IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'SMC'BENCH, ALLAHABAD

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
ITA Nos.13 to 15/ALLD/2022
Assessment Years: 2003-04, 2004-05 & 2006-07

Paras Brick Field, Amauli, Mirzapur, U.P. **PAN-AAFFP3519G**	v.	Deputy Commissioner of Income Tax, Central Circle, Allahabad, U.P.
(Assessee)		(Respondent)

Appellant by:	None
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	23.01.2023
Date of pronouncement:	23.01.2023

O R D E R

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

These three appeals by the assessee are directed against three separate orders of the CIT(A) dated 29.11.2019 and 27.12.2021 for the assessment years 2003-04, 2004-05 & 2006-07, respectively.

2. None has appeared on behalf of the assessee when these appeals were called for hearing nor any application for adjournment has been filed. It transpires from the record that since beginning the assessee has been seeking adjournment of hearing of these appeals. The hearing of these appeals has been adjourned for about ten times at the request of the assessee and still there is no appearance on behalf of the assessee. Accordingly, the Bench proposes to hear and dispose of these appeals *ex parte.*

3. In the grounds of the appeals for three years one common grievance of the assessee for all the years is regarding the *ex parte* order passed by the CIT(A) for giving reasonable opportunity of hearing to the assessee. The grounds raised for the assessment year 2003-04 are reproduced as under:-

"1- That in any view of the matter assessment made u/s 143(3) by order dated 10/03/06 on income of Rs. 5,45,270/- is bad both on the facts and in law.

2- That in any view of the matter the Ld. CIT(A) was wrong in framing the order ex-parte without providing reasonable opportunity to the assessee nor the assessee was aware about the fixture of appeal hence ex-parte order as framed is highly unjustified.

3- That in any view of the matter addition of Rs. 2,38,125/- by applying G.P. rate as made by the Assessing Officer and confirmed by CIT(A) is highly unjustified.

4- That in any view of the matter addition of Rs. 2,38,125/- is not correct when the assessee is regularly maintaining books of accounts and in past trading result has been accepted hence it is incorrect to apply provision of section 145(3) and applying G.P rate hence addition made is highly unjustified.

5- That in any view of the matter addition of Rs. 2,10,000/- as advance taken from different parties towards brick kiln business as added by the Assessing Officer is highly unjustified.

6- That in view of the matter the advance taken from different parties are genuine parties and are trade creditors and such advance was adjusted against sale hence addition made is highly unjustified.

7- That in any view of the matter finding an observation of both the two lower authorities with regard to addition of Rs. 2,38,125/- and Rs. 2,10,000/- are incorrect and contrary to the actual facts of the case.

8- That in any view of the matter the interest charged under different section is highly unjustified.

9- That in any view of the matter the appellant reserves his right to take any fresh grounds of appeal before hearing of appeal."

Thus, the ground no. 2 is common for all the assessment years.

4. I have heard the learned DR and carefully perused the impugned orders passed by the CIT(A). It transpires from the impugned orders of the CIT(A) that the CIT(A) has dismissed the appeals of the assessee and confirmed the additions made by the AO for want of any appearance and explanation on behalf of the assessee. For the assessment year 2003-04, the CIT(A) has given the details of the notice and date of hearings of appeal earlier pending before the CIT(A), Allahabad and thereafter, vide order dated 21.08.2019, these appeals were transferred to the office of the CIT(A), Lucknow. The CIT(A), Lucknow has also recorded the details of

the notice issued and proceeded to decide the appeal *ex parte* in para 4.2 to 4.9 as under:-

"4.2 Thereafter appeal was transferred to this office from the office of the CIT(A), Allahabad vide letter dated 21.08.2019 and received in this office on 22.08.2019. From this office opportunity of being heard were allowed to the appellant, as under:

Sr. No.	*Date of Notice*	*Date of Hearing*	*Remarks*
1.	*23.07.2020*	*05.08.2020*	*No Compliance*
2.	*13.08.2020*	*26.08.2020*	*No Compliance*
3.	*16.10.2020*	*04.11.2020*	*No Compliance*
4.	*14.01.2021*	*29.01.2021*	*No Compliance*
5.	*26.10.2021*	*09.11.2021*	*No Compliance*
6.	*11.11.2021*	*18.11.2021*	*No Compliance*
7.	*18.11.2021*	*25.11.2021*	*No Compliance*

4.3 From the above facts it is clear that the appellant did not choose to avail of the opportunities in the appellate proceedings allowed which lead to the only conclusion that it had no evidence or explanation against the order of the Assessing Officer. The appellant should not be allowed to be enriched or benefited unjustly for act of their own wrongs i.e. non- compliance or non-attendance of hearing. Considering the facts appeal is being decided on the merits and on the basis of details available on record.

4.4 The Hon'ble Delhi High Court has delivered a decision in the case of CIT vs Gold Leaf Capital Corporation Ltd. on 02.09.2011 (ITA No. 798 of 2009) holding that a negligent appellant 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 appellant for his negligence. When the appellant is non cooperative, it can safely be concluded that the appellant did not want to adduce evidence as it would expose falsity and non-genuineness of his claim.

4.5 In this regard, the decision of the Hon'ble High Court of Bombay in the case of M/s Chemipol vs Union of India, Central Excise Appeal No. 62 of 2009 clearly held that every Court, Judicial Body or Authority, which has a duty to decide a case between two parties, inherently possesses the power to dismiss the case in default. Relevant extract of the decision rendered by Hon'ble High Court of Bombay in the said case is extracted below:

"(i)…

(ii) While not inclined to depart from the view taken by the two High Courts, reference must be made to Sunderlal vs. Nandramdas AIR 1958 MP 260, where it was observed that though the Act does not give any power of dismissal, 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. This was approved in Dr. P. Nallla Thampy vs. Shankar (1984(Supp)SCC63). In New India Assurance vs. Srinivasan (2000) 3 SCC 242, it was held that every Court or Judicial body or authority, which has a duty to decide a lis 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 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 a 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 well within the jurisdiction to dismiss the complaint for non-prosecution.

(ii) Accordingly, though the rule conferring power on the Tribunal has been struck down, one cannot altogether lose sight of the rule that every Court or Tribunal has an inherent power to dismiss a proceeding for non-prosecution when the petition/appellant before it does not wish to prosecute the proceeding. In such a situation, unless the statute clearly requires the Court or Tribunal to hear the appeal/proceeding and decide it on merits, it can dismiss the appeal/proceeding for non-prosecution. The power must be exercised judiciously and taking into consideration all the facts and circumstances of the case."

4.6 The Hon'ble High Court of M.P. in the case of Tukojirao Holkar vs. CWT (223 ITR 480) had held that, "if the party, at whose instance the reference is made at, fails to appear at hearing....the Court is not bound to answer the reference." Similarly, their Lordship, in case of CIT vs. B. N. Bhattacharya (118 ITR 461) (pages 477,478) had held that, "appeal does not mean merely filing of appeal but effectively pursuing it." Hon'ble ITAT, Delhi, in the case of Whirlpool India Ltd. vs. DCIT (ITA No. 2006/Del/2011 dated 19.12.2011) has dismissed appeal for non- attending hearing, inferring that the appellant is not effectively pursuing the appeal.

4.7 The Hon'ble Supreme Court in Titaghur Paper Mills Co. Ltd. Vs. State of Orissa: Pinaki Sengupta Vs. State of Orissa (1983) 142 ITR 663(SC) held that "Merely because the assessing authority refused to grant any further adjournments and proceeded to assess to the best of his judgment, it could not be said that he acted in violation of the rules of natural justice." In view of this, it can be said that principles of natural justice have been met when notices were issued on several occasions. The laws aid those who are vigilant, not those who sleep upon their rights. This principle is embodied in well know dictum "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT."

4.8 In the case of Vipul Logistic & Warehousing(P) Ltd. Vs. ITO (ITA NO. for A.Y. 2006-07), the Hon'ble Delhi ITAT confirmed the order of the CIT(A), who dismissed the appeal of the taxpayer when there was no response to the notices issued. The observations and decision of the Hon'ble ITAT are as under:

> *We have heard rival submissions and have gone through the entire material available on record. In the grounds filed before us, assessee has not raised any such ground about the assessment being time barred. Therefore, since the plea raised by the assessee does not arise out of its grounds of appeal, the same is dismissed. We see no infirmity in the order of CIT(A) which is passed ex-party due to deliberate non-cooperation of the assessee. Therefore, the assessee's appeal is dismissed."*

4.9 Since sufficient opportunities has been allowed but no submission has been made, it stated that no useful purpose would be served by keeping the appeal pending and therefore the appeal is decided on the basis of documents available on record as the proceedings remained uncomplied with. Since various opportunities were given and the appellant has chosen not to file any further written submissions in respect of his claim in the grounds of appeal, it appears that appellant has been purposely avoiding the proceedings. Therefore, I am constrained to decide the appeal on the basis of documents available on record without any further opportunity to the appellant."

5. Though the appeals of the assessee were decided on merits but the orders were passed *ex parte* due to non-appearance of the assessee. Since, the appeals were transferred from the office of the CIT(A), Allahabad to the office of CIT(A), Lucknow during the Covid pandemic period therefore, in the facts and circumstances of the case and the interest of justice, the Bench is of the opinion that the assessee be given one more opportunity of hearing to present its case before the CIT(A). Accordingly, the impugned orders of the CIT(A) are set aside and the matters are remanded to the record of the CIT(A) for deciding the same afresh after giving one more opportunity of hearing to the assessee.

6. In the result, the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 23.01.2023 after conclusion of hearing at Allahabad, U.P.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Date: 23.01.2023
Allahabad
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Copy forwarded to:
1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order
Sr. P.S.