

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

**Before Shri L. P. Sahu, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 197/Asr./2018
(Assessment Year: 2014-15)**

M/s. S. B. Global
H. No. 44, Gali No. 11,
Gopal Nagar, Majitha Road,
Amritsar

Vs.

Income Tax Officer
Ward 4(5), Amritsar

PAN- ABOFS 6622B

(Appellant)

(Respondent)

Appellant by: Shri Ashwani Kalia (C.A.)
Respondent by: Shri Charan Dass, (D.R.)

Date of Hearing: 04.02.2020
Date of Pronouncement: 06.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-2, Amritsar, dated 30.01.2018, which in turn arises from the order passed by the Assessing Officer u/s 271(1)(b) of the Income Tax Act, 1961 (for short 'IT Act'), dated 07.11.2016 for A.Y. 2014-15.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. That the Ld. CIT(A)-2, Amritsar has erred in dismissing the appeal of the assessee ex-parte on the ground that notice dated 09.01.2018 fixing the date for 22.01.2018 remained uncomplied.
2. That the Ld. CIT(A)-2, Amritsar has erred in law in confirming the penalty u/s 271(1)(b) of the Income Tax Act, 1961.
3. That the order is bad in law and on facts.
4. That the appellant craves leave to add or amend the ground of appeal before the appeal is heard and disposed off.”

3. Briefly stated, the case of the assessee firm was selected for scrutiny assessment for the year under consideration. Notice u/s 143(2) was issued and served upon the assessee on 18.09.2015. Thereafter, notice u/s 142(1) of the Act along with a questionnaire was issued by the AO fixing the case for 22.08.2016. As the assessee failed to comply with the aforesaid notice and did not put up any appearance before the AO, therefore, another notice u/s 142(1) was issued to the assessee calling upon it to furnish the requisite reply to the questionnaire that was issued to it. Also, the assessee was called upon to ‘show cause’ as to why penalty may not be imposed upon it u/s 271(1)(b) of the Act. As the assessee failed to furnish any reply, therefore, the AO imposed a penalty of Rs.10,000/- u/s 271(1)(b) of the Act.

4. Aggrieved, the assessee assailed the penalty imposed by the AO u/s 271(1)(b) before the CIT(A). As the assessee failed to put up an appearance in the course of the hearing of appeal, therefore, the CIT(A) dismissed the same for want of prosecution.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As observed hereinabove, the appeal was dismissed by the CIT(A) for the reason that the assessee

had failed to put up an appearance in the course of hearing of the appeal. In fact, as is discernible from the order of the CIT(A), the appeal filed by the assessee was dismissed by him by drawing support from the order of the ITAT, Delhi Bench in the case of *CIT v. Multiplan India Ltd.* 38 ITD 320. Apart from that, we find that the CIT(A) had observed that as the assessee had failed to comply with the notices issued u/s 142(1), therefore, the AO was justified in levying penalty u/s 271(1)(b) of the Act.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. On a perusal of the order of the CIT(A), we find, that he had summarily dismissed the appeal of the assessee for non-prosecution. As a matter of fact, the CIT(A) had failed to apply his mind to the issue which did arise from the impugned order and was assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee had been disposed off by the CIT(A). In our considered view, once an appeal is preferred before the CIT(A), it is obligatory on his part to dispose off the same on merits. We are of a strong conviction that it is not open for the CIT(A) to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. Rather, a perusal of Sec.251(1)(a) and (b), as well as the *Explanation* to Sec. 251(2) reveals that the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law, the CIT(A) is not vested with any power to summarily dismiss the appeal for non-prosecution. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2017) 297**

CTR 614 (Bom). In the aforementioned case the Hon'ble jurisdictional High Court had observed 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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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 sub-s. (2) of s. 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 s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 s. 251(1)(a) and (b) and Explanation to Sec. 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.

7. We thus not being persuaded to subscribe to the dismissal of the appeal by the CIT(A) for non-prosecution, therefore, ‘set aside’ the same to his file with a direction to dispose off the same on merits. Needless to say, the CIT(A) shall afford a reasonable opportunity of being heard to the assessee in the course of the *de novo* appellate

proceedings. The grounds of appeal raised by the assessee are disposed off in terms of our aforesaid observations.

8. The appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06/02/2020

Sd/-
(L. P. Sahu)
ACCOUNTANT MEMBER
Place : Amritsar; Dated 06.02.2020
GP/Sr PS

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की 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. DR, ITAT, Amritsar Bench, Amritsar
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ITAT, Amritsar.
Bench, Amritsar