

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. 246/RPR/2022

निर्धारण वर्ष / Assessment Year : 2016-17

Gurmukh Das Gangwani
House No.199, Gurunanak Ward,
Bhatapara (C.G.)-493 118
PAN : AINPG1689A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.03.2023

घोषणा की तारीख / Date of Pronouncement : 10.03.2023

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 26.10.2022, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 23.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case, that the Ld. AO has erred in making further addition in order passed u/s 143(3) on the matter which was already declared/disclosed truly by the appellant under the Income Declaration Scheme, 2016 and was duly acknowledged by the Honorable Commissioner of Income Tax by issuing Form-4.

2. On the facts and circumstances of the case and in law, Ld. AO has erred on making disallowance of 25 percent of the amount of purchases made from certain parties u/s 145(3) even there was no suppression of profits.

3. That the assessee craves leave to add, urge, alter, modify and with draw any ground/grounds before or at the time of hearing of the appeal.”

2. Succinctly stated, the assessee who is engaged in the business of trading of Poha had e-filed his return of income for A.Y.2016-17 on 09.10.2016, declaring an income of Rs.4,11,840/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have made purchases of Rs.81,75,000/-from four tainted parties, as under:

S. No.	Name of the party	Amount
1.	Shri Tulsi Agro	Rs.32,50,000/-
2.	Balaji Food Ricetech	Rs.12,25,000/-
3.	Shre Sainath Agrotech	Rs.24,50,000/-
4.	Agrawal Agro	Rs.12,50,000/-
Total		Rs.81,75,000/-

As the assessee had failed to substantiate the authenticity of the aforesaid purchase transactions to the satisfaction of the A.O, therefore, he dubbed the same as bogus purchases and worked out an addition of Rs.20,43,750/- (25% of Rs.81,75,000/-). As the assessee had already declared Rs.10,67,300/- under the IDS 2016, therefore, the A.O restricted the addition qua the differential amount of Rs.9,76,450/- [Rs.20,43,750/- (-) Rs.10,67,300/-]. Accordingly, the A.O vide his order passed u/s.143(3) dated 23.12.2018 determined the income of the assessee at Rs.13,88,290/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded sufficient

opportunity had failed to put up an appearance in the course of the appellate proceedings, therefore, his appeal was dismissed in limine by the CIT(Appeals), observing as under:

“4. The hearing in this case was fixed on 10/10/2012. However, neither anybody attended nor was any request for adjournment made by the appellant. Before this several notices were issued fixing the case for hearing, but they were either not responded to or adjournment was sought. The details of opportunities offered are as under:

Sl. No.	Date of notice	Date of hearing	Remarks
1.	13/01/2021	20/01/2021	No reply
2.	02/11/2021	12/11/2021	No reply
3.	17/11/2021	23/11/2021	No reply
4.	14/12/2021	22/12/2021	No reply
5.	31/12/2021	11/01/2022	No reply
6.	21/06/2022	06/06/2022	No reply
7.	3/10/2022	10/10/2022	No reply

5. All notices were sent by registered mail. Sufficient opportunity has been afforded to the appellant. It appears that, the assessee is not interested pursuing in its appeal. The law aids those who are vigilant not those who sleep upon their rights. This principle is embodied in the well-known dictum, VIGILANTIBUS ET NONDORMIENTIBUS JURA SUB VENIUNT”

6. The provisions of Section 250(6) provides that the appellate order of CIT(A) are to state the points arising out of assessee’s appeal. The order shall give out the reasons for such decisions. The underline rationale of the position is that such order is further appealed.

7. Speaking order obviously will enable any party to know positively the points decided in his favor or against. Absence of formulation of the point of decision for want of quality due to the lack of information inadvertently puts the authority in a Quandary.

8. Sec.250(6) expressly embodies such provision, if an assessee fails to appear before the CIT(A) and fails to submit the relevant documents, the CIT(A) is restricted to the disposals of the appeal based on the merits available in the record.

9. This stand was furthered by the High Court in the following Judgements.

1. SHREE BALAJI WOOLLEN MILLS vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'G' BENCH. ITA. No. 1238 & 1239/De1/2011; Asst. yr. 2005-06

2. PRAVEEN KUMAR PRUTHI vs. INCOME TAX OFFICER, ITAT, DELHI 'F' BENCH ITA. No. 478/De1/2011; Asst. yr. 1999-2000

3. ASSISTANT DIRECTOR OF INCOME TAX vs. WHITE INDUSTRIES AUSTRALIA LTD, ITAT, BENCH 'C' KOLKATA ITA No. 507/Ko1/2010; Asst yr. 1992-93

4. JAI INTERNATIONAL vs. DEPUTY COMMISSIONER OF INCOME TAX ITAT, JODHPUR BENCH, ITA No. 138/Jc1/2018; Asst. yr. 2012-13

5. RAMESH SHARMA vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITA T, DELHI 'F' BENCH, ITA No. 2911/De1/2013; Asst. yr. 2006-07

6. ESTATE OF LATE TUKOJIRAO HOLKAR Vs. COMMISSIONER OF WEALTH TAX HIGH COURT OF MADHYA PRADESH, Misc Civil Case No.302 of 1991.

7. U-LIKE PROMOTERS (P) LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'H' BENCH, ITA Nos.1569 to 1572/Del/2009 and 1377 to 1379/Del/2012: Asst. Yrs. 1998-99 to 2011-12.

10. In view of the above facts the appeal is decided as under:

11. Following the above explained rationale, the appeal stands dismissed.”

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me. As the assessee appellant despite having been intimated about the hearing of appeal had failed

to put up an appearance, therefore, I am constrained to proceed with and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, i.e, after hearing the respondent revenue and perusing the orders of the lower authorities.

6. I have given a thoughtful consideration to the manner in which the CIT(Appeals) had disposed off the appeal for non-prosecution of the same by the assessee appellant. As the CIT(Appeals) had failed to apply his mind to the issues which did arise from the impugned order and was assailed by the assessee before him, therefore, I am unable to persuade myself to accept the same. In my considered view once an appeal is preferred before the CIT(Appeals), it becomes obligatory for him 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(Appeals) 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. The 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."

7. I, thus, not being able to persuade myself 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 the aforesaid observations.

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

Order pronounced in open court on 10th day of March, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 10th March, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, 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