

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 337/Del/2017
(Assessment Year: 2012-13)**

Interglobe Air Transport Limited.	Vs.	Dy. Commissioner of Income Tax, Circle 12(2), New Delhi.
PAN No: AACCI1684F		
APPELLANT		RESPONDENT

Assessee by : Shri Nagesh Kumar Behl, Adv.
Revenue by : Shri Inder Pal Singh Bindra, CIT(DR)

ORDER

PER ANADEE NATH MISSHRA, AM

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-4, New Delhi, ["Ld. CIT(A)", for short] dated 17.11.2016 for Assessment Year 2012-13. The grounds of appeal are as under:

- " 1. *That on the facts and circumstances of the case and in law, the order passed is bad in law having been passed in violation of the principles of natural justice without affording an opportunity of being heard to the appellant.*
- 1.1 *That the Ld. Commissioner of Income Tax- Appeals [CIT(A)] erred in holding that appellant had intentionally and willfully not cooperated during the proceedings before him and was not interested in taking up the matter and making submissions.*

2. *Without prejudice, the Ld. CIT(A) has erred in not adjudicating on erroneous credit of prepaid taxes allowed by the Ld. Assessing Officer.*
3. *Without prejudice, the Ld. CIT(A) has erred in not adjudicating on error on part of Ld. Assessing Officer in not allowing the relief u/s 90 of the Income Tax Act, 1961.*

The appellant craves leave to add, to alter, amend or vary from the above grounds of appeal at or before the time of hearing."

(B) The Assessment Order U/s 143(3) of the Income Tax Act, 1961 ("I.T. Act" for short) was passed on 23.03.2015 by Assessing Officer ("AO", for short). The relevant portion of the Assessment Order is reproduced as under:

"The assessee filed its e-return of income on 25.09.2012 showing total income of Rs. 23,46,29,880/- The case was selected for scrutiny under CASS and the notice u/s 143(2) of the I.T Act was issued and served on the assessee on 06.08.2013. Due to change of incumbency, fresh notice u/s 143(2) of the I.T. Act, 1961 along with detailed questionnaire u/s 142(1) dated 22.05.2014 were issued and served upon the assessee.. In response to notice u/s 143(2) of the I.T Act, Shri Vinay Sethi, C.A and Authorised representative of the assessee company attended and furnished the details called for.

2. The assessee is a Company engaged in the business of managing a board spectrum of passenger and cargo operations and cutting edge. Route and Revenue management services for international and Domestic Airlines.

3. Keeping in view the details filed and after discussion with assessee's authorized representative, the returned income of the assessee is accepted. Issue notice of Demand and Challan accordingly. Charge interest u/s 234B and 234C of the I.T. Act."

(B.1) The Assessee filed appeal before the Ld. CIT(A). As the assessee did not appear before the Ld. CIT(A), the Ld. CIT(A) concluded that the Assessee was not interested in prosecuting its appeal, and he dismissed the Assessee's appeal with the following observations in his aforesaid impugned order dated 17.11.2016:

"This appeal is filed on 20/04/2015 against the order dated 23/03/2015 passed by Dy. Commissioner of income Tax, Circle 12(2), New Delhi (hereinafter referred to as the "AO") under section 143(3) of the Income Tax Act, 1961 for the Assessment year 2012-13.

2. *The case was fixed for hearing on 27/06/2016 when an adjournment application dated 27/06/2016 was filed which was signed by some Vikas Walia for Sachin Mehta. It is clear that it was not signed by the authorized representative of the company. After that another application dated 29/06/2016 was filed in the dak on 30/06/2016 signed by Sachin Mehta along with original Power of Attorney in which he was authorized by the company. In this application a time of 15 days was sought to appear. Normally the authorized representative appears seeking another date which is given at the same time. Now in such a situation it is expected that the AR of the appellant would appear himself after the period of time requested by him. In this case nobody appeared so far to present the matter before me. It seems that the appellant is not interested in taking up the matter and make the submissions. Therefore I hereby dismiss the appeal.*

3. *The appeal is dismissed."*

(C) The Assessee filed this present appeal in Income Tax Appellate Tribunal ("ITAT", for short), against the impugned order dated 17.11.2016 of the Ld. CIT(A). We find from the perusal of record, that the following grounds of appeal were raised by the Assessee before the Ld. CIT(A).

"1. That on the facts and circumstances of the case, the Ld. Deputy Commissioner of Income Tax, Circle 12(2), New Delhi ("assessing officer") has erred on facts and in law in not allowing the credit of prepaid taxes of Rs. 11,05,82,493 claimed by the appellant in its return of income.

2. That on the facts and circumstances of the case, the Ld. Assessing Officer has erred in not allowing the relief u/s 90 of the Act of Rs. 6,56,157.

The appellant craves leave to add, to alter, amend or vary from the above grounds of appeal at or before the time of hearing."

(C.1) However, the Ld. CIT(A) in his aforesaid impugned order dated 17.11.2016, has not disposed off various grounds of appeal through a speaking order on merits. In fact, the Ld. CIT(A) has not decided the appeal on merits, and has, instead dismissed assessee's appeal in a summary manner while observing: "*...It seems that the appellant is not interested in taking up the matter and make the submissions.*" This is in violation of Section 250(6) of I.T. Act, which requires the Ld. CIT(A) to state the points for determination, and give decision thereon with reasons. The relevant provisions under I.T. Act regarding procedure in appeal, and powers of the Commissioner [Appeals] are contained in Sections 250 and 251 of I.T. Act, which are reproduced below for ready reference:

"250. (1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

(a) the appellant either in person or by an authorized representative;

(b) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

[(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A

(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

251. *(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

(a) In appeal against an order of assessment, may confirm, reduce, enhance or annul the assessment

(aa) In appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) In any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”

(C.2) A perusal of the above provisions of law shows that U/s 250(6) of I.T. Act the Ld. CIT(A) was obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which arose for consideration; and the Ld. CIT(A) was further obliged to state the reasons for his decision on each such points which arose for determination. In the present appeal before us, the Ld. CIT(A) has passed a summary order without deciding the issues on

merits. This is in violation of Section 250(6) of I.T. Act, which requires the Ld. CIT(A) to state the points for determination, and give decision thereon with reasons. In view of the foregoing and on careful perusal of Section 250(6) r.w.s. 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation to Section 251(2) of I.T. Act; it is amply clear that Ld. CIT(A) has no power to dismiss appeal in limine for non-prosecution of appeal by the assessee.

(C.3) At the time of hearing before us, both sides were in agreement that the impugned order of Ld. CIT(A) may be set aside, and the disputed issues in the present appeal may be restored to the file of the Ld. CIT(A) for fresh order in compliance of Section 250(6) of I.T. Act; having regard to the fact that the Ld. CIT(A) had not decided the issues on merits.

(D) We have heard both sides carefully. We have perused the materials available on record. We are of the view that the Ld. CIT(A) erred in dismissing Assessee's appeal on merits in a summary manner, without giving detailed reasons for his order, on various grounds of appeal before him. We further hold that the Ld. CIT(A) erred in passing a non-speaking order on each of the points which arose for his consideration and he failed in discharging the statutory obligation to state the reasons for his decision on each such points, which arose for determination in assessee's appeal before the Ld. CIT(A). In view of the foregoing, and as both sides have agreed to this at the time of hearing before us, we set aside the impugned order dated 17.11.2016 of Ld. CIT(A); and we direct the Ld. CIT(A) to pass fresh order, a speaking order on merits on the issues in dispute, in accordance with Section 250(6) of I.T. Act.

(E) In the result, Assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 03/01/20.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 03/01/20.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	