

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

M.A. No. 43/Hyd/2021 (arising out of ITA No. 339/H/2019 Assessment Year: 2014-15)		
Vijaya Durga Estates Pvt. Ltd., Hyderabad. PAN - AABCV 1662 P (Appellant)	Vs.	Income-tax Officer, Ward - 17(4), Hyderabad. (Respondent)
Assessee by:	Shri A.V. Raghram	
Revenue by:	Shri V. Godesi	
Date of hearing:	16/07/2021	
Date of pronouncement:	19/07/2021	

ORDER

PER L.P. SAHU, A.M.:

This Miscellaneous Application filed by the assessee arises out of the order of ITAT "A" Bench, Hyderabad Benches, Hyderabad, in ITA No. 339/Hyd/2019 dated 25/03/2021, dismissing the appeal under VSVS Scheme.

2. In the M.A. the assessee stated as under:

"1. The Hon'ble Tribunal vide order dated 25.03.2021 was pleased to dismiss the appeal of the appellant as withdrawn

under Vivad Se Vishwas Scheme. While doing so the Hon'ble Tribunal in paragraphs 3 and 4 has observed as under:

"3. At the outset, Ld. AR submitted before us that the assessee desires to avail 'Vivad Se Viiswas' Scheme. He further submitted that the assessee could not file Form No.1 & 2 due to paucity of time, however he assured the Bench that the Form No.1 & 2 shall be filed' shortly"

"4. The Ld. DR submitted that if the assessee desires to avail the Vivad Se Vishwas Scheme, 2020 the Revenue has no objection".

2. The Hon'ble Tribunal while observing as above relied on the order passed by the Hon'ble High Court of Madras in the case of DCIT Vs. Mis. Keyaram Hotels P Ltd., in T.C.A. No.694 of 2019, dt.13.10.2020.

3. It is submitted that the above observations are incorrect as no such request for withdrawal was made in the above appeal. Further, the appeal is filed against the order passed by the Pr. CIT - 5, Hyderabad u/s.263 of the Income Tax Act, 1961 (hereinafter 'the Act) but the Hon'ble Tribunal in paragraph no.1 by inadvertence noted that the . appeal is filed against the order passed by the CIT(A)-5, Hyderabad order dt.16.11.2018 involving proceedings u/ s.144 of the Act.

4. It is submitted that, except for the observation of the Hon'ble Tribunal at paragraph no.2, with respect to the delay in filing the appeal before the Hon'ble Tribunal, the rest of the discussion by the Hon'ble Tribunal in the order dt.25.03.2021 does not pertain to the appellant.

5. It is submitted that in the course of hearing the Hon'ble Tribunal indicated that the issue dealt by the Pr.CIT-5, Hyderabad in his order ix] s.263 of the Act is revenue neutral and therefore there is no prejudice to the interest of Revenue which is the essential requirement for exercising the power under section 263 of the Act, and consequently order impugned has to be quashed. But in the order Hon'ble Tribunal observed that the appellant desires to avail 'Vivad Se Vishwas Scheme' and has accordingly dismissed the appeal of the appellant as withdrawn. It is submitted that

the findings of the Hon'ble Tribunal are not based on any material placed before it, nor the same flow from the facts of the case.

In view of the above, the Hon'ble Tribunal may kindly rectify the above errors and allow the appeal of the Appellant as indicated during the course of hearing of appeal, and pass such other order as the Hon'ble Tribunal deems fit and proper in the interest of justice."

3. Referring to the above factual background, Ld. AR requested for recalling the order to pass an appropriate order in view of the submissions made in the MA cited supra.

4. We have considered the submissions of the parties and perused the material on record. We are inclined to recall our order dated 25/03/2021 passed in ITA No.339/Hyd/2019 and post the appeal for hearing on 05/10/2021. As the aforesaid date of hearing of appeal was announced in the open court in presence of both the counsels, no separate notice of hearing is required to be issued to the parties.

5. In the result, the Miscellaneous Application filed by the assessee is allowed.

Pronounced in the open court on 19th July, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 19th July, 2021

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Copy to:-

1	<i>M/s Vijaya Durga Estates Pvt. Ltd., 4-1-6/1, Block - A, Eden Bagh Road, Ramkoti, Hyderabad - 01</i>
2	<i>ITO, Ward - 17(4), Signature Towers, Opp. Botanical Garden, Kondapur, Hyderabad - 84</i>
3	<i>CIT(A) -5, Hyderabad</i>
4	<i>Add. CIT, Range - 17, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad</i>
6	<i>Guard File.</i>

	Description	Date	Intls	
1.	Draft dictated on			Sr.P.S.
2.	Draft placed before author			Sr.P.S
3	Draft proposed & placed before the second Member			
4	Draft discussed/approved by second Member			
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S.
6.	Kept for pronouncement on			Sr.P.S.
7.	File sent to the Bench Clerk			Sr.P.S.
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			