriate steps in the appellate proceedings before the Ld. Commissioner.

**5.** We also direct the Assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default the Assessee shall not be entitled for any leniency.

**6.** Thus, the case is remanded to the file of the Ld. Commissioner accordingly.

**7.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 26.08.2024.**

**Sd/-**  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.