

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. 167/RPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Grand Motors
NH-200, Raipur Road,
Bilaspur (C.G.)
PAN: AAKFG6077H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
CPC, Bengaluru

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.07.2023
घोषणा की तारीख / Date of Pronouncement : 17.07.2023

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 29.07.2022, which in turn arises from the intimation issued by Centralized Processing Centre (CPC)/AO under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 09.03.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The order of the CIT(a) is bad in law and on facts.
2. The Id. CIT(A) erred in dismissing the appeal summarily disregarding the grounds of appeal and statement of facts.
3. That the Id. CIT(A) ignored the fact of Covid situations prevailed in the country during the year 2020 to 2022. Therefore, no proper opportunity was given to the appellant.
4. That the Id. CIT(A) erred in restoring the order of AO and upheld the additions made.
5. i) That the Id. CIT(A) erred in sustaining addition of Rs. 83,23,022/- on account of VAT.
- ii) That the Id. CIT(A) erred in sustaining addition of Rs. 4,79,621/- on account of Entry Tax.
- iii) That the Id. CIT(A) erred in sustaining addition of Rs. 3,47,250/- on account of non-deduction of TDS on Rent, Contract payment, professional fees and Interest.
6. That the Id. CIT(A) erred in sustaining addition of Rs. 83,23,022/- on account of VAT, which has not been debited to profit & loss account. The case of the appellant is covered by Jurisdiction High Court decision in the case of Ganpati motors v/s State of Chhattisgarh and Hon'ble ITAT Raipur Bench.

7. The appellant reserves the right to add, alter and omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.”

2. As is discernible from the records, it transpires that the A.O vide intimation issued u/s.143(1) of the Act had made certain disallowances/additions, viz. (i) addition of Rs. 83,23,022/- on account of VAT; (ii) addition of Rs.4,79,621/- on account of entry tax; and (iii) disallowance of Rs.3,47,250/- u/s.40(a)(ia) of the Act, which thereafter on appeal was sustained by the CIT(Appeals).

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

4. The Ld. Authorized Representative (for short 'AR') for the assessee, submitted that the CIT(Appeals) had disposed off the appeal of the assessee for non-prosecution and the issues involved therein, remains to be adjudicated on merits. Carrying his contention further, it was submitted by the Ld. AR that in all fairness the matter may be restored to the file of the CIT(Appeals) for adjudication on merits.

5. The Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of restoring of the matter to the file of the CIT(Appeals) by the assessee's counsel.

6. We have heard the Ld. Authorized Representatives of both the parties and perused the orders of the lower authorities as well as the material available on record.

7. On a perusal of the order of the CIT(Appeals), we find that as the assessee despite having been afforded sufficient opportunities had failed to put up an appearance before him on 8 occasions, as under:

Date of notice	Date of compliance	Status
28.12.2020	29.12.2022	No compliance
22.09.2021	27.09.2021	No compliance
08.10.2021	18.10.2021	No compliance
13.12.2021	20.12.2021	No compliance
23.12.2021	29.12.2021	No compliance
03.03.2022	11.03.2022	No compliance
01.06.2022	08.06.2022	No compliance
10.06.2022	17.06.2022	No compliance

Accordingly, the CIT(Appeals) dismissed the appeal on account of non-prosecution by the assessee. However, we find that the CIT(Appeals) while disposing off the appeal had failed to deal with the specific issues which were assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee had 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.”

8. We, thus, not being persuaded 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 our aforesaid observations. As we have restored the matter to the file of the CIT(Appeals), therefore, we refrain from dealing with and therein, adjudicating the issues involved in the present appeal.

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

Order pronounced in open court on 17th day of July, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 17th July, 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, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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