

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 401/Chd/2024  
निर्धारण वर्ष / Assessment Year : 2011-12

Subhash Chand House No. 421, Ward No. 9, Gali No. 5, Subhash Nagar, Kaithal-Haryana- 136027	बनाम	The ITO Kaithal
स्थायी लेखा सं. / PAN NO: AFIPC2730E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pulkit Saini, Advocate  
राजस्व की ओर से / Revenue by : Dr. Ranjeet Kaur, Sr. DR  
सुनवाई की तारीख / Date of Hearing : 11/09/2024  
उदघोषणा की तारीख / Date of Pronouncement : 25/09/2024

**आदेश / Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), ADDL/JCIT(A)-1, Surat dt. 20/12/2023 pertaining to Assessment Year 2011-12.

2. At the outset, it is noted that there is delay in filing the present appeal as pointed out by the Registry. After pursuing the condonation application and affidavit in support thereof and hearing the Id DR, we find that there was reasonable cause which prevented the assessee in filing the appeal within the prescribed time period and the delay is hereby condoned and the appeal is admitted for adjudication.

3. In the present appeal, the Assessee has raised the following grounds of appeal:

1. That the Ld. CIT (Appeals) erred on facts and in law in dismissing the appeal against the impugned assessment order u/s 147 r.w.s 143(3), determining the income of assessee at Rs. 10,80,500.

2. That the Ld. CIT (Appeals) has erred in law and on facts in not deciding the appeal on merits and dismissing the appeal ex parte without any request being

*made by the assessee before the Id. CIT(A) for withdrawal of appeal under Vivad Se Vishwas.*

*3. That the Ld. CIT (Appeals) has erred in law and on facts in not appreciating that the declarartion/Form 3 under the Direct Tax Vivad Se Vishwas Act is null and void in case of non payment of requisite amount.*

*4. That the Ld. CIT (Appeals) has erred in law and on facts in not appreciating that the impugned assessment order was bad in law in the absence of issuance of mandatory notice u/ s 143(2) r.w.s 147 of the Act.*

*5. That the Ld. AO has erred in law and on facts in making an addition of Rs. 9,50,000 in a mechanical manner without appreciating the documentary evidences, including sale deed, furnished by the assessee.*

*6. That the Ld. AO has erred in law and on facts by unreasonably rejecting the explanation and documentary evidences furnished by the assessee, without carrying out any verification or enquiry into the material placed before him.*

*7. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in charging interest u/s 234A and 234B of the Income Tax Act, 1961.*

*That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.*

4. During the course of hearing, the Ld. AR submitted that the assessee is an individual and running a small barber shop at Kaithal and for the relevant A.Y. had reported an income of Rs. 1,30,500/-. Subsequently, the case of the assessee was assessed under section 147 on the basis of information that he has deposited a sum of Rs. 17,15,000/- in his bank account. Thereafter the assessment was completed under section 143(3) r.w.s 147 wherein the AO made an addition of Rs. 9,50,000/-.

4.1 It was submitted that the assessee appealed against the said order before the Ld. CIT(A) who has since dismissed the appeal of the assessee ex-parte without any request being made by the assessee and in violation of Vivad Se Vishwas Scheme Act.

4.2 It was submitted that the assessee had initially thought of opting for the Direct Tax Vivad Se Vishwas Scheme by filing Form No. 1 and Form NO. 3 dt. 11/02/2021 on the e-filing portal of Department. However, considering the merit

of his case and also due to financial difficulty, the assessee never made the payment under the scheme and decided to pursue the appeal on merits. It was further submitted that assessee had never requested or intimated to the Ld. CIT(A) that he is going for the settlement scheme and wanted to withdraw the appeal.

4.3 It was submitted that the assessee consistently submitted the reply on merits alongwith evidence with last reply being sent on 02/09/2023. In all his submissions, he has explained that the unexplained deposit of Rs. 9,50,000/- have been made out of sale proceeds from his shop and cash withdrawals made from the bank as evidenced by the registered sale deed dt. 04/05/2011 and the bank statement. However the Ld. CIT(A) suo moto held that the appeal has been withdrawn by the assessee and deemed to be infructuous based on the application filed under Vivad Se Vishwas Scheme on ITBA Portal.

4.4 It was submitted that the Ld. CIT(A) has relied upon Sub-Section 2 of Section 4 of the Direct Tax Vivad Se Vishwas Act to dismiss the appeal of the assessee. It was submitted that at the same time, Ld. CIT(A) has failed to take into consideration the fact that the declaration / Form 3 under the Direct Tax Vivad Se Vishwas Act clearly provides that "In case of non payment of amount payable as per the form, declaration under Form 1 shall be treated as void and shall be deemed never to have been made. Further reference was drawn to the provisions of Sub section 6 of Section 4 of the Direct Tax Vivad Se Vishwas Act as well as Board Circular No. 9/2020 dt. 22/04/2020 wherein the Board has clarifies in response to question no. 49 that once declaration is filed under Vivad Se Vishwas and for financial difficulties wherein the payment is not made by the assessee, the same will render the declaration to be null and void. It was accordingly submitted that the Ld. CIT(A) has erred in dismissing the appeal of the assessee on account of merely filing of the declaration in Form 1 wherein the assessee has not subsequently went ahead and deposit the amount payable

under the said scheme and therefore the declaration so made has to be treated as void and deemed never have been made. It was accordingly submitted that the matter may be set aside to the file of the Ld. CIT(A) to decide the same on merits of the case after providing reasonable opportunity to the assessee.

5. The Ld. DR did not raise any specific objection where the matter is set aside to the file of the Ld. CIT(A).

6. We have heard the rival contentions and perused the material available on record. Admittedly, the assessee had submitted a declaration (Form no. 1) under section 4 of the Direct Tax Vivad Se Vishwas Act, 2020 and thereafter, a Certificate (in Form no. 3) has been issued by the Competent authority under section 5(1) of the said Act determining the amount payable on or before the specified date. It has been further stated in the said certificate that in case of non-payment of the amount payable, the declaration under Form 1 shall be treated as void and shall be deemed never to have been made. Further, sub-section (3) of section (4) of the said Act provides that where the declarant has filed an appeal before the appellate forum, he shall withdraw such appeal after issuance of certificate under section 5(1) and furnish proof of such withdrawal along with intimation of payment to the designated authority under section 5(2) of the Act. In the instant case, the Id AR has stated at the Bar that the assessee had not proceeded with the deposit of the amount so determined by the Competent authority and there has been no intimation of any such deposit to the Competent authority. It has been further stated by him that no such intimation has been submitted before the Id CIT(A) seeking withdrawal of the appeal so filed. In view of the said admitted facts on record, we find that no cognizance of the declaration so made by the assessee and the issuance of certificate by the Competent authority can be taken in absence of assessee taking the necessary steps in terms of deposit of the amount so determined as

payable and thus, the appeal of the assessee has been to be heard on merits. In view of the same, we remit the matter to the file of the Id CIT(A) to decide the same on merits as per law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 25/09/2024

Sd/-

**परेश म. जोशी**  
**(PARESH M. JOSHI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV)**  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar