

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1255/MUM/2015

Assessment Year : 2009-10

Mahendra Jivraj Jain HUF,
29, Manipar House, 1st Floor,
Parsi Wada Lane,
Mumbai 400 004.
PAN : AADHJ7669H
(Appellant)

Vs Income Tax Officer – 15(1)(1),
. Mumbai.

(Respondent)

ITA No. 363/MUM/2015

Assessment Year : 2009-10

Jeevraj U Jain HUF,
Flat No.27, Khemraj Bhavan,
7th Khetwadi Lane,
Khetwadi Back Road,
Mumbai 400 004.
PAN : AADHJ8990B
(Appellant)

Vs Income Tax Officer – 15(1)(1),
. Mumbai.

(Respondent)

Appellant by

: Shri Sanjiv M Shah

Revenue by

: Dr Sunil Deshpande

Date of Hearing :1.12.2020	Date of Pronouncement : 04.12.2020
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ORDER

These appeals by two assesseees belonging to the same group are directed against respective orders of learned CIT(A)-26, Mumbai [in short 'the CIT(A)] dated for Assessment Year 2009-10.

2. The grounds of appeal relate to addition on account of bogus capital gain.

3. At the outset, it is noted that by a written submission it is stated that assesseees have opted for solution of dispute under the Vivad Se Vishwas Scheme. He further

states that Form 1 and 2 have already filed and a copies of the same are produced before us.

4. We note that in a similar situation, Hon'ble Madras High Court has in an appeal in the case of M/s. Nannusamy Mohan (HUF) vs ACIT vide order dated 16.10.2020 held as under :-

"3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No. I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished

are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 20.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form."

Accordingly, respectfully following the above and noting the fact that the assesseees are opting for resolution of dispute under *Vivad Se Vishwas Scheme*, we treat these appeals being disposed off as withdrawn.

5. The assesseees are given liberty for restoration of appeals in accordance with paragraph 7 of the Hon'ble High Court order as above. Both the parties fairly agreed to the above proposition.

6. In the result, these appeals are disposed of by treating the same as withdrawn.
Order pronounced in the open court on 1st December, 2020.

Sd/-
(PAWAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 4th December, 2020

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai