

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1224/MUM/2023
Assessment Year: 2017-18

Pramak/Partnership Firm
2nd floor, Kuber Building, 98,
Sheikh Memon Street, Zaveri
Bazar, Mumbai-400002.

PAN NO. AAAFP 1969 L

Appellant

CIT(A), NFAC,
Mumbai.

Vs.

Respondent

Assessee by : Zeal Savla
Revenue by : Ms. Indira Adakil, DR

Date of Hearing : 04/07/2023
Date of pronouncement : 10/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 13.02.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

1. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the order u/s 250 without giving opportunity.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in passing the order on 13.02.2023 by ignoring the fact that request for adjournment was filed on 30.01.2023 seeking time till 14.02.2023.*



3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the addition of Rs.34,80,000/- being cash deposits made out of business surplus cash on hand.*

2. At the outset, the Ld. Counsel of the assessee before us submitted that the Ld. CIT(A) has passed the impugned order before the adjourned date. He submitted that order has been passed on 13/02/23 ignoring the request dated 30/01/23 of the assessee seeking adjournment till 14/02/2023. The Ld Counsel submitted that Ld CIT(A) has passed the order *ex-parte* and therefore, matter might be restored back to the file of the Ld. CIT(A) for deciding afresh.

3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. CIT(A) has adjudicated the appeal observing as under:

“4. During the course of appeal proceedings, the following notices/letters for hearing were issued to the appellant, but till date the appellant has neither filed any response nor filed any submissions in support of grounds of appeal. The details of the notices issued are as under:

Sl. No.	Date of Notice Sent	Compliance Date	Remarks
	27.01.2021	29.01.2021	No response from the appellant
	06.09.2021	14.09.2021	No response from the appellant
	06.07.2022	21.07.2022	No response from the appellant
	19.09.2022	30.09.2022	No response from the appellant
	04.11.2022		Issued Enablement of Communication



			<i>Window. No response from the appellant.</i>
	14.01.2023	30.01.2023	<i>No response from the appellant</i>

4.1 Thus in this case, the appellant has not effectively pursued the appellate proceedings and failed to respond to various notices issued by this office. It is important to delve into the judicial pronouncements on this issue which are elaborated below:

4.1.1 In the case of *CIT vs. B.N. Bhattacharva* reported at 118 /TR 461, it was held by the Hon'ble Supreme Court that...*appeal does not mean merely filing of appeal but effectively pursuing it*"

4.1.2 The decision of the Hon'ble High Court of Mumbai in the case of *Ms. Chemipol v/s. Union of India, Law Ministry, Aayakar Bhawan, Mumbai and The Commissioner of Central Excise, Mumbai* (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.

4.1.3 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 the 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."

4.1.4 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 liSt 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, therefore, the court will be well within 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."

4.1.5 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 in exercise its inherent power to dismiss the appeal for non-prosecution.

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

Thereafter in another decision in the case of Chadha Finlease Ltd. V. ACITITA No.3013/Del/2011 date of order 20.12.2011) the Hon'ble ITAT had dismissed the appeal for non-attendance at hearings.

4.1.7 In a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA no.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence.



5. *The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition of Rs. 34,80,000/- made by the AO to the appellant's income should not be sustained.*

6. *In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. The assessee has failed to substantiate the cash deposits of Rs. 34,80,000/-. In the absence of any evidence whatsoever, whether documentary or otherwise, I am constrained to agree with the approach adopted by the A in making the addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.”*

3.1 Before us, the Ld. Counsel of the assessee has submitted that submission / explanation of the assessee has not been considered in the impugned order and the Ld. CIT(A) has not given finding on merit of the issue whereas even in ex-parte order, the Ld. CIT(A) is required to pass order on merit in terms of section 250(6) of the Act, which *prescribe that the order of CIT(Appeals) disposing the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.* In the



circumstances, we feel it appropriate to restore this appeal back to the file of the Ld. CIT(A) for deciding afresh after providing adequate opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 10/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai