IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"I" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT AND SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NOs. 4293, 4294 & 7389/MUM/2014
(A.Ys: 2008-09, 2009-10 & 2010-11)

HBO Pacific Partners V.O.F C/o PricewaterhouseCoopers Pvt. Ltd., PwC House, Plot 18/A Guru Nanak Road (Station Road) Bandra (W), Mumbai – 400050 **PAN: AADFH6451P**	*v.*	Dy. Director of Income Tax – (IT) Range 3(1) Scindia House, N.M. Road Ballard Estate, Mumbai – 400038
(Appellant)		**(Respondent)**

ITA NO. 52/MUM/2017 (A.Y: 2011-12)

HBO Pacific Partners V.O.F C/o PricewaterhouseCoopers Pvt. Ltd., PwC House, Plot 18/A Guru Nanak Road (Station Road) Bandra (W), Mumbai – 400050 **PAN: AADFH6451P**	*v.*	Dy. Director of Income Tax – (IT) Range-2(2)(2) Scindia House, N.M. Road Ballard Estate, Mumbai – 400038
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Kiresh Shivkar**
Department by	**:**	**Shri Vijaykumar G Subramanyam**
Date of Hearing	**:**	**30.12.2020**
Date of Pronouncement	**:**	**30.12.2020**

O R D E R

PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)–10, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.02.2014 for the A.Ys.2008-09, 2009-10 and dated 16.09.2014 for the A.Y. 2010-11 and order of the Learned Commissioner of Income Tax (Appeals)–56, Mumbai dated 29.09.2016 for the A.Y. 2011-12.

2. Assessee through its authorized representative sent a mail date 24.12.2020 and the contents of the mail are as under: -

> "*Hon'ble Members*
>
> *The appeals for subject assessment years are scheduled for hearing before the "I" Bench of the Hon'ble Income Tax Appellate Tribunal, Mumbai on 30 December, 2020.*
>
> *In this regard, we most humbly submit that the appellant is considering to opt for the scheme under Direct Tax Vivad Se Vishwas Act, 2020 for the subject assessment years. In view of the above, we request Your Honours to kindly grant us an adjournment in respect of the subject appeals.*
>
> *We trust Your Honours will accede to our request and oblige*."

3. On a perusal of the above mail sent by the assessee through its authorized representative it is noticed that assessee is in the process of

opting for Vivad-Se-Vishwas Scheme. Therefore, since assessee is contemplating to settle litigation under Vivaad se Vishwas scheme no purpose would serve keeping these appeals pending.

4. The Hon'ble Madras High Court in the case of M/s. Nannusamy Mohan (HUF) *v.* ACIT in T.C.A. No. 372 of 2020 dated 16.10.2020 on an appeal by the assessee u/s. 260A of the Act, held as under: -

> *"This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 03.12.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) in I.T.A.No.2576/CHNY/2017 for the Assessment Year 2011-12. The appeal is admitted on the following Substantial Questions of Law:*
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> > *"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was perverse in not considering all the grounds raised in Cross Objection, viz. (1) claim of exemption in respect of sale of agricultural land (2) claim of deduction by way of cost inflation Index and cost of plot of land purchased in computing deduction u/s.54F of Income Tax Act?*
> >
> > *2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the disallowance of cost of improvement in providing Modern Kitchen in the flats purchased?"*
>
> *2. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing counsel and M/s.K.G.Usha Rani, learned counsel for the respondent/Revenue.*
>
> *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."

5. Following the above decision of the Hon'ble Madras High Court, these appeals are disposed off accordingly, with liberty to the assessee to file a miscellaneous application, in the event of either the assessee not opting for Vivaad se Vishwas scheme as contemplated by it before the due date of the scheme in operation or in the event of the department not accepting the applications made by the assessee under the said scheme, the appeals of the assessee shall be recalled by the Tribunal and restored for adjudication on merits. It is further made clear that if the assessee seeks to restore the appeals in the event of assessee's declaration made under Vivaad se Vishwas scheme is not accepted by the Revenue, the Registry shall not insist for filing of application for condonation of delay, if the Miscellaneous Application for recalling the order is filed beyond time on account of delayed communication of outcome under Vivaad se Vishwas scheme in view of the decision of the

Hon'ble Madras High Court in the case of M/s. Nannusamy Mohan (HUF) *v.* ACIT in T.C.A. No. 372 of 2020 dated 16.10.2020. With these observations these appeals are disposed off accordingly.

6. In the result, appeals of the assessee are dismissed as observed above.

Order pronounced in the virtual court on 30.12.2020.

Sd/-	Sd/-
(PRAMOD KUMAR)	**(C.N. PRASAD)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Mumbai / Dated 30/12/2020
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum