

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 12932 OF 2021**

Stride Multitrade Pvt. Ltd.  
Office No. 8B, Giriraj, Ground floor,  
Sant Tukaram Road,  
Iron Market Carnac Bunder,  
Mumbai - 400 009.  
P.A.No.: AAGCS 5768N

..Petitioner

Vs.

1. Asstt. Commissioner of Income Tax  
Circle -13(2)(2)  
Room No: 146, 1st Flr.,  
Aayakar Bhavan,  
Maharishi Karve Road,  
Mumbai - 400020.

2. Pr. Commissioner of Income-tax-5  
Mumbai, Aayakar Bhavan,  
Maharishi Karve Road,  
Mumbai - 400020.

3. Commissioner of Income-tax (Appeals)  
National Faceless Appeal Centre  
New Delhi.

4. The Central Board of Direct Taxes,  
Through the Chairperson,  
Department of Revenue,

Government of India,  
North Block, New Delhi-110 001.

5. Union of India  
Through its Finance Secretary  
Department of Revenue,  
Ministry of Finance, 3rd Flr.,  
Jeevan Deep Building,  
Sansad Marg,  
New Delhi - 100 001.

..Respondents

Mr.Ajay R. Singh i/b Mr.Sameer G.Dalal, for Petitioner.  
Mr.Akhileshwar Sharma, for Respondents – Revenue.

**CORAM : K.R.SHRIRAM, J.  
M. S. KARNIK, J.**

**DATE: SEPTEMBER 21, 2021**


**ORAL JUDGMENT (PER K.R.SHRIRAM, J.) :**

1. Petitioner is impugning the order of rejection dated February 26, 2021 passed by respondent no.2 rejecting petitioner's application /declaration/ undertaking filed under the provisions of Direct Tax Vivad Se Vishwas Act, 2020 ('VSV' Act).

2. Petitioner had filed its original return of income tax for Assessment Year 2017-18 on October 30, 2017 declaring total income

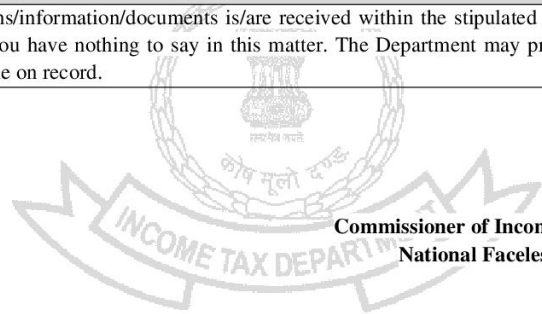
at loss of Rs.23,92,61,385/-. Petitioner's case was selected for scrutiny and respondent no.1 passed an assessment order dated December 19, 2019 under Section 144 of the Income Tax Act, 1961 (the 'Act'). Aggrieved by this assessment order, petitioner filed an appeal before respondent no.3 under Section 246A of the Act on February 6, 2020. Mr.Singh stated that the time limit for filing the appeal under Section 246A of the Act expired on January 18, 2020 but the appeal was filed on February 6, 2020 along with an application for condonation of delay. The delay was of 19 days. Mr.Singh further stated that on January 24, 2020 itself, petitioner had paid the filing fees for the appeal.

3. On January 20, 2021, petitioner received a communication from Commissioner of Income Tax (Appeals), National Faceless Appeal Centre enquiring with the petitioner whether they would wish to opt for Vivad Se Vishwas Scheme 2020, or they would like to contest the appeal. For better effect and reference, the said letter is scanned and reproduced below.

