

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI S.RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5951/MUM/2019
(Assessment Year: 2014-15)**

Mr. Dheeraj Jain
401, Dipti Pearls, 86,
Rajasthan Co-op. Hsg. Soc, Ltd.
J.B. Nagar, Andheri (E),
Mumbai - 400 059

Income Tax Officer 24(1)(5),
Vs. Piramal Chambers, Lalgaug,
Mumbai- 400 012

PAN No. ABMPJ3453D

(Assessee)

(Revenue)

Assessee by : None
Revenue by : Shri Sanjay J. Sethi, D.R

Date of Hearing : 11/08/2021
Date of pronouncement : 12/08/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-36, Mumbai, dated 28.06.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act,1961 (for short 'Act'), dated 29.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds before us:

"1. The Commissioner of Income-tax (Appeals) - 36, Mumbai (hereinafter referred to as the CIT(A)) erred in framing an ex-parte order.

The appellant contends that on the facts and in the circumstances of the case and in law the CIT(A) ought not to have framed an ex-parte order.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the CIT(A) has not given an opportunity to cure the defects in the appeal e-filed with him and the appellant submits that he ought to have given an opportunity to

cure the defects mentioned by him and hence, the impugned ex-parte order is unwarranted.

2. The CIT(A) erred in not deciding the following grounds of appeal on merits –

1. Income-tax Officer 24(1)(5), Mumbai (hereinafter referred to as the Assessing Officer) erred in determining the total income at Rs.18,84,400/- as against Rs.1,04,055/- per return of income and consequently, raising a demand of Rs.4,77,170/- including interest of Rs.1,18,404 charged under section 234B of the Act.

The appellant contends that the Assessing Officer ought to have accepted the income of Rs.1,04,055/- per return of income for the reasons more specifically mentioned in the grounds of appeal nos. 2 and 3.

3. The Assessing Officer erred in disallowing a sum of Rs.17,37,630/- under section 57, being interest paid on unsecured loans on the ground that the nexus for payment of such interest has not been established by the appellant.

The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer ought to not to have disallowed the aforesaid interest Rs.17,37,630 claimed as deduction under section 57 in the Act.

4. The Assessing Officer erred in disallowing interest paid Rs.42,710/- on purchase/ construction at home properly, under the head 'income from house property.

The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer ought not to have disallowed the impugned interest claimed as deduction by virtue of the provisions of second proviso to section 24(b) of the Act

5. The Assessing Officer erred in charging interest Rs.1,18,404/ under section 234B of the Act.

The appellant contends that the Assessing Officer ought not to have charged the impugned interest under section 234B inasmuch as:-

(a) The Assessing Officer has not given an opportunity to the appellant before charging the said interest as required by the principles of nature justice.

(b) the charging of interest is not in accordance with law.

The appellant craves leave to add to, alter or amend the aforesaid grounds of appeal.”

2. Briefly stated, the assessee who is engaged in the business of investing and trading in shares and securities a/w providing advisory and consultancy services had e-filed his return of income for A.Y. 2014-15 on 28.07.2014, declaring a total income of Rs.104,055/-. Subsequently, his case was selected

for scrutiny assessment u/s 143(2) of the Act. Original assessment was framed by the A.O vide his order passed u/s 143(3) of the Act, dated 29.12.2016 determining the income of the assessee at Rs.18,84,400/- after making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Addition/disallowance of the assessee's claim for deduction of interest under the head 'house property'.	Rs.42,710/-
2.	Disallowance of the assessee's claim for deduction u/s 57 of interest of loan.	Rs.17,37,630/-

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the assessee despite sufficient opportunities failed to put up an appearance in the course of the proceedings before the CIT(A). Also, it was observed by the CIT(A) that though it was stated in the 'Form No. 35' that the grounds of appeal were separately attached, however, there was no such attachment of either the 'grounds of appeal' or the 'statement of facts' in the ITBA work list. Accordingly, the CIT(A) in the backdrop of the aforesaid facts dismissed the appeal.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of the appeal had failed to put up an appearance before us, therefore, we are constrained to dispose off the same as per Rule 24 of the Appellate Tribunal Rules, 1963 after hearing the respondent revenue and perusing the orders of the lower authorities.

5. We have heard the Id. Departmental representative, 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. Also, it was observed by hr CIT(A) that the assessee had not attached the 'grounds of appeal' or the 'statement of facts' in

the ITBA work list. We are unable to persuade ourselves to accept the summarily dismissal of the appeal of the assessee by the CIT(A) for non-prosecution on the part of the assessee. In our considered view once an appeal is preferred before the CIT(A), then, it is obligatory on his part to dispose off the appeal on merits. 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. In our considered view, as is discernible from the provisions of the Act, 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.

6. At the same time, we cannot remain oblivion of the fact that as observed by the CIT(A), the assessee had not attached the 'grounds of appeal' and 'statement of facts' in the ITBA work list. In the totality of the facts involved in the case before us, we are of the considered view that in all fairness and interest of justice the matter requires to be set-aside to the file of the CIT(A) with a direction to dispose off the same on merits, alongwith a direction to the assessee to remove the defects in the appeal. Needless to say, the CIT(A) shall afford a reasonable opportunity of being heard to the assessee in the course of the set-aside appellate proceedings.

7. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.08.2021

Sd/-
(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Mumbai;

Dated: 12.08.2021

PS: Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai