

**THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**

**SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**I.T.A. No. 271/Mum/2024**

**(A.Y. 2014-15)**

Orbit Financial Capital 7, Mehta Mahal, 15 Matthew Road, Opera House, Charni Road, Mumbai - 400004	Vs.	ACIT-Circle 19(2), Room No. 207, 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai -400007
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AACFO3151E</b>		

Assessee by	Ms. Kinjal Bhuta
Department by	Shri H.M. Bhatt (Sr.Dr.)
Date of Hearing	08.05.2024
Date of Pronouncement	14.05.2024

**ORDER**

**PER RENU JAUHRI :-**

This appeal is filed by the appellant against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-30/ National Faceless Appeal Centre, Delhi (NFAC) dated 03/01/2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the relevant Assessment Year [A.Y.] 2014-15. The assessee has raised following grounds of appeal:

*“1. The Ld. Commissioner of Income Tax Appeal-NFAC erred in dismissing the appeal of the appellant and considered the appeal as deemed to be withdrawn by misinterpreting the provisions of the Direct Tax Vivad Se Vishwas Scheme Act, 2020.*

*2. The Ld. Commissioner of Income Tax Appeal-NFAC erred in dismissing the appeal and not deciding the appellant's case on merits. That the disallowance of genuine business loss of Rs. 44,90,342/- made by the Assessing Officer is unwarranted and ought to be quashed.*

*3. The Ld. Commissioner of Income Tax Appeal - NFAC erred in dismissing the appeal and not deciding the appellant's case on merits. That the Assessing Officer erred in adding Rs. 2,50,399/- under section 69C of the Income Tax Act, 1961.*

*4. All of the above grounds are without prejudice to each other. The appellant craves leave to add, amend, alter, or delete any of the above grounds of appeal.”*

2. Brief facts of the case are that the return of income was filed by the appellant for A.Y. 2014-15 on 20/09/2014 declaring total income of Rs.6,22,68,870/-. The assessment was completed u/s. 143(3) of the Act on 29/12/2016 at assessed income of Rs. 6,70,09,610/- after making disallowance of long term capital loss.

3. The AO was in receipt of information from Investigation Wing regarding some entry operators/exit providers. M/s. Global Infartech was one such company found to be providing accommodation entries. The appellant has shown trading in the shares of this company and declared Long-term Capital Loss of Rs. 44,90,342/-. The AO besides disallowing Rs.44,90,342/-on account of bogus capital loss, has also added incidental expenses of Rs. 2,50,399/- calculated at the rate of 2%.

4. Aggrieved by the assessment order, appeal was filed by the assessee before the Ld. CIT(A) on 17/01/2017, which was

subsequently transferred to the NFAC. The appellant opted for VSV scheme by filing Form No. 1 & 2 on 25/01/2021.

5. Form No. 3 was issued by the Designated authority on 01/09/2021. However, the appellant chose not to pursue this application and did not submit Form no. 4. As the appellant did not make any payment of tax as per Form 3 and consequently no intimation was filed in Form 4, the appeal filed before the Ld. CIT(A) was to be revived. However, CIT(A) vide order dated 17/09/2024 dismissed the appeal after holding as under :

*“(xv).The appellant in their submission, sought for personal hearing through video conference. However the appeal itself is not maintainable and deemed to have been withdrawn on 01-09-2021, the date on which Designated Authority issued Form-3. Hence, this request is devoid of any merit as CIT(A) shall not proceed to decide any issue relating to tax arrear mentioned in the declaration in respect of which an order has been made u/s 5(1) of VSV Act 2020 by designated authority*

*8. Hence, the appeal is dismissed as deemed to have been withdrawn on 01-09- 2021.”*

6. Aggrieved with the above order, the appellant has filed present appeal and has submitted the following chronology.

<i>Particulars</i>	<i>Date</i>
<i>Appeal was filed before CIT(A)(A)-NFAC</i>	<i>17.01.2017</i>
<i>Hearing notice u/s. 250 was issued, giving the appellant an option to opt for Vivads Se Vishwas Scheme, 2020</i>	<i>31.12.2020</i>
<i>Hearing notice u/s 250 was issued, giving the appellant an option to opt for Vivad se Vishwas Scheme, 2020</i>	<i>22.01.2021</i>
<i>The appellant filed Form 1 &amp; 2 under Vivad se Vishwas Scheme</i>	<i>22.01.2021</i>
<i>Form 1&amp; 2 was revised by the appellant to rectify the mistake committed while calculating the total amount payable under the scheme.</i>	<i>25.01.2021</i>
<i>Form 3 was issued by PCIT, Mumbai-19. The total amount payable was enhanced from ₹ 14,07,630/- (as per revised Form 1 &amp;2) to ₹ 20,99,996/-.</i>	<i>08.03.2021</i>
<i>Hearing notice u/s. 250 asking the appellant to furnish written submission in support of the grounds of appeal.</i>	<i>12.01.2022</i>
<i>Detailed submissions was made by the appellant and</i>	<i>11.02.2022</i>

<i>requested some time for submitting bank statement</i>	
<i>Hearing notice u/s. 250 giving the appellant an opportunity to furnish any submission in addition to the previous submission, in support of the grounds of appeal.</i>	07.07.2023
<i>The appellant submitted an extract of bank statement.</i>	20.07.2023
<i>Hearing notice u/s 250 was issued. For the first time, CIT(A) mentioned about the maintainability of the appeal filed, as Form 3 was issued by PCIT, Mumbai-2019. The CIT(A) also asked the appellant to make submission based on merits.</i>	22.12.2023
<i>The appellant made submission on maintainability of the appeal and also resubmitted the merits submissions.</i>	29.12.2023
<i>CIT(A) passed an order dismissing the appeal filed by the appellant as deemed to withdrawn.</i>	03.01.2024

Ld. AR has further submitted that after non-submission of Form no. 4, the appeal of the assessee was automatically reinstated and should have been decided on merits.

7. In this regard attention of this bench was drawn to the CBDT circular containing FAQs on DTVSV scheme in which question no.3 and its answer is relevant to the present case. Same is reproduced below:

<i>Question No</i>	<i>43</i>	<i>Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the Vivad se Vishwas by DA at the stage of determination of amount payable under section 5(1) or, amount determined by DA ix at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payuhle, then whether the appeals are automatically reinstated or a separate application needs to be filed for reinstating the appeal before the appellate authorities</i>
<i>Answer :</i>		<i>Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA under section 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellant forum and submit proof of withdrawal with intimation of payment to the DA as per the same section. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed</i>

8. Ld. DR, on the other hand, relied on the order of Ld. CIT(A).
9. We have heard the rival submissions and carefully considered the facts of the case. It is clear that the appeal is not to be treated as withdrawn till the issue of certificate by the Designated Authority in Form 5. Since in the present case, Form No.4 was not submitted by the assessee and, therefore, the appeal could not have been treated as withdrawn. The Ld. CIT(A), therefore, wrongly held that the appeal is deemed to be withdrawn instead of deciding the same on merits. We, therefore, set aside the order of Ld.CIT(A) and direct him to decide the appeal afresh on merits after giving reasonable opportunity to the appellant.
11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.05.2024.

Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-

**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated : 14/05/2024

POONAM MIRASHI  
(STENOGRAPHER)

**Copy of the Order forwarded to :**

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

//True Copy//

+BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai