

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.1681/Ahd/2018**

**Asstt.Year : 2010-11**

Mohd Tahir Mohd Basir Shaikh 15, Gulista Apartment, Lal Mill Char Rasta Rakhial Ahmedabad 380 021. PAN : APYPS 3093 J	Vs	JCIT, Range-6(1) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	None
Revenue by :	Shri Mukesh Sharma

सुनवाई की तारीख/Date of Hearing : 19/09/2022

घोषणा की तारीख /Date of Pronouncement: 28 /09/2022

**आदेश/ORDER**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-6, Ahmedabad (in short referred to as Id.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 27.4.2018 pertaining to Asst.Year 2010-11.

2. The assessee has raised the following grounds of appeal:

*"1. That the Ld. CIT (A) erred in law and in the facts of the case in conforming the order of the AO in levying penalty of Rs. 2,40,765/- u/s 27IE of the act.*

*2. That the Ld. CIT (A) erred in law and in the facts of the case in passing an ex-parte order and not admitting the additional evidences placed before him.*

3. At the time of hearing none appeared on behalf of the assessee.

I have also gone through the order-sheet of matter. The appeal of

the assessee was presented before the Tribunal on 19.7.2018. Registry of the Tribunal noted that the appeal filed by the assessee is time barred by six days, but no delay condonation was filed by the assessee despite direction to do so. Even direction of the Registry to file legible copy of penalty order passed under section 271E of the Act, under challenge was not filed by the assessee. Appeal thereafter listed on several occasions starting from 7.2.2020 to 20.9.2022 and only two occasions i.e. 11.8.2021 and 26.10.2021 assessee's representative appeared, and in between till the date of final hearing before us the assessee has not bothered to put appearance nor gave reasons for non-compliance.

4. Further, looking into the merits of the case also, laxity in filing appeal is more evident in the conduct of the assessee-company before the Ld.CIT(A) during the appellate proceedings. In this regard, I observe as follows.

5. A perusal of order of the ld.CIT(A) makes it very clear that while completing the appellate proceedings, the ld.CIT(A) has granted more opportunities to the assessee prove his case and the conclusion arrived at para 5.3.3 by the ld.CIT(A) are as follows:

*“5.3.3 As mentioned in Para 5.3.2 above, the appellant had filed application for-admitting additional evidence under Rule 46A of the Rules. However, during remand proceedings the appellant did not submit complete documents before the AO. Even during appeal proceedings the appellant did not appear on 26.4.2018 when the hearing of the appeal was fixed. It must mentioned that on earlier occasion also several notices were issued to the appellant fixing the hearing of the appeal. However, the appellant did I not attend on any of these dates and sought adjournments. Hearing notices were issued on 20.7.2017, 31.7.2017 and 18.8,2017 fixing hearing of appeal on 26.7.2017, 8.8.2017 and 21.8.2017 respectively. On these occasions the appellant filed adjournment letter only in response to notice dated 31.7.2017 fixing hearing on 8.8.2017. On 17.8.17 the AR of the appellant attended and once again filed letter for adjournment. Hearing was adjourned to 21.8.2017. None attended on 21.8.2017. However, on 29.7.2017 the appellant filed request for admitting additional evidence under Rule 46A of the Rules. This request was forwarded to the AO on*

15.9.2017. Later developments have already been mentioned in Para 5.3.2 above. And as said above also on 26.4.2018 also the appellant did not attend. This clearly shows that appellant is not interested in pursuing the appeal. Needless to mention that issue of so many notices and giving so many adjournments consumes a lot of time of the staff members of this office and involves cost also. Thus the appeal of the appellant is liable to be dismissed for non-prosecution. ....

The above facts clearly show that the appellant is not interested in pursuing the appeal. The issue of non compliance by assessee at appellate stage has been considered and decided by the Hon'ble Supreme Court and Various High Courts as discussed below.

The decision of the Hon'ble High Court of Mumbai in the case of M/s. Chemipol v/s. Union of India [Central Excise Appeal No.62 of 2009] clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in case of Nandramdas Dwarkadas, AIR 1958 MP 260, is reproduced below :

*"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."*

The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. Nalla Thampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

*"That every court or judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi judicial body. In the absence of the complainant, therefore, the court will be without its jurisdiction to dismiss the complaint for non prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non appearance of the complainant."*

The Hon'ble Bombay High Court has also laid down the proposition that where the appellant in spite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can exercise its inherent power to dismiss the appeal for non-prosecution. In the case of CIT Vs. B. N. Bhattacharya

*reported at 118 ITR 461, it was held that appeal does not mean merely filing of appeal but effectively pursuing it.*

*The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dt.19.12.2001) in the case of Whirlpool of India Ltd. v. DCIT had dismissed appeal for non attendance at hearings, inferring at assessee was not interested prosecuting the appeal.*

*In the case of Chadhe Finlease Ltd. V. ACIT (ITA No.3013/ Del/2011 dote of order 20.12.2011) the Hon'ble ITAT Delhi had dismissed the appeal for non-attendance at hearings.*

*In the case of CIT v. Gold Leaf Capital Corporation Ltd. (ITA No.798 of 2009 order dated 2-9-2011, the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just: because the quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to giving premium to the assessee for his negligence. When the assessee is non-cooperative, it can safely be concluded that the assessee did not want to adduce evidence as it would expose falsity and non genuineness.*

*In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and is not having any documents, explanation and evidence in support of grounds of appeals raised and thus has not discharged the onus to prove the genuineness of the transactions/ additions made by the AO.*

*In view of discussion above, the appeal filed by the appellant is dismissed for want of prosecution.”*

6. Though the Id.CIT(A) dismissed the appeal of the assessee for want of prosecution, he still at para 5.3.4 based on the material on record, proceeded to decide the issue on merit, and considering all this, and in absence of explanation and supporting materials, he dismissed ground of appeal of the assessee.

7. After hearing the Id.DR, I have gone through the orders of the authorities below and material available on record. I find that the issue raised in the appeal is against levy of penalty of Rs.2,40,765/- under section 271E of the Act. However, as noted hereinabove, even before me none appeared on behalf of the assessee to defend his case and to explain delay coupled with negligence or sheer carelessness, in prosecuting his appeal. I find both the authorities

below have given a concurrent finding of contravention of provision of section 269T of the Act for imposing impugned penalty. It is settled principle of law that concurrent findings of the authorities cannot be interfered with without sufficient and just reason or any material irregularities in the finding being pointed out by other side. There is nothing more before me to depart from the view taken by the revenue authorities on this issue, more so, in the absence of any assistance rendered by the assessee in regard to the issue involved in the ground raised before me. Even otherwise also, after going through the orders of both the authorities, I do find any infirmity in the order of the CIT(A). It is upheld. The appeal of the assessee is dismissed.

8. In the result, appeal of the assessee is dismissed.

**Order pronounced in the Court on 28<sup>th</sup> September, 2022 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 28/9/2022