

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 25/RPR/2022  
निर्धारण वर्ष / Assessment Year : 2016-17

Adim Jati Sewa Sahakari Samiti Maryadit, Dhorra  
Ground floor, Main Road  
Dhorra, Gariyaband(C.G)-493889  
PAN: AABAA7991C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

ACIT, Circle 1(1)  
Revenue Building, Civil Lines  
Raipur (C.G.)-492001

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S.Agrawal, CA  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.04.2023

घोषणा की तारीख / Date of Pronouncement : 28.04.2023

**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 16.12.2021, which in turn arises from the order passed by the AO under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.11.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. That under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi erred in passing ex-parte order without considering two submission made before Ld. A.O electronically on 27.7.18 which is unjustified. The appellant is a primary agriculture cooperative society, operating in a remote area and in a small village named Dhorra in Tehsil and District Gariaband, Raipur (Chhattisgarh). Notices of fixation of appeal did not come to the knowledge of the appellant, the Order be set aside.

2. That under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi further erred in passing ex-parte order without considering the merits of the case on facts and the law, rejecting deduction u/s 80Pj and making an addition of Rs.2,65,41,390. Prayed accept loss of Rs.20,96,966 as returned in ITR.

3. That the Ld. CIT (A) confirmed the order of Ld. A.O. who did not consider the loss of Rs. 20,96,966 /- but proceeded in making assessment item wise which is unjustified. Loss be allowed.

4. That Under the facts & the law the Ld. CIT (Appeals), NFAC, Delhi further erred in not allowing deduction of income from interest from banking business u/s 80P(2)(a)(i) amounting to Rs. 85,288 confirming the Order of the Ld. AO Prayed that Appellant is eligible for deduction of above sum under the above section which kindly be allowed.

5. That under the facts and the law the Ld.CIT (Appeals) NFAC, Delhi further erred in confirming the rejection of claim of the appellant for deduction of commission income earned at Rs. 2,73,661 u/s. 80P(2). Prayed that the above income is deductible u/s. 80P(2).

6. That Under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi further erred in confirming the rejection of claim of the appellant for deduction of dividend income earned at Rs. 15,650 u/s 80P(2)(d). Prayed that the above, income is deductible u/s 80P(2)(d).

7. That, Under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi further erred in confirming the Order of the Ld. Assessing officer who erred in adding the recovery amounting to Rs.6,32,602/- as income from other sources which be deducted. Prayed to deduct above sum.

8. Under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi further erred in confirming the Order of the Ld. AO. Assessing officer who added various trade liabilities amounting to Rs. 2,65,41,390 as below as income of the appellant though reply to same was filed before the Ld. AO

- 1) Rs. 1,87,60,826 payable to more than 900 farmers being bonus as received from C.G Marketing Federation.
- 2) Rs. 6,33,506 is opening balance as received in advance from C.G. State Marketing Federation for purchase of Maize.
- 3) Rs. 15,43,000 is received from C.G. State Marketing Federation for purchase of fertilizer.
- 4) Rs. 3,54,546 is saving deposits of farmers, deposit into Bank by them.
- 5) Rs. 36,54,810 is **opening** balance, amount received from Central Government against society rehabilitation package.
- 6) Rs. 2,75,292 is **opening** balance, amount received from State Government against society rehabilitation package.
- 7) Rs. 95,384 is amount received from farmers against amount payable to Land Development Bank.
- 8) Rs. 12,24,026 is again balance, payable to other societies for internal transaction. Total **Rs.2,65,41,390**. Prayed to delete Rs.2,65,41,390

9) That Under the facts and the law the Ld. CIT (Appeals), NFAC, Delhi further erred in confirming the Order of the Ld. Assessing officer who disallowed 1/10<sup>th</sup> of expenses amounting to Rs.76,42,965/- .Which kindly be deleted. Prayed to delete above sum.

10. That the Ld. CIT (Appeals), NFAC, Delhi further erred in confirming the interest charged by the Ld. AO u/s 234B at Rs. 26,97,152 and u/s 234D at Rs.28,927 which is unjustified as the Appellant never

knew that heavy addition/disallowance will be made. Prayed to delete the same.

11. That the Appellant craves leave to file additional ground, if any, at the time of hearing.

12. Whether there is any delay in filing of appeal ( if yes, please attach application seeking condonation of delay)

2. Succinctly stated, the assessee-society which is a primary agricultural co-operative society engaged in the business of banking, paddy procurement, sale of fertilizers, seeds, manure and pesticides, and sale of controlled items under Public Distribution System (PDS), had e-filed its return of income for AY 2016-17 on 16.10.2016, declaring an income of Rs. Nil. The case of the assessee was thereafter selected for scrutiny assessment u/s. 143(2) of the Act.

3. Assessment was thereafter framed by the AO vide its order passed u/s. 143(3) of the Act, dated 28.11.2018 determining the income of the assessee at Rs. 2,62,15,921 after making the following additions/disallowances.

Sr.No.	Particulars	Amount(Rs.)
1	Disallowances of the assessee's claim for deduction/s. 80P	Rs. 10,07,201/-
2	Addition of bogus creditors	Rs. 2,65,41,390/-
3	Disallowances of the assessee's claim for deduction of expenses	Rs. 7,64,296/-

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

opportunity failed to participate in the appellate proceedings, therefore, the CIT(A) holding a conviction that the assessee was no more interested in pursuing its appeal dismissed the same for want of prosecution on its part.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. The Ld. Authorized Representative (for short 'AR') for the assessee-society had filed an application under Rule 29 of the Appellate Tribunal Rules, 1963, seeking liberty for placing on record additional documentary evidences, as under.

S.No.	<u>Particulars</u>	Page No.
1	Summary of sundry creditors in Balance sheet filed before AO (here filed for convenience purpose)	1
2	<ul style="list-style-type: none"> <li>• Copy of Release Order filed with State Cooperative Marketing Federation Limited, Raipur for supply of fertilizers - Rs. 15,43,000/-</li> <li>• English Version (Sample) .</li> </ul>	2-5 & 6
3	<ul style="list-style-type: none"> <li>• Bank Statement showing payment made next year</li> </ul>	7
4	List and account copy of farmers for payment of Paddy procured - Rs. 1,87,60,826/-	8-34
5	List and account copy of amount payable to other societies (Old balance) -Rs. 12,24,026/-	35-40
6	List of amount payable to Bhoomi Vikas Bank - Rs. 95,384/-	41-45
7	List of amount payable to Nagrik Apurti Nigam - Rs. 6,33,506/-	46
8	Details of Central & State Government subsidy received for Infrastructure -Rs. 39,30,102/-	47-52

9	List of Savings Bank deposits from Members - Rs. 3,54,546/-	53-74
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7. On being queried as to why the aforementioned documents were not filed in the course of proceedings before the lower authorities, it was submitted by the ld. AR that the same was primarily for the reason that the A.O had during the course of the assessment proceedings allowed insufficient time of five days to the assessee. Elaborating further, it was submitted by the ld. AR that as the assessee which is a primary agricultural cooperative society that is working for the benefit of the farmers in an interior and remote area of the State of Chhattisgarh which is affected by the movement of Naxalites and is not well connected by rail/road, thus, could not make available the aforesaid documentary evidences to its counsel who was allowed only a short time period of four working days for furnishing the same in the course of the assessment proceedings.

8. We have given a thoughtful consideration, and find substance in the reasons which has led to the failure on the part of the assessee to furnish the aforementioned documents in the course of the assessment proceedings. In our considered view as the assessee was not allowed sufficient time period to file the aforementioned documents, therefore, as stated by the ld. A.R, and, rightly so, there was justifiable reason for the assessee in not furnishing the same in the course of the assessment proceedings. We, thus in terms of

our observations accept the aforesaid request of the assessee for placing on record the aforesaid additional documentary evidence before us.

9. Adverting to the merits of the case, we find that the CIT(A) had failed to dispose off the appeal by way of a speaking order and had summarily dismissed the same for the reason that the assessee had neither put up an appearance before him nor filed any written submissions in the course of the appellate proceedings. For the sake of clarity the observations of the CIT(Appeals) are culled out as under:

“7. I have considered the facts and circumstances of the case, the observations of the A.O and material available on record on the above matter. As mentioned in the above paragraph of this appeal order, this office has issued several letters to file written submission. However, neither any adjournment was sought for nor any written submissions were filed. The letters were issued through ITBA Systems at the e-mail provided in ITBA system. From the above conduct of the assessee, it is evident that the assessee is no more interested in pursuing the appeal. The Hon’ble Supreme Court in the case of CIT Vs. B.N. Bhattacharjee and Others (1979) 10 CTR 354 (SC) observed that preferring an appeal, means effectively pursuing it. The Hon’ble M.P High Court in the case of Estate of Late Tukojirao Holkar Vs/ CWT (1979) 223 ITR 480 (M.P) dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the assessee in the present circumstances, I am of the view that the assessee is not interested in pursuing the appeal. This view has been affirmed by the Hon’ble ITAT Ahmedabad in case of Amitkumar H. Shah Vs. ACIT in ITA No.2985/Ahd/2010 vide their order dated 31.12.2013, wherein following the order of ITAT Delhi Bench in the case of CIT Vs. Multiplan India Pvt. Ltd. (1991) 38 ITD 320 (Del), ITAT has dismissed the appeal filed by the assessee for want of persuasion. Under these circumstances, the current appeal of the appellant is liable to be dismissed.”

As observed hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issues which did arise from the impugned order and was 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. 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.”

10. We, thus, in terms of our aforesaid observations not being able to persuade ourselves to subscribe to the manner in which the CIT(Appeals) had summarily dismissed the appeal, restore the matter to his file for fresh adjudication. The CIT(A) is directed to re-adjudicate the matter after considering the aforesaid additional documentary evidence that has been filed by the assessee before us U/rule 29 of the Appellate Tribunal Rules, 1962. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

11. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 28<sup>th</sup> day of April, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 28<sup>th</sup> April, 2023

\*#Thirumalesh/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, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.