IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

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

ITA No. 2420/MUM/2019
(Assessment Year: 2009-10)

M/s Basic Infrastructure Pvt. Ltd. (Since merged with M/s Hinal Estate Pvt. Ltd.) Dahanukarwadi, Dattamandir Road, Kandivali (W) Mumbai – 400 067	Vs.	ITO-12(1)(3) Aayakar Bhavan, M.K. Road, Mumbai – 400 020
PAN No. AADCB5962E		
(Assessee)		**(Revenue)**

Assessee by	:	None
Revenue by	:	Shri KPRR Murty, D.R
Date of Hearing	:	07/10/2021
Date of pronouncement	:	25/11/2021

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 09.10.2018, 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 31.03.2015 for A.Y. 2009-10. The assessee has assailed the impugned order on the following grounds before us:

"1. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in passing the impugned order ex-parte without giving opportunity of being heard and in complete violation of principle of natural justice and as such, the order is liable to be quashed and set aside.

2. That on the facts and circumstances of the case and in law, notice u/s 148 of the Act issued in the name of a non-existent company is bad in law and deserves to be quashed.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the re-assessment order u/s 147 of the Act passed in the name of a non-existent company, which is non est in law being void an initio and such, deserve to be quashed.

4. That on the facts and circumstances of the case and in law, where the predecessor company (appellant) has ceased to exist, then only the special provisions for making assessment & recovery as provided in Section 170 of the Act ought to have been followed, and accordingly, re-assessment order u/s 147 of the Act passed in the name of the predecessor non-existent appellant company is bad in law and deserves to be quashed.

5. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing officer without appreciating the fact that Appellant had discharged its onus of proving identity of creditor, capacity of creditor and genuineness of transaction during the course of assessment proceeding, as such no addition ought to have been made u/s 68 of the Act.

6. That the appellant craves leaves to add, alter or delete all or any of the grounds of appeal."

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2009-10 on 30.07.2009, declaring a total income of Rs.1,83,398/-. On the basis of information received by the A.O from the office of the CCIT(CCA), Mumbai, that the assessee as a beneficiary had obtained bogus entries of share application money/premium from entities which were controlled by Shri Praveen Kumar Jain, an infamous accommodation entry provider, its case was reopened u/s 147 of the Act. In response to the notice issued by the AO u/s 148 of the Act, the assessee sought the treatment of its original return of income filed on 30.07.2009 as a return filed in response to the said notice. Eventually, assessment was framed by the A.O vide his order u/s 143(3) r.w.s 147, dated 31.03.2015, wherein the A.O stamped an amount aggregating to Rs. 1 crore that was claimed by the assessee to have been received as share application money/premium from 4 parties as accommodation entries and made an addition of the same to the returned income of the assessee, as under:

Sr. No.	Name of the party from whom the share application money received	Total Amount of share application money received (Rs.)

1.	Triangular Infocom Ltd. (previously known as Lexus Infotech Ltd.)	25.00,000
2.	Casper Enterprises Pvt. Ltd. (Previously known as Ostwal Trading (I) P. Ltd.	25,00,000
3.	Atharv Business Pvt. Ltd. (Previously known as Fastsone Trading Co. Pvt. Ltd.	25,00,000
4.	Raghunandan Rayons Ltd.	25,00,000

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). As the assessee failed to put up an appearance in the course of the proceedings before the CIT(A), therefore, he proceeded with and disposed off the appeal after referring to the facts discernible from the record, on an ex-parte basis, and dismissed the appeal.

4. Being aggrieved with the order of the CIT(A) the assessee has carried the matter in appeal before us. Although, the assessee was put to notice about the hearing of the appeal, however, he had failed to appear before us. We, thus, in the backdrop of the aforesaid facts are constrained to proceed with and dispose off the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963 i.e after hearing the respondent revenue and perusing the orders of the lower authorities.

5. As is discernible from the records, we find that the CIT(A) had disposed off the appeal by way of an ex-parte basis, for the reason, that the assessee despite having been put to notice about the hearing of the appeal had however failed to comply with the same. On a perusal of the order of the CIT(A), we find that he had after referring to the facts and the issue involved in the appeal before him summarily dismissed the same for non-prosecution and had failed to apply his mind to the issue which arose from the impugned order as was assailed by the assessee before him. In our considered view, once an appeal is preferred before the CIT(A), it is obligatory on his part to dispose off the appeal 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."

6. 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 before us are disposed off in terms of our aforesaid observations.

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

Order pronounced in the open court on 25.11.2020

Sd/- (Pramod Kumar) VICE PRESIDENT	Sd/- (Ravish Sood) JUDICIAL MEMBER

Mumbai;
Dated: 25.11.2021
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