

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI“B” BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
And C.N. Prasad(Judicial Member)]**

ITA Nos. 3807 to 3813 /Mum/2019  
Assessment year: 2003-04 to 2009-10

**Narendra Solvex Pvt Ltd** .....Appellant  
*Town Square, Near Gajananbaba Mandir,  
Amravati Railway Station Road,  
Amravati-444602, Maharashtra  
[PAN: AAACN 3398 M]*

**Vs**

**Assistant Commissioner of Income-tax** .....Respondent  
*Circle-4(3)(1), Mumbai*

**Appearances by**

**Jitendra Jain**for theappellant  
**Avneesh Tiwari**for the respondent

Date of concluding the hearing : September 20, 2019  
Date of pronouncement : September 30, 2019

**ORDER**

**Per Pramod Kumar, VP:**

1. By way of these seven appeals, the assessee-appellant has challenged the correctness of the orders, all dated 11<sup>th</sup> April 2019, passed by the CIT(A)-9, Mumbai, in the matter of assessment under section 143(3) r.w.s. 254 of the Income Tax Act, 1961, for the assessment years2003-04 to 2009-10.

2. The assessee appellant has raised materially identical grounds, barring for difference in figures in some of these grounds, in all these appeals. So far as the first ground of appeal is concerned, however, this ground of appeal is exactly the same in all the appeals is the same, and is reproduced below for ready reference:

***“1. (a) The Commissioner of Income Tax(Appeals)-9, Mumbai [CIT(A)] erred in dismissing the appeal holding that as this appeal is filed by the Appellant against***

***the order giving effect to the order of the ITAT, passed by the AO u/s 143(3) r.w.s. 254 of the Act, hence the CIT(A) is not having the jurisdiction to adjudicate the appeal and the appeal should lie only before the ITAT.***

*The Appellant submit that the order giving effect to ITAT's order passed by the AO u/s 143(3) r.w.s. 254 is an order appealable before the CIT(A) and the Ld.CIT(A) ought to have adjudicated the appeal on merit.*

***(b) The CIT(A) erred in passing the order, without providing any opportunity of being heard to the Appellant to represent its case in respect of maintainability of appeal and without raising any query/objection during the Appellate proceedings.***

*The Appellant submit that the CIT(A) ought to have given an opportunity of being heard to the Appellant in respect of maintainability of appeal and should have asked the Appellant to give its submission in this regard; and on the facts and circumstances of the case the appeal shall be set aside to the file of CIT(A) for fresh adjudication.*

3. The issue in appeal lies in a rather narrow compass of material facts. This is second round of proceedings before us. The assessee before us is engaged in the business of manufacturing refined oil and vanasapati ghee. On 22<sup>nd</sup> October 2008, the assessee was subjected search and seizure operation, and, subsequently assessments were framed under section 153A. The assessee challenged these assessment orders in appeals before the CIT(A) but without any success. The consolidated order, dealing with all these appeals, so passed by the CIT(A) was then challenged before this Tribunal. Vide order dated 31<sup>st</sup> July 2015, a coordinate bench of this Tribunal had remitted the matter to the file of the Assessing Officer, with certain directions. The matter thus went back to the Assessing Officer, and, to give effect to the appeal effect, the Assessing Officer passed the appeal effect orders accordingly which did not satisfy the assessee again. The assessee challenged these appeal effect order before the CIT(A) but, rather than dealing with the grievance of the assessee appellant on merits, learned CIT(A) held these appeals to be non-maintainable before him. The appeals were thus summarily rejected. While so rejecting the appeals, learned CIT(A), inter alia, observed as follows:

**4.2 As mentioned in the paragraph 2.5 of this order, this appeal is filed by the appellant against the order giving effect to the order of the ITAT, passed by the A.O. Before proceeding to consider the ground of appeal, the maintainability of the appeal is required to be considered in this case. It is noted that the issue of maintainability of such case has been decided by the Hon'ble Punjab & Haryana High Court in the case of Paras Rice Mill v. CIT & Another reported in (2009) 18 DTR (P&H) 149 dated 19.09.2008. The Hon'ble High Court while deciding identical issue, held that the appeal against the order giving effect to the ITAT passed by an A.O. shall lie only before the ITAT. The relevant portion of the judgement is reproduced below:**

**“6. .... We are of the opinion that the reasoning of the learned Tribunal that since the A.O. had merely given effect to the order of the**

**Tribunal, an appeal against the said order would lie only before the Tribunal and not before the CIT(A) is correct.....”**

**Considering the fact that the appeal is filed against the order giving effect to the ITAT’s order, the ratio of the aforesaid judgement is squarely applicable to the appellant’s case. Therefore, following the decision of the Hon’ble Punjab & Haryana High Court in the case of Paras Rice Mill vs. CIT & Another the appeal is dismissed by holding that the undersigned is not having the jurisdiction to adjudicate the appeal which should lie only before the ITAT.**

