

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.17/RPR/2020
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Girdhar Lal Sahu
Chandi Mandir Road,
Mathpara, Durg (C.G.)
PAN : DJZPS9023Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(2),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, Advocate
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 28.07.2022
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)-II, Raipur dated 31.10.2019, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (for short 'the Act') dated 03.03.2016 for assessment year 2010-11. Before us the assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case and in law, the initiation of reassessment proceeding is bad in law and without jurisdiction.

2. In facts and circumstances of the case and in law, the learned Commissioner of income Tax (Appeals) has erred in dismissing the appeal without giving reasonable opportunity and considering the written submission filed by the appellant.

3. The impugned order is bad in law and on facts.

4. The appellant reserves the right to add, amend, alter omit or withdraw all or any of the grounds of appeal.”

2. On the basis of information received by the A.O that the assessee though had sold his ancestral land for a consideration of Rs. 3,00,000/- (stamp duty value : Rs.14 lac), but had not filed

his return of income for the year under consideration i.e. A.Y. 2010-11, the case of the assessee was reopened under Section 147 of the Act.

3. Assessment was thereafter framed by the A.O vide his order passed under Section 143(3) r.w.s.147, dated 03.03.2016, assessing the income of the assessee at Rs. 40,000/- a/w LTCG of Rs. 6,05,677/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as the assessee despite sufficient opportunity failed to put up an appearance before the appellate authority, therefore, the latter, in substance, by merely referring to and endorsing the observations of the A.O summarily dismissed the appeal.

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

6. We have heard Ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the

material available on record. Ostensibly, the appeal filed by the assessee had been dismissed by the CIT(A) for the reason that as the assessee had failed to prosecute his appeal, therefore, it was to be presumed that he had nothing to say qua the matter in question. On the basis of his aforesaid observation it transpires that the CIT(A) had without independently applying his mind to the subject matter of appeal in the backdrop of the grievance of the assessee appellant dismissed the appeal. After deliberating at length on the manner in which the appeal of the assessee appellant had been disposed off by the CIT(A) we are unable to persuade ourselves to subscribe to the same.

7. 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 however 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 despite the fact that the same had

been 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 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.”

8. We, thus, not concurring with the dismissal of the appeal by the CIT(A) for non-prosecution, therefore, restore the matter 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.

9. 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)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
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		