

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K (SMC)" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4501/MUM/2024  
Assessment Year: 2010-11**

Rajeev Brijbhushan Bhatnagar,  
C/o CA Himanshu Gandhi  
Chartered Accountants 16<sup>th</sup> floor,  
D Wing, Trade World Tower,  
Kamala Mills Compound, Lower  
Parel,  
Mumbai-400013.

**PAN NO. ACFPB 2967 G  
Appellant**

**Vs.** ITO-28(2)(1),  
Tower No. 6, Vashi Railway Station  
Commercial Complex, Vashi,  
Navi Mumbai-400703.

**Respondent**

Assessee by : Mr. Himanshu Gandhi/  
Mr. Brijesh Vyas  
Revenue by : Mr. Tushar Mohite, Sr. DR

Date of Hearing : 14/10/2024  
Date of pronouncement : 22/10/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against order dated 22/07/2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld.



CIT(A)] u/s 154 r.w.s. 250 of the Income-tax Act, 1961 (in short 'the Act') for assessment year 2010-11, raising following grounds:

*1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not reviving the appeal filed against the assessment order which was wrongly closed while passing the order in appeal filed against the penalty order under section 271F which is settled under VSV Scheme 2020. Hence, the appeal filed against the assessment order is closed without passing any order under section 250 on grounds of appeal raised in that appeal and required to be revive and heard on merits*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the validity of reassessment notice issued under section 148 on basis of AIR report is bad in law and required to be quashed*

*3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in making addition of Rs 2271305 on account of Long Term Capital Gain without considering the fact that sale proceeds of flat were utilized for buying another residential property and same is eligible for exemption under section 54 of Income Tax Act*

2. Briefly stated, facts of the case are that against reassessment order passed u/s 147 r.w.s. 144 dated 20.12.2017, the assessee preferred appeal before the Ld. CIT(A). The assessee also preferred appeal against a penalty order dated 26/06/2018 passed u/s 271F of the Act. The appeals against both those orders, *firstly*, order passed u/s 147 and *secondly*, penalty order passed u/s 271F, were pending before the Ld. CIT(A). Meanwhile, the assessee opted for benefit of Vivad Se Vishwas Scheme, 2020 in respect of appeal against the penalty order u/s 271F of the Act, and sought for withdrawal of appeal against order u/s 271F of the Act, but the Ld. CIT(A) by mistake dismissed the appeal of the assessee filed against order u/s 147 as withdrawn under the impression that Vivad Se Vishwas Scheme was opted for appeal against u/s 147 of the Act.



The relevant finding of the Ld. CIT(A) in order dated 30.03.2021 is reproduced as under:

*“The present appeal in this case was filed on 25.08.2019 by the appellant against order dated 20.12.2017 (served on 01.08.2019 as per Form No. 35) of the Assessing Officer passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (henceforth the Act) for the Assessment Year 2010-11. Subsequently, the appeal was migrated to the National Faceless Appeal Centre in terms of Notification No. 76 of 2020 dated 25.09.2020 issued by the CBDT.*

*2.0. It is noted that the appellant opted for the Vivad Se Vishwas Scheme, 2020. Pursuant thereto, the Pr.CIT, Mumbai-27 has certified the full and final payment of Rs. 1250/- as taxes in terms of Form No. 5. In view of the above, the appeal is treated as infructuous as per the Direct Tax Vivad Se Vishwas Act, 2020.”*

2.1 However, on being noticed that the Vivad Se Vishwas Scheme was opted by the assessee in relation to appeal filed against penalty order u/s 271F of the Act and not in relation to appeal filed against order u/s 147 of the Act, the Ld. CIT(A) rectified its order dated 30.03.2021 and treated the appeal against penalty order u/s 271F of the Act as dismissed. The relevant finding of the Ld. CIT(A)'s order dated 30/06/2021 is reproduced as under:

*“In this case, an order u/s 250 of the IT Act, 1961 was passed on 30.03.2021, as the appellant opted for the Vivad Se Vishwas Scheme and the concerned PCIT, Mumbai-27 also issued Form No. 5 u/s 5(2) r.w.s. 6 of the Direct Taxes Vivad Se Vishwas Scheme 2020 dated 25/01/2021.*

*Now it has come to the notice of this office that the section under which the order appealed against was passed had wrongly been mentioned section 147 r.w.s. 144 of the IT Act instead of section 271F of the IT Act, 1961 in the aforesaid appellate order, as the appellant opted the Vivad Se Vishwas Scheme only in respect of penalty order u/s 271F passed by the AO on 26.06.2018 and not in respect of assessment order passed by the AO u/s 147 r.w.s. 144 of the IT Act on 20.12.2017. The mistake apparent from the record is required to be rectified within the meaning of u/s 154 of the IT Act 1961. In the light of above mentioned facts an opportunity notice of hearing for the proceedings u/s 154 of the*



*IT Act 1961 was issued to the Appellant on 25/05/2021 for submission of his reply in the matter on or before 31/05/2021. In response to the notice, the assessee has submitted as under :-*

*" This appeal is wrongly dismissed under VSV. Assessee had opted for VSV for Penalty under section 271F and paid Rs.1250. But instead of closing that appeal your goodself has closed this appeal which is filed against order under section 144 r.w. 147 of income tax act. Therefore, we request your honour to kindly restore this appeal and close appeal which is filed against order under section 271F of Income Tax Act 1961."*

*In view the above facts, the mistake apparent from the record is hereby rectified now. The section under which the order appealed against was passed may be read as section 271F vide order dated 26.06.2018 instead of section 147 r.w.s. 144 of the Act vide order dated 20.12.2017 as mentioned in the order passed u/s 250 of the IT Act on 30.03.2021."*

2.2 In view of the above situation, the assessee vide letter dated 9/9/2023 requested for revival of the appeal against the order u/s 147 Act for deciding on the merit but the Ld. CIT(A) vide impugned order dated 22/07/2024 declined the request on the ground that revival was beyond his purview. The relevant finding of the Ld. CIT(A) is reproduced as under:

**"2. Decision**

*It is seen that the appellant had opted for VsV scheme for penalty levied u/s 271F of the Act and had sought to withdraw the appeal filed against the above penalty. Inadvertently, appeal order was passed on 30.06.2021 against the order passed u/s 147 r.w.s. 144 of the Act. However, a rectification order was passed on the same date rectifying the above mistake. However, as per appellant, the appeal filed against the assessment order has been closed in the system and in his rectification application, the appellant has sought to revive the appeal against the original assessment order.*

*However, it is made clear that the action of reviving a closed appeal is does not falls within the purview of rectification process and therefore, the application is not within the jurisdiction of the undersigned to adjudicate. The appellant may approach the appropriate authority for the same.*

*Therefore, the rectification application is hereby dismissed."*



3. Aggrieved with the above finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. We have heard rival submission of the parties and perused the relevant material on record. In view of the above facts, it is evident that the Ld. CIT(A) by inadvertent mistake adjudicated the appeal of the assessee , which was filed against the order u/s 147 of the Act. However, he rectified the said mistake occurred in order dated 30/03/2021 and substituted word 'the appeal against the order under section 147' by way of word 'levy of the penalty u/s 271F of the Act' . In our opinion, once, the Ld. CIT(A) has rectified his mistake and substituted the word 'order u/s 147 of the Act' with the word 'order u/s 271F of the Act', then, the appeal against the order u/s 147 which was inadvertently dismissed, got revived and thus the Ld. CIT(A) was required to adjudicate the appeal of the assessee in relation to order u/s 147 of the Act on merit. The Ld. CIT(A) has expressed his in ability for the reason that window available on the system of the Department was already closed. In our opinion, this could not be a valid ground for not deciding appeal of the assessee. The mistake was on the part of the Ld. CIT(A) and once he has rectified the mistake, in principle, the appeal against order passed u/s 147 automatically got revived. If the system does not permit the Ld. CIT(A) was required to take appropriate action with the system authorities for making required modification in



system for revival of the appeal . The assessee cannot be made remediless against the order passed by the Assessing Officer and it is the responsibility of the Ld. CIT(A) to adjudicate the relevant appeal of the assessee on merit and pass a reasoned order. In view of the above discussion, we set aside the order of the Ld. CIT(A) on the issue in dispute and restore the matter back to him for deciding the appeal of the assessee filed against order u/s 147 passed by the Assessing Officer.

5. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 22/10/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 22/10/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**