4. The assessee is not satisfied and is in further appeals before us.

5. Vide application dated 3<sup>rd</sup> September 2019, the assessee appellant had prayed for an early hearing. This application was taken up for hearing on 20<sup>th</sup> September 2019. Having perused the said application, and having perused the material on record, we were of the view that rather than scheduling the appeals for an early, all these appeals can be disposed of at this stage itself. The suggestion of the bench was very graciously accepted by the learned representatives. With the consent of the parties, therefore, these appeals were taken up for final disposal at this stage itself.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. To decide these appeals, it is enough to take note of the fact that, beyond any doubt or controversy, so far as the jurisdiction of this Hon’ble Bombay High Court is concerned, the orders passed by the Assessing Officer, giving effect to the directions of this Tribunal, like the orders before us today, are appealable before the Commissioner (Appeals). It was so held by Hon’ble Bombay High Court, in the case of **Caltex Oil Refining (India) Pvt Ltd Vs CIT [(1994) 202 ITR 375 (Bom)]**, wherein Their Lordships had, inter alia, observed as follows:

**.....So far as the first submission is concerned which relates to the nature of an order passed by the ITO in consequence of orders of the appellate authorities with a view to giving effect to the directions contained therein, it is difficult to hold that such an order is an administrative order. The power of the ITO is to make assessment under section 143 or 144. It is that assessment which is the subject-matter of appeal. The appellate authority, on an appeal against an order of assessment, has power to confirm, reduce, enhance or annul the assessment or to set aside the assessment and refer the case back to the ITO for making a fresh assessment in accordance with the directions given by such authority (section 251). Evidently the effect of an appellate order is that the assessment either stands confirmed, reduced or enhanced or it stands annulled or set aside. In case of confirmation, reduction or enhancement the original order of assessment**

**stands modified to the extent of the directions given by the appellate authority. In the case of annulment the order becomes non est. In case an order is set aside, the authority has to start the entire process afresh and make a fresh order of assessment complying with the directions given by the appellate authority. It is, thus, clear that what remains as a final order after giving effect to the orders of the appellate authorities is an order of assessment under section 143 or 144. It cannot be anything else.**

.....

**.....In the light of these decisions and for the reasons given above, we are of the opinion that the impugned order of assessment passed by the ITO pursuant to the directions of the appellate authorities with a view to giving effect to the directions contained therein is an order of assessment within the meaning of section 143 or section 144 of the Act and an appeal lies under section 246(c) against such an order.**

8. The stand taken by the learned CIT(A), holding that the orders giving effect of the directions of this Tribunal are not appealable before the CIT(A), is thus wholly unsustainable in law. We reject the same. We are of the considered view that the CIT(A) ought to have examined the appeal on merits. In this view of these discussions, and in the light of law laid down by Hon'ble jurisdictional High Court, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication on merits. Ordered, accordingly.

9. As we remit the matter to the file of the CIT(A) for fresh adjudication, we have two quick points to make. The first point is that learned counsel for the assessee had painstakingly argued that *de hors* Hon'ble jurisdictional High Court's judgment in Caltex Oil Refining (*supra*), in any event, Hon'ble Punjab & Haryana High Court's judgment in the case of Paras Oil Mills (*supra*) is not even applicable on the facts of this case. We see no need to deal with these fine points for the simple reason that, given the fact that the matter has been taken up for disposal at the stage of hearing of the early hearing petition itself, it is unreasonable to expect the learned Departmental Representative will be able to properly present departmental perspective on this aspect. That is anyway an academic issue in the present context. The second point is that we are anguished to note that the CIT(A) did not even put the appellants to notice about his intention to summarily reject the appeals as non-maintainable, and yet he proceeded to do so in complete violation of the fundamental principle of natural justice *audi alteram partem* i.e. no person shall be condemned unheard, and such a conduct cannot meet any judicial approval. The approach so adopted by the learned CIT(A), even if on account of an inadvertent mistake- which we are sure must be the case, also results in wholly avoidable delay in the dispute resolution process. To ensure that the assessee is not subjected to long wait for disposal of his appeals on merits, we also deem it fit and proper to direct the learned CIT(A) to dispose of these appeals in a time bound manner. We, therefore, direct the CIT(A) to hear the matter, on merits, expeditiously, and make sincere efforts to dispose of the remanded proceedings within six months of receipt of this order.

10. As all the appeals are being remitted to the file of the learned CIT(A) for adjudication on merits, the remaining grounds of appeals, which are grievances on merits, call for no adjudication. These grounds of appeals are infructuous and are dismissed as such.

11. In the result, the appeals are allowed for statistical purposes. Pronounced in the open court today on the 30<sup>th</sup> day of September, 2019

**Sd/-**  
**C.N. Prasad**  
(Judicial Member)

**Sd/-**  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 30<sup>th</sup> day of September, 2019**

*Copies to:*

<i>(1)</i>	<i>The Applicant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*