 <p>भारत सरकार / <b>GOVERNMENT OF INDIA</b>          वित्त मंत्रालय / <b>MINISTRY OF FINANCE</b>          आयकर विभाग / <b>INCOME TAX DEPARTMENT</b>          राष्ट्रीय पत्रचान विहीन अपील केन्द्र / <b>NATIONAL FACELESS APPEAL CENTRE (NFAC)</b>          दिल्ली / <b>DELHI</b></p>								
<b>Notice under section 250 of the Income-tax Act, 1961</b>								
<table border="1"> <tr> <td>AAGCS5768N</td> <td><b>DIN:</b> ITBA/NFAC/F/APL_1/2020-21/1029913525(1)</td> </tr> <tr> <td>STRIDE MULTITRADE PVT LTD</td> <td><b>Date:</b> 20/01/2021</td> </tr> <tr> <td>OFFICE NO. 8B GIRIRAJ, GROUND FLOOR                  ,SANT TUKARAM ROAD, IRON MARKET                  CARNAC BUNDER, MUMBAI                  MUMBAI 400009 ,Maharashtra                  India</td> <td><b>Appeal No:</b>CIT (A) 21, Mumbai/10407/2019-20</td> </tr> <tr> <td></td> <td><b>Assessment Year:</b>2017-18</td> </tr> </table>	AAGCS5768N	<b>DIN:</b> ITBA/NFAC/F/APL_1/2020-21/1029913525(1)	STRIDE MULTITRADE PVT LTD	<b>Date:</b> 20/01/2021	OFFICE NO. 8B GIRIRAJ, GROUND FLOOR ,SANT TUKARAM ROAD, IRON MARKET CARNAC BUNDER, MUMBAI MUMBAI 400009 ,Maharashtra India	<b>Appeal No:</b> CIT (A) 21, Mumbai/10407/2019-20		<b>Assessment Year:</b> 2017-18
AAGCS5768N	<b>DIN:</b> ITBA/NFAC/F/APL_1/2020-21/1029913525(1)							
STRIDE MULTITRADE PVT LTD	<b>Date:</b> 20/01/2021							
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	<b>Assessment Year:</b> 2017-18							
<b>Why are you getting this communication?</b>								
<p>Dear Appellant,</p> <p>This communication is in connection with the above referred appeal preferred by you against the order under section 144 of the Income-tax Act,1961 passed by <b>CIRCLE 13(2)(2), MUMBAI</b> vide DIN No. <b>1022695634(1)</b> on <b>19/12/2019</b> for the Assessment Year <b>2017-18</b>.</p>								
<b>What you need to do?</b>								
<p>If you want to opt for <b>Vivad Se Vishwas Scheme 2020</b>, please go to e-filing portal by following the path mentioned below:</p> <p>Login with user credentials--&gt; Vivad Se Vishwas (last tab)</p> <p style="text-align: center;">OR</p> <p>If you have already applied for <b>Vivad Se Vishwas Scheme 2020</b>, this communication is issued to expedite the settlement of appeal in your VSVS case. In order to have proper linking of relevant documents in the electronic appeal docket for future reference it is requested that you may upload your request for withdrawal of appeal through your registered e-filing account (and provide the Appeal No., Form-1, Form 3 and Form-5, if issued) electronically in the path mentioned below:</p> <p>Login with user credentials to <a href="http://www.incometaxindiaefiling.gov.in">www.incometaxindiaefiling.gov.in</a> --&gt; e-Proceeding</p> <p style="text-align: center;">OR</p> <p>If you are not opting for Vivad Se Vishwas Scheme 2020, then in support of your <i>Grounds of Appeal</i>, you are requested to furnish or cause to be furnished Ground-wise written submission, along with supporting documentary evidence(s) and/or documents as specified in the attached Annexure, if any, and if not already submitted electronically on the E-filing portal.</p>								
<b>How will you produce the submission and documents?</b>								

AAGCS5768N- STRIDE MULTITRADE PVT LTD  
A.Y. 2017-18 - CIT (A) 21, Mumbai/10407/2019-20  
ITBA/NFAC/F/APL\_1/2020-21/1029913525(1)

<p>You may furnish or cause to be furnished the above written submission(s) and documents electronically in 'E-proceedings' facility through your account in e-Filing Website (<a href="http://www.incometaxindiaefiling.gov.in">www.incometaxindiaefiling.gov.in</a>).</p>
<p><b>What steps should you taken for furnishing the written submission(s) and documents(s) electronically?</b></p>
<p>You may refer to the Help Guide available at following path at e-filing portal for step-by-step instructions for furnishing the written submission(s) and documents(s) electronically.</p> <p><b>Navigation Path:</b> e-filing Portal Home (<a href="https://www.incometaxindiaefiling.gov.in">https://www.incometaxindiaefiling.gov.in</a>)--&gt;<b>Help</b>--&gt;<b>General Help</b> --&gt;<b>e-proceeding-Plan for Paperless Proceeding</b></p>
<p><b>Is there any time limit involved?</b></p>
<p>The above written submissions may please be furnished on or before <b>04/02/2021</b>.</p>
<p><b>What if we do not hear from you?</b></p>
<p>If no submissions/information/documents is/are received within the stipulated time period, it will be presumed that you have nothing to say in this matter. The Department may proceed ahead based on material available on record.</p>



