

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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.110/MUM/2020
(Assessment Year: 2014-15)**

Kwench Global Technologies
Pvt. Ltd., 401, 4th Floor,
Wing B, Pinak Galaxi,
Kapurbawadi Junction,
Majiwada, Thane (West)

ITO 12(3)(1)
Vs. Room No. 147A, Aayakar
Bhavan, M.K. Road,
Mumbai – 400 020

PAN No. AADCK3390D

(Assessee)

(Revenue)

Assessee by

: None

Revenue by

: Shri Gurbinder Singh, D.R

Date of Hearing

: 21/09/2021

Date of pronouncement

: 23/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-20, Mumbai dated 04.11.2019, 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 31.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds before us:

- "1. The Appellant had filed its return of income on 25.09.2014 declaring income of Rs.4,62,911/-.
2. The said return was selected for assessment under section 143(3) of Income Tax Act, 1961.
3. The learned learning officer completed the assessment by making additions of Rs.61,54,448/- to the declared income.

4. The learned assessing officer added Rs.48,93,175/- claimed by the appellant as liability towards Unearned Corporate Rewards Redemption on the ground that "The assessee has booked the invoices in current year however not offered the same for taxation. He has also not explained that subsequently in which year the sale is booked and when the assessee received the payment. The assessee also not filed any party-wise reconciliation of the unbilled revenue on account of Unearned Corporate Rewards Redemption." [Point No-4.3 of Assessment order]
5. The appellant is aggrieved by the said addition of Rs.48,93,175/-.
6. The appellant pleads that it has followed Accounting Standard 9 "Revenue Recognition" issued by ICAI in which the condition of passing the risk and reward is mandatory for recognising the revenue, on a consistent basis and the said amount of Rs.48,93,175/- was shown as liability according to the principles set by the said Accounting Standard.
7. The appellant pleads that consistency in following accounting principles laid down by the accounting standards is a precondition set by the income tax act 1961 and the same is being followed by the appellant.
8. The appellant pleads that the said addition made by the learned assessing officer is in violation of section 145 of the income tax act which makes it clear that if accounting method is followed regularly by the appellant, addition to income shall not be made.
9. The appellant prays that the said addition of Rs.48,93,175/- may be deleted.
10. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal."

2. Briefly stated, the assessee company which is engaged in the business of providing corporate library services and recognition services had filed its return of income for A.Y. 2014-15 on 25.09.2014, declaring an income of Rs.4,62,911/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. The A.O vide his order passed u/s 143(3) of the Act, dated 31.12.2016 assessed the total income of the assessee company at Rs.97,17,880/- after, inter alia, making an addition of unearned corporate rewards redemption of Rs.48,93,175/-.

4. Aggrieved, the assessee assailed the order passed by the A.O u/s 143(3), dated 31.12.2016 before the CIT(A). As is discernible from the records, the

CIT(A) taking cognizance of the fact that the assessee had in its memorandum of appeal stated that all the notices be sent to it through email, had thus, forwarded the notices intimating the fixation of appeal for hearing of various dates i.e on 07.10.2019, 18.10.2019 and 30.10.2019 through email (ITBA Portal). However, as the assessee failed to respond to the aforesaid notices, therefore, the CIT(A) holding a conviction that the assessee appellant was not interested in prosecuting the appeal, thus, after briefly referring to the facts of the case endorsed the view taken by the A.O and dismissed the appeal.

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

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

7. We have heard the Id. D.R and perused the orders of the lower authorities. As observed by us hereinabove, the CIT(A) had proceeded with the appeal on an ex-parte basis, for the reason, that the notices which were forwarded by him to the assessee vide e-mail were not responded to by the latter. Be that as it may, we find that the CIT(A) briefly referring to the findings of the A.O had upheld the view taken by him as regards the issue in question, for the reason, that the assessee had failed to discharge the onus that was cast upon him as regards proving the genuineness of the liability under consideration. In our considered view, though the CIT(A) had briefly referred to the facts involved in the case before him and endorsed the view taken by the A.O, however, he had failed to independently adjudicate the issue as was assailed by the assessee before him.

Backed by the aforesaid facts, we are of a strong conviction that it was 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. Our aforesaid view that a 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 afresh 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.

8. 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.

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

Order pronounced in the open court on 23.09.2021

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 23.09.2021

*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