

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.623/PUN/2021
निर्धारण वर्ष / Assessment Year : 2017-18

Jyoti Santosh Parakh,
Swaraj Cement Distributors,
Akole Bye-Pass Road, Tal.-Sangamner,
Dist.-Ahmednagar – 422605

PAN : AAYPP9270H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 4, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas Bora

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 20-09-2022

घोषणा की तारीख / Date of Pronouncement : 06-12-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 20-08-2020 passed by the Commissioner of Income Tax (Appeals)-2, Pune [‘CIT(A)’] for assessment year 2017-18.

2. I find that this appeal was filed with a delay of 34 days. Upon hearing both the parties, I find that the delay of 34 days is saved by the decision of Hon’ble Supreme Court passed during National Lockdown imposed on account of pandemic Covid-19. Therefore, the delay of 34 days is condoned.

3. The assessee raised three grounds of appeal on facts and in law challenging the action of CIT(A) in permitting the assessee to withdraw appeal ignoring the parameters of section 251 of the Act.

4. Heard both the parties and perused the material available on record. I note that the assessee is an individual and is proprietor of Swaraj Cement Distributors. The assessee engaged in the business of trading of cements material. The case of the assessee was selected for AIMS data for cash deposits of Rs.20,70,000/- during demonetization period. According to the AO, the assessee deposited cash of Rs.18,70,000/- in Bank Account No. SBIN000014000 in Nasik Merchant Co-operative Bank Ltd., Sangamner Branch, Ahmednagar. For no return of income filed offering the said deposits for taxation, the AO issued notice u/s. 142(1) of the Act. The assessee did not file return of income nor filed any explanation, the AO issued notice u/s. 133(6) of the Act calling bank entries/transactions, bank statement from Nasik Merchant Co-operative Bank Ltd. In response to the final show cause notice, the assessee uploaded explanation stating that the cash was deposited in the said bank account was out of cash balance of previous year and furnished the financial statements for A.Y. 2012-13 in support of her explanation. On an examination of such financials, the AO opined that the assessee is liable for tax audit u/s. 44AB of the Act but no tax audit report under Form 3CB and Form 3CD were filed. It is also observed by the AO that the assessee has shown Rs.38,60,322/- as cash in hand, the AO doubted that the contention of cash having been balance of previous year and for not furnishing satisfactory explanation in respect of cash deposits, he proceeded to add entire amount Rs.20,70,000/- to the total income of the assessee u/s. 69A of the Act for his best judgment u/s. 144 of the Act. Having aggrieved, the

assessee preferred an appeal before the CIT(A) against the order dated 08-12-2019 passed by the AO u/s. 144 of the Act.

5. The AO raised excess demand taking the assessed income at Rs.82,80,000/- instead of Rs.20,70,000/- inadvertently. The assessee filed application for rectification of the said inadvertent mistake. The AO passed rectification order dated 11-02-2020 by raising correct demand on assessed income of Rs.20,70,000/-. Against such order passed by the AO u/s. 154 of the Act, the assessee filed an appeal before the CIT(A). For better understanding the chronological events as tabulated by the Id. AR is reproduced at page 4 of the paper book are as under :

Date	Particulars/Events
08-12-2019	Assessment order u/s. 144 of the Act.
12-12-2019	Date of service of assessment order and Demand notice.
15-01-2020	Filing of appeal before CIT(A) against assessment order u/s. 144 of the Act by filing Form 35.
11-02-2020	Rectification order passed u/s. 154 of the Act.
29-02-2020	Filing of appeal before CIT(A) against rectification order u/s. 154 by filing Form 35.
19-08-2020	Application for withdrawal of appeal against the order u/s. 144 of the Act filed before CIT(A) by the appellant.
20-08-2020	Order passed by CIT(Appeal)-2, Pune w.r.t. the appeal filed against the assessment order u/s. 144 of the Act.
22-11-2021	Appeal filed before Hon'ble ITAT Pune against the order of CIT(A)-2, Pune dated 20.08.2020.