**Yours faithfully,**

**Commissioner of Income Tax (Appeals)  
National Faceless Appeal Centre**

4. Petitioner has been told to furnish the ground-wise written submission in support of petitioner's grounds of appeal along with supporting documents and evidences if the petitioner was not opting for VSV Scheme, 2020. In our view, since this communication has come from Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) is asking the petitioner to furnish ground-wise written submission on grounds of appeal, it would mean that condonation of delay application has been allowed by Commissioner of Income Tax (Appeals). Therefore for respondent no.2 to say that there is no order condoning the delay and hence, the application/ declaration of petitioner under the VSV Act is rejected, is incorrect.

5. Moreover, Section 2(1)(a)(i) of the VSV Act provides for a person in whose case an appeal or a writ petition or special leave petition has been filed either by himself or by income tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date is entitled to make a declaration under the Act. The specified date under Section 2(1)(a)(n) of the VSV Act is January 31, 2020. The time to file

declaration/undertaking under VSV Act was January 31, 2021. Petitioner has admittedly made its declaration in Form 1 on January 21, 2021, i.e., within the prescribed period.

6. The Central Board of Direct Taxes issued a Circular dated December 4, 2020 in which question 59 and answer thereto reads as under :-

*"Q.59. Whether the taxpayer in whose case the time limit for filing of appeal has expired before 31st Jan 2020 but an application for condonation of delay has been filed is eligible?"*

*Answer : If the time limit for filing appeal expired during the period from 1st April 2019 to 31st Jan, 2020 (both dates included in the period), and the application for condonation is filed before the date of issue of this circular, and appeal is admitted by the appellate authority before the date of filing of the declaration, such appeal will be deemed to be pending as on 31st Jan 2020."*

7. Therefore, where the time limit for filing of appeal has expired before January 31, 2020 but an appeal with an application for condonation is filed before the date of the Circular, i.e., December 4, 2020, such appeal will be deemed to be pending as on January 31, 2020. In the answer to question 59 expression used is "an appeal is admitted by the appellate authority before the date of filing of the declaration". This has been dealt with by a Division Bench of Delhi High Court in the case of **Shyam Sunder Sethi Vs. PR. Commissioner**

of Income Tax-10 and ors. in Writ Petition (C) 2291/2021 and CM APPL. 6677/2021 dated 3rd March, 2021 wherein it is held that an appeal would be "pending" in the context of Section 2(1)(a) of the VSV Act when it is first filed till its disposal and the Act does not stipulate that the appeal should be admitted before the specified date, it only adverts to its pendency. The Court opined that the respondent could not have wrongly equated admission of the appeal with pendency. The Court, therefore, held that the appeal would be pending as soon as it is filed and up until such time it is adjudicated upon and a decision is taken qua the same. We respectfully agree with the view expressed by the Division Bench in **Shyam Sunder Sethi** (*supra*).

8. In the case at hand, the time limit to file appeal expired on January 18, 2020, and the condonation of delay application was filed on February 6, 2020, before December 4, 2020, the date of the Circular, the appeal would be pending as required under the VSV Act. In any event, the Commissioner of Income Tax (Appeals) himself has addressed a letter dated January 20, 2021 asking the petitioner to furnish ground-wise submissions on the grounds of appeal if petitioner was not opting for VSV Scheme, 2020. This itself would



mean the delay also has been condoned.

9. In our view, order of rejection dated February 26, 2021 is bad in law and is accordingly set aside. Respondent no.2 is directed to process the forms filed by petitioner under the provisions of VSV Act.

10. Writ Petition is disposed accordingly with no order as to costs.

(M.S. KARNIK, J.)

(K.R.SHRIRAM, J.)