

**IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 287/PAN/2017
Assessment Year: 2008-09**

M/s Gajalaxmi Transport, #16, Sukh Sagar Complex, Near Hotel Ramdev, Nehru Nagar, District Belgaum PAN: AAGFG5192D (Appellant)	Vs.	The Joint Commissioner of Income Tax, Range-2, Belgaum (Respondent)
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Assessee by : Shri Pravin B. Chinnannavar (CA)

Revenue by : Shri Y.V. Raviraj (DR)

Date of Hearing: 13/11/2018
Date of Pronouncement: 28/12/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 15.09.2017 passed by the Commissioner of Income Tax (Appeals)- (for short 'the CIT(A), Gulbarga, pertaining to the assessment year 2008-09, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 271E of the Income Tax Act, 1961 (for short the 'Act').

2. Aggrieved by the order of Ld. CIT (A), the assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"The order of the Authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

2. *The appellant denies itself liable to the penalty levied by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], under section 271E of the Act amounting to Rs. 2,00,000/- under the facts and circumstances of the case.*
3. *The learned authorities below failed to appreciate the fact that the Appellant had repaid an amount being Rs. 2,00,000/-, through banking challan which does not attract the penalty provisions under section 271E of the Act, under the facts and circumstances of the case.*
4. *The learned Authorities failed to appreciate the fact that the provisions of section 269T and 271E of the Act, were introduced to curb rotation of black money and not applicable to genuine re-payments through banking channels, under the facts and circumstances of the case.*
5. *The learned authorities below failed to appreciate the fact that due reasonable cause the monies were transferred into the firm through direct bank transfer instead of transferring through cheque and considering the fact the learned authorities below ought not to have imposed penalty under section 271E of the Act under the facts and circumstances of the case.*

3. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly dismissed the penalty order passed by the AO u/s 271E of the Act, as the AO has passed the said order without taking into consideration the facts of the case and evidence on record. The Ld. counsel further contended that the authorities below have failed to appreciate the fact that the applicant had repaid the amount of Rs. 2,00,000/- through banking channel, therefore, the provisions u/s 271E of the Act do not apply in the assessee case. The Ld. counsel further submitted that since the Ld. CIT (A) has passed the order without giving

opportunity of being heard to the assessee, the same is liable to be set aside.

4. On the other hand, the learned DR relying on the order passed by the learned CIT (A) submitted that since the assessee has failed to appear and present its case before the learned CIT(A) despite sufficient opportunity granted, for pursuing the appeal, the learned CIT (A) has rightly passed the *ex-parte* order on the basis of material available on record and dismissed the appeal.

5. We have perused the material on record. The grievance of the appellant/assessee is that the learned CIT (A) has wrongly confirmed the penalty order passed by the Ld. CIT (A). As pointed out by the Ld. counsel, the Ld. CIT (A) has passed the impugned order *ex-parte*. We notice that the learned CIT (A) has dismissed the appeal of the assessee by applying the decision of the Delhi Bench of the ITAT in the case of *CIT vs. Multiplan India (P) Ltd (1991) 38 ITD 320 (Del.)* dated 27th May, 1991 on the ground that the assessee has failed to appear on 04.09.2017 and 13.09.2017. We notice that the learned CIT(A) has dismissed the appeal for non-prosecution by the assessee. The Hon'ble Bombay High Court in the case of *Commissioner of Income Tax (Central) Nagpur vs. Premkumar Arjundass Luthra (HUF) [2017] 297 CTR 614 (Bom.)* has *inter alia* held that the law does not permit the CIT(A) to dismiss the appeal for non-prosecution by the assessee. The operative part of the said judgment reads as under:-

“8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act

obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to subsection (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

6. The Hon'ble Supreme Court in the case of *S.Chennappa Mudaliar (1969) 74 ITR 41* has held that dismissal of appeal for failure of appellant to appear is *ultra vires*.

7. Hence, in our considered view, the Ld. CIT(A) has passed the impugned order in contravention of the ratio laid down by the Hon'ble Supreme Court and the Hon'ble Bombay High Court in the aforesaid judgments. We therefore, set aside the order passed by the Ld.CIT(A) and remit the appeal back to the learned CIT(A) for deciding the appeal afresh on merits after affording a reasonable opportunity of being heard to the appellant/assessee. However, we direct the assessee not to seek adjournments on frivolous grounds during the appellate proceedings before the Ld. CIT(A).

In the result, appeal filed by the assessee for assessment year 2008-2009 is allowed for statistical purposes.

Order pronounced by listing the result on the notice board of the bench under rule 34(4) of the Appellate Tribunal Rules, 1963.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Panaji; दिनांक Dated: 28/12/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Panaji/
DR, ITAT, Panaji
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)/PS
आयकर अपीलीय अधिकरण, Panaji / **ITAT, Panaji**