6. On perusal of the above, I note that the assessee filed two appeals before the CIT(A), i.e. one is against assessment order dated 08-12-2019 passed u/s. 144 of the Act on 15-01-2020 and another appeal against the order dated 11-02-2020 passed u/s. 154 of the Act on 29-02-2020.

7. As matter stood thus, the assessee filed an application dated 19-08-2020 before the CIT(A)-2, Pune requesting to allow to withdraw appeal filed against assessment order dated 08-12-2019 in view of appeal being filed against the order passed u/s. 154 of the Act. The said withdrawal letter is filed at page 9 of the paper book.

8. Coming to the impugned order, it is noted that the CIT(A) by considering the said application dated 19-08-2020 permitted the assessee to withdraw the appeal, resultantly, the appeal was dismissed being withdrawn. Against such order, the assessee is before us. The ld. AR vehemently submits that the CIT(A) is obliged and duty bound of the Act to decide the appeal on merits within the parameters of section 251 of the Act inspite of having filed application seeking withdrawal of appeal. He argued that though application is filed seeking withdrawal that the CIT(A) as to adjudicate grounds on merits but the CIT(A) without following the provisions u/s. 251 of the Act simply dismiss the appeal as withdrawn. He submits that the power of the CIT(A) co-terminus be that of the AO that he can do all that the AO could do. The ld. AR drew my attention to the order of SMC Bench Mumbai in the case of M/s. Deekay Gears Vs. ACIT in ITA No. 2366/Mum/2018 for A.Y. 2009-10 vide order dated 16-01-2019. He argued that the Tribunal restored all the issues to the file of CIT(A) holding, the CIT(A) has not exercised his power in consonance with the provisions of section 251(1)(a) of the Act.

9. Admittedly, the other appeal filed against order passed u/s. 154 of the Act is pending on the file of CIT(A) for adjudication, wherein, the same issue arising out of the same assessment order u/s. 154 of the act rectifying the mistake in mentioning assessed income at Rs.82,80,000/- instead of Rs.20,70,000/-. The order passed u/s. 154 also is an

appealable order under clause (c) of sub-section (1) of section 246 of the Act. The assessee is entitled to raise all her objections in the said appeal before the CIT(A). The Law never permits two appeals on file against on similar issue on same identical facts. On perusal of the withdrawal application dated 19-08-2020, it is noted that the appeal filed against assessment order passed u/s. 144 of the Act is being withdrawn only for the reason that another appeal came into existence on file before the CIT(A) against the order passed u/s. 154 of the Act. Therefore, again restoring the appeal which was dismissal on withdrawn, which is impugned before me does not serve purpose of the assessee in challenging the action of AO in two different appeals against the same issue. The assessee is not precluded in raising any issue in the said appeal pending before the CIT(A) filed against the order passed u/s. 154 of the Act.

10. Coming to order of SMC Bench of Mumbai in the case of M/s. Deekay Gears (supra) as relied on by the ld. AR is not applicable to the facts on hand for the reason that there was no other appeal pending before the First Appellate Authority. It was contended therein, that main partner who was looking after the Income Tax matters due to illness continuously, the other partner, occupied with the main business activity having not aware the Income Tax compliance and pending litigation decided to withdraw the appeal. In the present case, it was contended vide letter dated 19-08-2020 which is at page 9 of the paper book, that the assessee sought to withdraw the present appeal in view of filing an appeal against the order dated 11-02-2020 passed u/s. 154 of the Act before the CIT(A) which means that the assessee is well aware that she can raise all the issues relating to her claims in the appeal concerning 154 order and filed application for withdraw the present appeal, when that is so, following the provisions u/s. 251 of the Act in the present appeal does not arise, in my

opinion, when the said appeal filed against 154 order is pending on similar issue is on same identical facts concerning the same assessment year, the CIT(A) rightly dismissed the appeal as withdrawn and no prejudice is caused to the assessee. Therefore, the finding of SMC Bench of Mumbai in the case of M/s. Deekay Gears (supra) is not applicable to the facts on hand. Thus, the grounds raised by the assessee fail and it is dismissed.

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

Order pronounced in the open court on 06th December, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th December, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune