

IN THE INCOME TAX APPELLATE TRIBUNAL
“PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.316/Pat/2024
Assessment Year: 2015-16

Ashi Enterprises.....Appellant

8A, Main Road, Kankarbagh,
Below Pesu Office, Near Sardar
Batter Kankarbagh, Patna-800020.
[PAN: AALFA9444K]

vs.

ITO, Ward-4(1), Patna..... Respondent

Appearances by:

Shri D. v. Pathy, Advocate, appeared on behalf of the appellant.
Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the Respondent.

Date of concluding the hearing : December 18, 2024
Date of pronouncing the order : December 20, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal emanates from the order dated 24.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] passed u/s 250 of the Income Tax Act (hereinafter referred to as the ‘Act’), wherein, the appeal of the assessee was dismissed on the ground that the assessee had opted Direct taxes Vivad Se Viswas scheme and had filed relevant forms under the scheme.

2. At the outset, the ld. AR of the assessee contested the dismissal of the appeal by the ld. CIT(A) arguing that the assessee never opted for the said scheme nor filed any forms in this regard. As such, the dismissal of the appeal by the ld. CIT(A) on this ground alone, is factually incorrect.

3. The background of the case are that the assessment order was passed u/s 143(3) of the Act by making an total addition of Rs.6,15,946.71/- to the income of the assessee. The addition of Rs.6,15,946.71 included (i) Rs.1,35,893.71 as professional fee on the ground that this amount was reflected in the assessee's Form No.26AS was not accounted for in the P&L A/c statement and (ii) Rs.56,682/- as advertisement expenses, (iii) Rs.42,788/- as convenience expenses and Rs.3,80,583/- as salary expenses. The ld. CIT(A) dismissed the appeal on the basis of presumption that the assessee has availed Direct taxes Vivad Se Viswas scheme and filed relevant forms thereupon.

4. The ld. AR stated that the assessee never applied for Direct taxes Vivad Se Viswas scheme and the dismissal of the appeal by the ld. CIT(A) without addressing the merits of the case, is wrong. He further stated that the ld. CIT(A) failed to adjudicate the justification of the addition made by the Assessing Officer, therefore, the matter may be remanded back to the file of the ld. CIT(A) for fresh adjudication upon verification of facts of the case.

5. The ld. DR supported the order of the ld. CIT(A) but did not provide any evidence to establish that the assessee had opted for Direct taxes Vivad Se Viswas scheme.

6. We, after hearing the submissions of the parties and perusing the materials available on record, find that the ld. CIT(A)'s order dismissing the appeal solely on the ground of the misconception that the assessee had opted Direct taxes Vivad Se Viswas scheme is not supported by any evidence. We note that the assessee has categorically denied of filing of any forms under the scheme and the department has failed to provide any contrary evidence. Since, the ld. CIT(A) did not address the case on merit, we deem it necessary to send back the whole issue in the appeal of the assessee to the file of the ld. CIT(A) with a direction to re-examine

the issues afresh on merits after giving reasonable opportunity of being heard to the assessee in order to present its case.

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

Kolkata, the 20th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 20.12.2024.

RS

Copy of the order forwarded to:

1. Ashi Enterprises
2. ITO, Ward-4(1), Patna
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches