

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2419/Del./2019
(ASSESSMENT YEAR : 2013-14)**

Intergen Energy Limited, vs. ACIT, Circle 12 (2),
A-1/6, 6th Floor, Pavilion Building, New Delhi.
Mehrauli Gurgaon Road,
Opp. State Bank of India,
Gurgaon – 122 001 (Haryana).

(PAN : AACCI7025C)

**ITA No.2658/Del./2019
(ASSESSMENT YEAR : 2013-14)**

Shri Gurcharan Singh Dhawan, vs. ACIT, Circle 47 (1),
B – 9, 3rd Floor, Shankar Garden, New Delhi.
Vikaspuri,
Delhi – 110 018.

(PAN : ATNPS9241F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ns, Anupama Singla, Senior DR

Date of Hearing : 23.05.2022

Date of Order : 26.05.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the respective assessees against the respective orders of the Id. CIT (Appeals) for the concerned assessment year in which the Id. CIT (A) has dismissed the assessee's appeal for non-prosecution.

2. In both the cases, assessee has duly filed appeals before the Id. CIT(A) pursuant to the additions made by the Assessing Officer (AO). Ld. CIT (A) has dismissed the respective appeals for non-prosecution by noting that there was no response of the notices from the assessees. Ld. CIT(A) did not address the merits of the cases.

3. We note that the Id. CIT (A) has no powers to dismiss the appeals for non-prosecution. Sections 251 & 252 of the Income-tax Act, 1961 (for short 'the Act') which contain the procedure and power of Commissioner of Income-tax do not provide for dismissal of appeal for non-prosecution. In this regard, we may refer to the decision of **Hon'ble Bombay High Court in the case of Commissioner of Income-tax (Central), Nagpur vs. Premkumar Arjundass Luthra (HUF) (2017) 297 CTR 614 (Bom.)** wherein the Hon'ble High Court has *inter alia* held that the law does not permit the CIT (A) to dismiss the appeal for non-prosecution by the assessee. The operative part of the said judgment reads 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 sub-section (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 co-terminus 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.”

Similarly, the Hon’ble Supreme Court in the case of **CIT v. S. Cheniappa Mudaliar (1969) 74 ITR 41 (SC)** has held that dismissal of appeal for failure of appellant to appear is ultra vires.

4. In this view of the matter, the order passed by the Id. CIT (A) is not sustainable. Hence, in the interest of justice, we remit the issue to the file of Id. CIT (A) to decide the appeals on merits of the case and pass order accordingly.

5. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on this day 26th of May, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 26th day of May, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.