

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

Chandrasahni Ispat Private Limited
Gerwani, Saraipalli Road,
Raigarh-496 001
PAN : AACCC9257G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.08.2023

घोषणा की तारीख / Date of Pronouncement : 04.09.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 15.07.2022, 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 14.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us :

“1. That in the facts and circumstances of the case, the National Faceless Appeal Centre (NFAC) has grossly erred in dismissing the appeal so filed by the assessee and thus sustaining the additions of Rs.1,64,49,966/- u/s 68 so made by the AO.

2. That in the facts and circumstances of the case, the Ld. A.O has grossly erred in making addition of share application money amounting to Rs.1,64,49,966/- to total income as unexplained credit u/s 68 of the Income Tax Act, 1961 which is bad in law and against the principle of natural justice.

3. That in the facts and circumstances of the case, the Faceless Appeal Centre (NFAC) erred in passing appellate order without providing reasonable opportunity of being heard to the assessee.

4. The appellant craves leave to add, amend, alter or vary from the above grounds of appeal at or before the time of hearing.”

2. At the very outset of the appeal hearing, we find that a delay of 1 day is involved in filing the present appeal. On a perusal of the application filed by the assessee company explaining the reasons leading to the delay above, we

find that the same had been attributed to the late delivery of papers by courier to the assessee's counsel. Considering the reason leading to the delay above of 1 day, which is by no means inordinate, we condone the same.

3. Succinctly stated, the assessee company, which is engaged in manufacturing CTD Bars, etc., had e-filed its return of income for A.Y.2017-18 on 21.10.2017, declaring an income of Rs.75,67,450/-. The assessee's case was thereafter selected for scrutiny assessment u/s.143(2) of the Act.

4. The A.O. after that framed assessment vide his order passed u/s.143(3) dated 14.12.2019, wherein after treating the share application money of Rs.1,64,49,966/- as an unexplained cash credit u/s. 68 of the Act, the income of the assessee company was assessed at Rs.2,40,17,420/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. At this stage, we may herein observe that as the assessee, despite having been afforded sufficient opportunities, had failed to put up an appearance in the course of proceedings before the First Appellate Authority i.e., on 16.12.2021, 28.12.2021, 19.04.2022 and 04.07.2022; therefore, the CIT(Appeals) dismissed its appeal for want of prosecution and refrained from dealing with the merits of the case.

6. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us. As observed by us hereinabove, the CIT(Appeals) had disposed of the appeal for non-prosecution and failed to apply his mind to the issues arising 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 of 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 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. A perusal of Sec.251(1)(a) and (b) of the Act, 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 arise 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 view above 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 case mentioned above the Hon'ble jurisdictional High Court 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. 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 of the same on merits. Needless to say, the CIT(Appeals) shall afford a reasonable opportunity to be heard to the assessee during the de novo appellate proceedings. The grounds of appeal raised by the assessee are disposed in terms of our observations above.

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

Order pronounced in open court on 04th day of September, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 04th September, 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-1 (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.