

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI  
BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1298/MUM/2020  
[Assessment Year: 2012-13]**

Shri Kushal Biotech Ltd.  
3070, Bhandup Industrial Estate,  
Pannalal Compound, LBS Marg,  
Bhandup (W), Mumbai – 400 078

Vs.

ACIT 15(2)(1)  
Room No. 357, Aayakar Bhavan,  
M.K.Road, Mumbai – 400 020

**PAN No. AACCK3925H**

**Assessee**

**Revenue**

Revenue by	:	Shri Gurbinder Singh, D.R
Assessee by	:	None
Date of Hearing	:	16/09/2021
Date of pronouncement	:	20/09/2021

**ORDER**

**PER RAVISH SOOD(JM):**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-24, Mumbai, dated 26.08.2019, which in turn arises from the order passed by the A.O u/s 144 r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 31.07.2017 for A.Y 2012-13. The assessee has assailed the impugned order on the following grounds before us:

- “1. The Learned CIT(A) has erred in not giving proper opportunity to the appellant.
2. The Learned CIT(A) has erred confirming the addition of Rs.1,08,70,000/- as a capital gain made by Learned AO.
3. The Learned CIT(A) has erred in confirming the Land as a non agriculture Land and taxed it as capital gain.
4. The Learned CIT(A) has erred in confirming notice of re-opening and re-assessment without giving any reason.

5. The Appellant reserves its right to add, delete, modify any grounds of appeal.”

2. Briefly stated, the assessee company had filed its return of income for A.Y. 2012-13 on 03.12.2013, declaring a loss of (-) Rs.94,964/-. The return of income filed by the assessee company was initially processed as such u/s 143(1) of the Act. Subsequently, on the basis of information received from the DDIT(Inv.), Unit 1(4), Pune, that the assessee had wrongly projected the land at Budgaon sold by him as agricultural land had sought exemption qua the profits arising therefrom, his case was reopened u/s 147 of the Act. Assessment was thereafter framed by the A.O vide his order passed u/s 144 r.w.s 147 of the Act, dated 31.07.2017, and the income of the assessee was determined at Rs.1,07,75,037/-.

3. Aggrieved, the assessee assailed the assessment order before the CIT(A). However, as the assessee despite having been intimated about hearing of the appeal failed to put up an appearance before the CIT(A), therefore, the latter dismissed the appeal for non-compliance. At the same time, the CIT(A) is stated to have dealt with the merits of the addition that was made by the A.O while disposing off the appeal.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Although, the assessee was duly intimated about the fixation of the appeal, however, he had failed to put up an appearance before us. In the backdrop of the aforesaid fact, we are constrained to dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1962 i.e after hearing the respondent revenue and perusing the orders of the lower authorities.

5. The Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the Id. D.R and perused the orders of the lower authorities and the material available on record. As is discernible from the order of the

CIT(A), we find that he had primarily dismissed the appeal for non-prosecution of the same by the assessee. Although, the CIT(A) after dismissing the appeal had claimed to have disposed off the appeal on merits, however, a perusal of his order reveals that he had simply referred to the facts that were involved in the case before him. Be that as it may, we are of a strong conviction that it is not open for the CIT(A) to have summarily dismissed 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 'Explanation' to Sec. 251(2) of the Act 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 the CIT(A) is not vested with any power to summarily dismiss an appeal for non-prosecution. As observed by us hereinabove, though the CIT(A) had referred to the facts involved in the case before him and endorsed the view taken by the A.O, he however had failed to independently adjudicate the issue as was assailed by the assessee before him. Our aforesaid view that the CIT(A) is obligated to apply his mind to all the issues which arises from the impugned order before him is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Income-tax (Central) Vs. Premkumar Arjundas Luthdra (HUF) (2016) 240 ITR 133 (Bom), wherein 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 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 coterminous 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.”

We, thus, in terms of our aforesaid observations not being persuaded to subscribe to the manner in which the assessee’s appeal had been dismissed by the CIT(A) set-aside his order and restore the appeal 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 **Ground of appeal No. 1** is allowed for statistical purposes in terms of our aforesaid observations.

7. As we have restored the appeal to the file of the CIT(A), therefore, we refrain from adverting to the grounds on the basis of which the impugned addition made by the A.O had been assailed before us. The **Grounds of appeal Nos. 2 to 4** are disposed off in terms of our aforesaid observations.

8. The **Ground of appeal No. 5** being general in nature is dismissed.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.09.2021

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;  
Dated: 20.09.2021

\*PS: Rohit

**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**