

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4626/MUM/2024
(A.Y. 2016-17)**

ITO, 2 nd Floor, Mohan Plaza, Wayale Nagar, Khadakpada Kalyan West, Maharashtra-421301	v/s. बनाम	Rajesh Lakhwani 3 rd Floor, Flat No. 7, Near Goal Maidan, Alfa Medical, Ulhasnagar, Maharashtra-421001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABEPL9468Q		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Smt. Sanyogita Nagpal
Respondent by :	Shri Satyaprakash Singh

Date of Hearing	04.11.2024
Date of Pronouncement	18.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 03.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2016-17.

2. The revenue has raised following grounds of appeal:

“1 On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in passing the appellate order under consideration by not adjudication the re-assessment order u/s 144 r.w.s 147 dated 03.05.2023 for which the present appeal was filed.

2 The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer may be restored

3 The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.”

3. The brief facts of the case are that the assessee had filed original return of income on 28.03.2018 declaring total income of Rs. 7,70,010/-. The assessment was completed vide order dated 27.12.2018 u/s 143(3) after making an addition of Rs. 50,00,000/- on account of unexplained cash deposits in the bank account with Konark Urban Cooperative Bank. The assessee filed an appeal against this order on 24.01.2019. During the pendency of this appeal, the assessee opted for Vivad Se Vishwas scheme, pursuant to which the appeal was treated to be withdrawn and dismissed for statistical purposes vide order dated 19.05.2022. Subsequently, the case was reopened u/s 147 after as information was received regarding deposits in the assessee's bank account with the Axis Bank amounting to Rs. 28,35,57,473/-. The reassessment was finalized vide order u/s 147 r.w.s. 144 r.w.s. 144B dated 03.05.2023 at a total income of Rs. 28,93,27,483/-.

4. Aggrieved with the order, the assessee filed an appeal before Ld. CIT(A) on 16.06.2023. The Ld. CIT(A) erroneously observed that the assessee had opted for Vivad Se Vishwas scheme and wrongly dismissed the appeal with a direction to AO to verify Form No. 4 relating to payment of tax by the assessee.

Aggrieved with this order, the revenue is in appeal before us.

5. We have considered the rival submissions and perused the material placed before us. The Ld. AR has explained that the Ld. CIT(A) made a mistake



in observing that the assessee had opted Vivad Se Vishwas Scheme in respect of the reassessment order dated 28.12.2022, whereas the assessee had filed declaration under Vivad Se Vishwas scheme, 2020 in respect of the original assessment order dated 27.12.2018. In support of its claim copies of Form No. 1, 2, 3, 4, 5 have been furnished. Thus, the Ld. CIT(A) had wrongly dismissed the appeal against the reassessment order.

6. Considering these facts, we restore the case to the Ld. CIT(A) to pass a fresh order on merits. Needless to add, the assessee should be given proper opportunity to being heard.

7. In the result, the appeal of the revenue is allowed for statistical purposes
Order pronounced in the open court on 18.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 18.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

