

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्रीअरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 361/RPR/2025

(निर्धारण वर्ष Assessment Year: 2011-12)

Srinivas Rachiraju, Flat No. C-406, 4 th Floor, Megapolis, RGIP Phase III, Maan, Infotech Park, Hinjawadi, Dist. Pune-411057, Maharashtra	v s	Income Tax Officer, Ward-2(2), Aaykar Bhawan, Civic Centre, Bhilai- 490006, C.G.
PAN: AIFPR8144R		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S. R. Rao, Adv.
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24.06.2025
घोषणा की तारीख / Date of Pronouncement	:	30.06.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal preferred by the assessee is directed against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"], passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 01.04.2021, for the Assessment Year 2011-12, which in turn arises from the assessment order u/s 147 r.w.s. 144 of the Act, dated 05.12.2018, passed by Income Tax Officer-2(2), Bhilai (in short "Ld. AR").

2. The grounds of appeal raised by the assessee assailing the impugned order are extracted as below:

- 1. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals), NFAC has erred in dismissing rectification application u/s 154 of the Income-tax Act, 1961 for restoration of appeal, which was wrongly dismissed holding that appellant has opted for Vivad Se Vishwas Scheme Act, 2020 against assessment order, while Declaration filed under VSVS Act was with respect to Penalty order and not against assessment order.*
- 2. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals), NFAC ought to have decided the appeal against assessment on merits by rectifying his order dismissing the appeal wrongly assuming that Appellant filed declaration under VSVS Act.*
- 3. The impugned order is bad in law and on facts.*
- 4. The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.*

3. Brief facts of the case are that the assessee's case was reopened u/s 147 of the Act and a notice u/s 148 was issued on 09.03.2018 requiring the assessee to furnish his Return of Income within 30 days, however, Return of Income was not filed within the stipulated time. Accordingly, another opportunity was granted by issuance of notice dated 11.08.2018, which was delivered to the assessee through email but the assessee again failed to comply with the said notices. Further, certain more opportunities were provided to the assessee, but he remains silent during the entire assessment proceedings. Ld. AO, therefore, have decided to complete the assessment

under the provisions of section 144 of the Act and, thereby have made certain additions / disallowance as under:

- (i) Salary income of the assessee as per 26AS- Rs.2,50,000/-
- (ii) Payment towards credit cards bills- Rs. 5,04,409/-

In terms of the aforesaid additions, the assessed income of the assessee determined at Rs. 7,54,409/-.

4. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), wherein the appeal of assessee has been dismissed, stating that the assessee had opted for VSVS, 2020. The observations of Ld. CIT(A) while deciding the aforesaid appeal are extracted as under:

It is noted that the appellant opted for the Vivad Se Vishwas Scheme, 2020, vide application dated 22.12.2020. Pursuant thereto, the PCIT, Raipur-1 has clarified that the full and final payment of Rs.2,500/- as taxes in term of Form No. 5 dated 04.03.2021 (Certificate No. 933291130291220 dated 29.12.2020) has been made by the appellant. In view of the above, the appeal is treated as infructuous as per Sub section 2 of Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020.

3. *Accordingly, the appeal is treated as dismissed for statistical purposes.*

5. Dissatisfied with the aforesaid decision of Ld. CIT(A), assessee preferred an appeal before us, which is under consideration in the present matter.

6. At the outset, it is submitted by the Ld. AR before us that the assessee in the present case had not opted for VSVS, 2020. However, for the same assessment year a penalty was imposed upon the assessee u/s 271(1)(b) of the Act for Rs. 2500/-, which was settled by opting for VSVS, 2020, accordingly, a separate appeal filed by the assessee against penalty order was dismissed by the Ld. CIT(A), copy of said order is placed before us, which is extracted hereunder for the sake of complete of facts:



भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / MINISTRY OF FINANCE
आयकर विभाग / INCOME TAX DEPARTMENT
राष्ट्रीय पहचानविहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
दिल्ली / DELHI

To, SRINIVAS RACHIRAJU 6/23 ,GOPAL MARG,NEAR AGARWAL FARMS SFS MANSAROVAR,JAIPUR JAIPUR,JAIPUR 302020 ,Rajasthan India	
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PAN: AIFPR8144R	AY: 2011-12	Dated: 18/03/2021	DIN & Order No : ITBA/NFAC/S/250/2020-21/1031595965(1)
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Order u/s 250 of Income Tax Act,1961

Instituted on 13/11/2019 from the order of ITO 2(2) BHILAI dated 29/05/2019

Appeal No	CIT (A), Raipur- 2/10354/2019-20
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	271(1)(b)
Date of Order under which the order appealed against was passed	29/05/2019
Income/Loss Assessed (in Rs .)	0
Tax/Penalty/Fine/Interest Demanded (in Rs.)	10000
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

The appeal was instituted on 13.11.2019 against the order dated 29.05.2019 passed under section 271(1)(b) of the Income Tax, 1961 by the ITO Ward 2(2) Bhilai for the assessment year 2011-12. Subsequently the appeal was migrated to the National Faceless Appeals Centre in terms of Notification No. 76 of 2020 in S.O.

3296E dated 25.09.2020 from Central Board of Direct Taxes.

2. It is noted that the appellant opted for the Vivad Se Vishwas Scheme, 2020, vide application dated 22.12.2020. Pursuant thereto, the PCIT, Raipur-1 has clarified that the full and final payment of Rs. **2,500/-** as taxes in terms of Form No. 5 dated 04.03.2021 (**Certificate No. 933291130291220 dated 29.12.2020**) has been made by the appellant. In view of the above, the appeal is treated as infructuous as per Sub section 2 of Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020.

3. Accordingly, the appeal is treated as dismissed for statistical purposes.

7. It is further clarified by the Ld. AR that the assessee's opting for VSVS, 2020 to settle the penalty imposed has been misconstrued under wrong impression by the Ld CIT(A), that the appellant had also opted for VSVS, 2020 to settle the quantum additions, accordingly, the appeal for quantum additions was also dismissed. However, the assessee had never opted for VSVS, 2020 towards pending appeal *qua* the quantum additions. It was the submission that the appeal of the assessee has been dismissed under factual misunderstanding. To substantiate this fact, Ld. AR drew our attention to observations of Ld CIT(A) in both the appeals (extracted supra) that the same certificate No. 933291130291220 dated 29.12.2020 for Rs. 2,500/- mentioned in the penalty appeal by the Ld. CIT(A) is noted in the quantum appeal also. On perusal of Ld. CIT(A)'s impugned order, this fact is clearly emerging that the same certificate no. and amount has been cited while dismissing the appeal against the quantum addition, whereas the amount of quantum addition was Rs. 7,54,409/- and no certificate was issued under VSVS, 2020.

Such facts shows that the assessee's application for VSVS, 2020 for penalty addition are misconstrued by the Ld. CIT(A) and the information has been repeated in the quantum appeal also, consequently, the appeal is dismissed under mistaken belief about the facts.

8. Considering the aforesaid facts and circumstances of the present case, it can be safely construed that the appeal of the assessee has been dismissed by Ld. CIT(A), based on misreading of facts, therefore, it would be appropriate to restore this matter back to the file for Ld. CIT(A) for reconsideration, to which both the parties herein had fairly agreed to.

9. Accordingly, the impugned order of Ld. CIT(A) dated 01.04.2021 passed against the order u/s 147 r.w.s. 144 dated 05.12.2018 is set aside, with directions to revisit the matter and adjudicate *denovo*.

10. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings, wherein the assessee shall cooperate and assist proactively, failing which the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

11. In result, appeal of the assessee is **allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 30/06/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 30/06/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Srinivas Rachiraju
2. प्रत्यर्थी/ The Respondent- ITO, Ward-2(2), Bhilai
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR,
ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur