

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**M.A. No. 147/Mum./2022**

**IN**

**ITA No. 4573/Mum./2018**  
(Assessment Year : 2012-13)

Sanjay Subhashchand Gupta  
3<sup>rd</sup> Floor, Atul Baug, Near Saraswat  
Co-operative Bank, Syndicate, Kalyan (W)  
PAN – AAXPG1576G

..... Applicant

v/s

Asstt. Commissioner of Income Tax  
Circle-2, Kalyan

..... Respondent

**ITA no.4573/Mum./2018**  
(Assessment Year : 2012-13)

Sanjay Subhashchand Gupta  
3<sup>rd</sup> Floor, Atul Baug, Near Saraswat  
Co-operative Bank, Syndicate, Kalyan (W)  
PAN – AAXPG1576G

..... Applicant

v/s

Asstt. Commissioner of Income Tax  
Circle-2, Kalyan

..... Respondent

Assessee by : Shri Satya Prakash Singh, C.A.  
Revenue by : Shri Chetan Kacha, Sr. A.R.

Date of Hearing – 19.07.2022

Date of Order – 04/08/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present Miscellaneous Application has been filed by the assessee against the ex-parte order dated 25/04/2022, passed under section 254(1) of the Income Tax Act, 1961 ("*the Act*") by the Co-ordinate Bench.

2. In the present Miscellaneous Application, the learned Authorised Representative ("*the learned A.R.*") submitted that the assessee on 30/03/2021, filed a letter before the Tribunal seeking withdrawal of its appeal, as the assessee had opted for VSV Scheme (Viwad Se Vishwas Scheme, 2020). The learned A.R. further submitted that since there was no representation on behalf of the assessee, therefore, the aforesaid letter was not brought to the attention of the Co-ordinate Bench of the Tribunal and thus, was not taken into consideration, while dismissing the assessee's appeal. The learned A.R. referred to the aforesaid letter dated 30/03/2021, which is annexed with the present Miscellaneous Application.

3. On the other hand, the learned Departmental Representative did not object to the fact that the tax dispute pertaining to the year under consideration has been settled under VSV Scheme.

4. Having considered the submissions made by the learned Representative of both the sides, we find that the assessee had filed an application dated 30/03/2021 before the Tribunal seeking withdrawal of its

appeal, as the assessee had opted for settlement of its tax dispute for the assessment year 2012–13 under the VSV Scheme. The acknowledged copy of the said application has been placed on record. We find that the aforesaid aspect was not brought to the notice of the Co-ordinate Bench of the Tribunal when the appeal was listed for hearing and, therefore, the order under section 254(1) of the Act was passed ex-parte deciding the appeal on merits. Since the tax dispute for the year under consideration has been settled under VSV Scheme, therefore, it is not open to the assessee to pursue the legal remedy of appeal as well. In view of the above, we deem it fit and proper to recall the order dated 25/04/2022, passed in appeal being ITA no.4573/ Mum./2018.

5. With the consent of both the parties, the corresponding appeal being ITA no.4573/Mum./2018, was taken up for hearing. In view of the aforesaid letter dated 30/03/2021, the only aspect which needs consideration is the request of the assessee seeking withdrawal of its appeal.

6. In view of the submissions of the learned A.R. that the assessee has made full and final settlement of tax arrears for the assessment year under consideration and tax dispute has been settled under VSV Scheme, we accept the request of the assessee for withdrawal of the appeal for the assessment year 2012–13.

7. In the result, Miscellaneous Application filed by the assessee is allowed, while the appeal filed by the assessee is dismissed as withdrawn.

Order pronounced in the open court on 04/08/2022

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 04/08/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai