

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHINBENCH:COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.523/Coch/2023
AssessmentYear:2014-15

Sheeja Vamadevan Sathi Varkala Park International Railway Station Road Varkala Trivandrum 695141 PAN NO :AXTPS9216Q	Vs.	ITO Ward-1(4) Thiruvananthapuram-3
APPELLANT		RESPONDENT

Appellant by	:	Shri R. Krishnan, A.R.
Respondent by	:	Shri Sanjit Kumar Das, D.R.

Date of Hearing	:	06.01.2025
Date of Pronouncement	:	28.01.2025

O R D E R

PERKESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. CIT(A)/NFAC dated 12.5.2023 vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1052797573(1) for the Assessment Year (in short "AY") 2014-15 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

2. The assessee has raised following grounds of appeal:

	Grounds of appeal	Tax effect
1	The learned Commissioner of income - tax (Appeals) went wrong in holding that up on issuing a Certificate u/s 5(1) of the DTVsV Act in Form-3 by the Designated authority, the appeal become infructuous as deemed to have been withdrawn. He ought to have found that - (i) According to section 5(1) of DTVsV Act if the tax as per Certificate in Form-3 was not paid within the specified date the declaration become void and nonest's (ii) the appellant had neither been paid the tax as per Form -3 nor had it been filed Form -4; and (iii) that only upon filing Form -4 the appeal can be deemed as withdrawn and not upon issuing Form-3.	30,78,908

2	The learned Commissioner of income - tax (Appeals) went wrong in holding that non-prosecution for non-response to the notices by the appellant would make the appeal become infructuous. He ought to have found that - (i) the judgments relied up on are rendered in distinguishable facts and contexts and; (ii) that it is settled that an appellate authority cannot dismiss an appeal for non-prosecution for non-response to the notices by the appellant, but dispose of on merits after examining the records of the case.	30,78,908
3	The learned Commissioner of income - tax (Appeals) went wrong in not deciding ground (1) regarding the irregularity in converting limited scrutiny in to complete scrutiny. He ought to have appreciated that return of income filed for the assessment year relevant to the previous year in which survey was conducted u/s 133A would only come under compulsory complete scrutiny basket in accordance with the guidelines for compulsory selection of cases for complete scrutiny and that the survey in this case was not conducted in the previous	30,78,908

	year relevant to the A.Y2014-15 which is under appeal.	
4	The learned Commissioner of income - tax (Appeals) went wrong in not deciding ground (2) regarding hypothetical manner of completing the assessment involving extrapolation of sales without incriminating materials, non deduction of unrecorded expenses relating to unrecorded sales etc.	30,78,908
	Total tax effect	30,78,908

3. Brief facts of the case are that the assessee filed her return of income for the AY 2014-15 on 30.11.2014 declaring total income of Rs.10,43,500/-. The return was processed u/s 143(1) of the Act on 3.1.2015. Thereafter the case was selected for limited scrutiny under CASS for the reason "Cash deposits in savings bank account is more than the turnover". Accordingly, notices u/s 143(2) of the Act as well as 142(1) of the Act were issued calling for specific details.

3.1. Further, a survey u/s 133A of the Act was conducted in the assessee's business premises M/s. Hotel Varkala Park International on 25.2.2015. Since the case was already selected for limited scrutiny by CASS, approval was obtained from Principal CIT to convert it into a complete scrutiny as a survey was conducted in respect of assessment year 2014-15. On verification of the documents and after considering the submissions made by the assessee, the AO determined the additional income of the assessee amounting to Rs.1 Crore and added the same to the returned income and completed the assessment proceedings on a total assessed income of Rs.1,10,43,500/-.

3.2. Aggrieved by the assessment completed u/s 143(3) of the Act dated 31.12.2016, the assessee preferred an appeal before the Id. CIT(A)/NFAC. The Id. CIT(A) dismissed the appeal on the ground that as the assessee has opted for Vivad Se Vishwas Scheme, 2020 and already filed Form 1 & 2 and subsequently the certificate in Form 3 was also issued by the department but the assessee did not pay the tax amount as determined in Form 3 by filing Form No.4, the moot question is whether the appeal can be decided on merit? The Id. CIT(A)/NFAC held that upon issuing Form No.3 to the assessee by the designated authority, being the jurisdictional Principal CIT, the appeal is deemed withdrawn. Thus, as the appeal is stated as withdrawn, this appeal becomes infructuous and also the assessee has not responded to any of the notices sent to her and as there is no response to appeal notices, the appeal is liable to be dismissed. Thus, on the aspect of non-compliance and on the aspect of appeal being treated as withdrawn, the appeal becomes infructuous and accordingly dismissed.

3.3 Aggrieved by the order of Id. CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal.

4. We have heard the rival submissions and perused the materials available on record. It is undisputed fact that Id. CIT(A)/NFAC disposed of the appeal without going into the merit of the case by stating reason that as the appeal is stated as withdrawn by virtue of not paying the tax determined as payable in Form 3, by filing Form No.4, the appeal becomes infructuous. Further, we find that the assessee has also not responded to various notices issued by the Id. CIT(A) on 3 occasions. Being so, in the interest of justice and fair play as well as, as requested by the Id. A.R. of the assessee, we remit the entire issue in dispute to the file of Id. CIT(A)/NFAC and to decide the same on the merits of the case in accordance with law. Needless to say, that reasonable opportunity of being heard must be granted to the assessee and the assessee is also directed to submit relevant documents/records/submissions/information as required by Id. CIT(A)/NFAC to substantiate her claim. It is ordered accordingly.

5. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28th Jan, 2025

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated: 28th Jan, 2025.

VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Cochin.