

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

आयकर अपीलिय अधीकरण, न्यायपीठ "C" कोलकाता,

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER****ITA No.265/Kol/2022
Assessment Year: 2012-13**

M/s. NSI (India) Ltd., Beltala, Chamrail, Howrah- 711114, West Bengal. (PAN: AAACN9225B)	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Kolkata.
(Appellant)		(Respondent)

Present for:Appellant by : Shri Piyush Lakhotia, Advocate
Respondent by : Shri G. Hukugha Sema, CITDate of Hearing : 11.01.2023
Date of Pronouncement : 17.01.2023**ORDER****PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2021-22/1040894101(1) dated 16.03.2022 passed against the assessment order by DCIT, Circle-3(1), Kolkata u/s. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 18.12.2019.

- Shri Piyush Lakhotia, Advocate appeared for the assessee and G. Hukugha Sema, CIT appeared on behalf of the revenue.
- Grounds taken by the assessee are reproduced as under:

“1. For that the Ld. CIT(A) erred in dismissing the appeal when the assessee has already opted for Vivad Se Vishwas Scheme, the appeal was withdrawn and the dispute was settled.

2. for that the action of the CIT(A) in confirming the addition made by AO may kindly be deleted and relief be provided to the assessee.”

4. Brief facts of the case are that assessee had opted for Vivad Se Vishwas Scheme and had withdrawn its appeal which was pending before the Ld. CIT(A). Assessee had made a submission on 19.03.2021 before the Ld. CIT(A) vide Acknowledgment No. 19032114497409 wherein the response submitted by it stated that assessee is withdrawing its appeal. Response submitted by the assessee before the Ld. CIT(A) is extracted as under:

“Good Evening Sir. Greetings from NSI India Limited Subject - Withdrawal of appeal. Appellant participated under Vivad Se Viswas Scheme and Filed Form 1 and 2 on 30.11.2020. The same had been accepted and the Learned PCIT-I, Kolkata has Issued Form 3 on 04.02.2021 in this regard. Both Forms arc enclosed for your perusal. Accordingly, appellant is withdrawing this appeal. In view of above, you are requested to close the proceedings and issue a confirmation letter in this regard, if any, at your earliest. With regards. NSI India Ltd.”

5. Ld. Counsel submitted that without considering this response which was furnished in the course of first appellate proceeding, Ld. CIT(A) proceeded to dismiss the appeal of the assessee by passing the order dated 16.03.2022 which compelled the assessee for filing the present appeal before the Tribunal. Ld. Counsel also referred to Form 5 issued as “*order for full and final settlement of tax arrear*” u/s. 5(2) read with section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 (3 of 2020) The Direct Tax Vivad Se Vishwas Rules, 2020 dated 22.12.2021.

6. Ld. Counsel thus, contended that department has accepted its application under the Vivad Se Vishwas Scheme since assessee has paid the tax towards full and final settlement of tax arrears. Considering the facts on record as stated above wherein assessee has

deposited the amount of tax arrear as full and final settlement which has been accepted by the department by issuing Form 5 referred above, we allow the ground no. 1 of the assessee to hold that the appeal is withdrawn since the dispute is settled in the Direct Tax Vivad Se Vishwas Act, 2020. Accordingly, the impugned order of Ld. CIT(A) is set aside.

7. In the result, the appeal of the assessee is allowed as withdrawn under the Vivad Se Vishwas Scheme.

Order is pronounced in the open court on 17th January, 2023.

Sd/-
(Rajpal Yadav)
Vide President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17th January, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata