

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 45/RPR/2020
निर्धारण वर्ष / Assessment Year : 2015-16

Rajesh Agrawal
C/o. Goyal Traders,
Gudiyari, Raipur-492 009
PAN : ACJPA4635J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-2, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Shri P.K Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing : 03.08.2022

घोषणा की तारीख / Date of Pronouncement : 09.09.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-3, Bhopal, dated 08.08.2019, which in turn arises from the order passed by the A.O under Sec 153A r.w.s. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.12.2018 for assessment year 2015-16. Before us the assessee has assailed the impugned order on the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned A.O has erred on facts and in law in restricting the deduction claimed on account of cost of improvement after indexation to Rs.3,90,500/- as against Rs.6,50,000/- claimed by the assessee on account of extraneous reasons and the learned CIT(Appeals)-3, Bhopal has erred in confirming the addition made by the learned A.O without giving sufficient opportunity of being heard to the assessee, hence, it is prayed that the disallowance and consequential enhancement to the total income may kindly be deleted.

2. The appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of appeal."

The assessee has also raised an additional ground of appeal which reads as under:

"Additional Ground of appeal :

"On the facts and circumstances of the case and in law, the Id. AO has erred in making addition of Rs.6,68,937/- on account of long-term capital gain without there being any incriminating material found as result of search pertaining to the A.Y.2015-16 whose assessment got completed before the date of search. The return of income for A.Y.2015-16 was filed on 30.03.2016 whereas, on the date of search (i.e. on 17.01.2017), the assessment for the A.Y.2015-16 had already been completed in the eyes of law and reached to the finality as no notice u/s143(2)of the Income Tax Act had been issued upto 30.09.2016, thus, no assessment was pending for A. Y 2015-16 and there is no mention in the assessment order about any incriminating material/document found during the course of search which is related to the alleged addition of Rs.6,68,937/- for A. Y 2015-16 and in absence of this, the alleged addition is not sustainable in the eyes of law while making assessment u/s 153A for an unabated assessment, as held in Meeta Gutgutia (2018) (SC); Kurule Paper Mills (P) Ltd (2015) (SC); Sinhgad Technical Education Society (2017) (SC); Meeta Gutgutia (2017) (Del HC); Kabul Chawla (2015) (Del HC); Jignesh P Shah (2018) (Born HC); Gahoi Dal & Oil Mills (2020) (MP HC); Vimal Kumar Rathi (2020) (Born HC); Caprihans India Ltd (2020) (Born HC); Saumya Construction (P) Ltd (2016) (Guj.)"

As the aforesaid additional ground of appeal raised by the assessee before us involves purely a question of law based on the facts available on record, therefore, relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. National Thermal Power Co. Ltd. (1998) 229 ITR 383 (SC), we herein admit the same.

2. Search and seizure proceedings were conducted under Sec. 132 of the Act at the residential premises of the assessee on 17.01.2017. Consequently, the assessee in compliance to the notice issued under Sec. 153A filed his return of income for A.Y. 2015-16 on 06.06.2018, declaring an income of Rs. 3,89,840/-.

3. During the course of the assessment proceedings, it was, inter alia, observed by the A.O that the assessee had disclosed Long Term Capital Gain (LTCG) on sale of his share of land a/w a claim for deduction under Sec. 54 of the Act, as under :-

Sales consideration received on 25.03.2015	Rs.53,82,000
Value 50C	Rs.53,82,000
Sales Consideration	Rs.53,82,000
Less:Transfer expenses	Rs.3,82,000
Les: Indexed Cost Purchase cost F.Y. 1987-88 Rs.14,616/150*1024=Rs. 99,779 Expenses F.Y.1987-88 Rs.6,50,000/150*1024= Rs.44,37,333	Rs.45,37,112
Long Term Capital Gain	Rs. 4,62,888
Deduction u/s 54F	Rs. 3,24,308
Income from Long Term Capital Gain	Rs.1,38,579

On a perusal of the details it was observed by the A.O that the assessee a/w another co-owner, viz. Smt. Chanda Devi Agrawal had claimed to have incurred an expenditure of Rs. 13 lacs on the development of the

land that was sold. It was noticed by the A.O that both the assessee and Smt. Chanda Devi Agrawal (supra) had in their respective income-tax returns for the year under consideration claimed to have borne an expenditure of Rs. 6.50 lac each towards development of the aforesaid land. In support of the aforesaid claim of expenditure the assessee had placed on record a receipt from a contractor, viz. Ramlu for an amount of Rs. 7.81 lac. Considering the aforesaid fact the A.O was of the view that as the balance amount of land development expenditure of Rs. 5.19 lac [Rs. 13 lac (-) Rs. 7.81 lac] claimed by the aforesaid persons had remained unexplained, therefore, 50% of the assessee's claim of expenditure amounting to Rs. 2,59,500/- [50% of Rs. 5,19,000/-] was liable to be disallowed. Accordingly, the A.O reworked out the LTCG on sale of the aforesaid property in the hands of the assessee at Rs.22,34,408/-. Consequent thereto the assessee's claim for deduction under Sec. 54F was also restricted by the A.O to an amount of Rs. 15,65,471/-. On the basis of his aforesaid deliberations the A.O determined the income of the assessee from LTCG at Rs. 6,68,937/- [Rs. 22,34,408/- (-) Rs. 15,65,471/-].

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without any success.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record. At the very outset of the hearing of the appeal it was submitted by Shri Veekas S. Sharma, Ld. Authorized Representative (for short 'AR') for the assessee that as the CIT(A) for want of persecution on the part of the assessee appellant had summarily dismissed his appeal, therefore, the order passed by him was not maintainable and was liable to be set-aside on the said count itself. Our attention was drawn by the Ld. A.R to the observations of the CIT(A) as were recorded by him in his order.

7. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

8. Having given a thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both the parties, we find substance in the claim of the Ld. A.R that the CIT(A) had gravely erred in law and facts of the case in summarily dismissing the appeal for want of prosecution on part of the assessee appellant before him. Admittedly, the CIT(A) had dismissed the appeal for the reason that the assessee despite having been put to notice about the hearing of the appeal had failed to comply with the same. On a perusal of the order of the CIT(A), it transpires, that he had summarily dismissed the appeal of the assessee for non-prosecution and had failed to apply his mind to the issues which arose from the impugned order and were assailed by the assessee before him. In our considered view once an appeal is preferred before the CIT(A), then, it is obligatory on his part to dispose off the same 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 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 ITA No.896/Mum/2019 A.Y. 2014-15 Hibiscus Communications Pvt. Ltd. Vs. ACIT-15(2)(1) 4 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, not concurring with the dismissal of the appeal by the CIT(A) for non-prosecution, therefore, set-aside his order 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. Before parting, we may herein clarify that as the assessee by way of raising an additional ground of appeal which had been admitted by us hereinabove has also assailed before us the validity of the jurisdiction that was assumed by the A.O for framing the impugned assessment under Sec. 153A/143(3), dated 28.12.2018, therefore, he shall in the course of the set-aside proceedings remain at a liberty to raise the said issue before the CIT(A) who shall also adjudicate the same.

9. Resultantly, the appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 09th September, 2022

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Bhopal
4. The Pr. CIT (Central), Bhopal
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	10.08.2022	Sr.PS/PS
2	Draft placed before author		Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		