

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 155/RPR/2022

निर्धारण वर्ष / Assessment Year : 2017-18

Pradip Nandkishor Daga
Prop. M/s. Pradip Plasto, Mahesh Nagar,
Kourin Bhata Road,
Ranjandgaon (C.G.)
PAN : AQAPD0420B

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nilesh Jain, CA
Revenue by : Shri Gitesh Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.09.2022

घोषणा की तारीख / Date of Pronouncement : 14.09.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 30.07.2022, which in turn arises from the orders passed by the A.O under Sec. 144 of the Income-tax Act, 1961 (in short 'the Act') dated 07.12.2019 for the assessment year 2017-18. 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 ld. Commissioner of Income-tax (Appeals) (NFAC) has erred in dismissing the appeal on ex-parte without deciding on merits, which is contrary to the law laid down by Hon'ble Bombay High Court in the case CIT vs. Premkumar Arjundas Luthra (HUF) [2016] 240 taxman 133.

2) In the facts and circumstances of the case and in law the ld. Commissioner of Income-tax (Appeals) (NFAC) erred in deciding the appeal without valid service of notices issued for hearing thereby denying reasonable opportunity and principles of natural justice.

3) The ld. Commissioner of Income-tax (Appeals) (NFAC) erred in confirming the addition of Rs.5,95,000/- made u/s.69A of the Income-tax Act, 1961.

4) The impugned order is bad in law and on facts.

5) The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice. ”

2. Succinctly stated, notice u/s.142(1) of the Act dated 19.12.2017 was issued to the assessee calling upon to file his return of income for the year under consideration i.e. A.Y.2017-18. However, as the assessee had failed to file his return of income, therefore, the A.O framed the assessment vide his order passed u/s.144 of the Act, dated 07.12.2019 at Rs.12,64,135/- after, inter alia, making the following additions/disallowances:

Sl. No.	Particulars	Amount
1.	Undisclosed cash deposits u/s. 69A of the Act	Rs. 5,95,000/-
2.	Undisclosed income of the assessee from business	Rs.5,76,630/-
3.	Interest from bank	Rs.92,505/-

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) observing that the assessee despite having been put to notice had neither participated in the appellate proceedings nor placed on record any written submissions, thus, dismissed the appeal for non-prosecution on the part of the assessee.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. As observed by us hereinabove, the CIT(Appeals) had disposed off the appeal for non-

prosecution and had failed to apply his mind to the issue which did arise from the impugned order and has been assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee has been disposed off by the CIT(Appeals). In our considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "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. As per mandate of law the CIT(Appeals) 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. Premkumar Arjundas (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.”

5. We, thus, not being persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(Appeals) 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 are disposed off in terms of our aforesaid observations.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 14th day of September, 2022.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 14th 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), Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" 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	07.09.2022	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		