

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.435/Hyd/2023		
Assessment Year: 2020-21		
Venkata Sai RCC Pipes & Infrastructures, Hyderabad	Vs.	Dy. CIT Circle 9(1) Hyderabad
(Appellant) PAN:AAHFV8280E		(Respondent)
Assessee by:	Advocate S Sandhya	
Revenue by:	Shri T Sunil Gowtham, DR	
Date of hearing:	21/09/2023	
Date of pronouncement:	21/09/2023	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the ex-parte order dated 28/06/2023 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2020-21.

2. The grounds raised by the assessee read as under:
1. *The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*
 2. *The learned Commissioner of Income-Tax (Appeals) erred in dismissing the appeal without providing opportunity.*
 3. *The learned Commissioner of Income-Tax (Appeals) erred in not deciding the grounds agitated by the appellant in Form No.35 filed before the Hon'ble CIT (A).*
 4. *The learned Commissioner of Income-Tax (Appeals) ought to have seen that the income admitted of Rs.91,04,610/- by the*

assessee includes disallowance made by the assessee of Rs.17,88,358/- being 30% of the expenses on which TDS was not deducted.

5. The learned Commissioner of Income-Tax (Appeals) ought to have considered that while admitting the income of Rs.91,04,610/- disallowance of Rs.17,88,368/- was made by the assessee and CPC while processing the return of income once again added Rs.17,88,368/-.

6. As the CPC did not rectify the mistake the learned CIT (Appeals) ought to have directed CPC to delete the addition of Rs.17,88,368/-.

7. Any other ground that may be urged at the time of hearing.”

3. We find the learned CIT (A) NFAC sustained the addition made by the Assessing Officer in absence of any submission or documentary evidence filed by the assessee despite two opportunities granted. The relevant paragraphs of the order of the learned CIT (A) read as under:

3. Notice of hearing dated 06.04.2023 and 07.06.2023 were given fixing the case for necessary submissions by 21.04.2023 and 14.06.2023 respectively. However, no reply has been filed by the appellant in the appeal proceedings even till the date of passing of this order. The conduct of the appellant makes it clear that the appellant is not interested in pursuing the appeal.

4. It is also important to mention that the notices were sent to the email provided by the appellant in Form No. 35 and to the email addresses available in the database of the department. However, no submissions have been furnished by the appellant till date in support of the grounds of appeal.

5. It has been held in various decisions that where the assessee has not made any compliance, the appeal can be decided on material available on record.

5.1 In the case of CIT vs. B. N. Bhattacharya reported at 118 ITR 461 it was held that “.....appeal does not mean merely filing of appeal but effectively pursuing it.”

5.2 In this regard, the decision of the Hon'ble High Court of Mumbai in the case of M/s Chemipol v/s. Union of India [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.

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 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.”

5.3 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:-

“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 who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be will without 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.”

5.4 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.

5.5 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dt.19.12.2001) in the case of Whirlpool of India Ltd. v. 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. ACIT (ITA No.3013/Del/2011 date of order

20.12.2011), the Hon'ble ITAT had dismissed the appeal for non-attendance at hearings.

5.6 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. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence as it would expose falsity and lack of genuineness.

6. Therefore, as the appellant has not pursued the appeal despite being granted several opportunities, this appeal is being decided on the basis of facts available on record.

7. Held:- During the course of appeal proceedings, no reply has been filed by the appellant. I have perused the order of the Assessing Officer and considered the facts of the case. The appellant has not pursued the appeal despite being granted several opportunities as elaborated above. No details, documents or submission have been provided by the appellant substantiating its grounds of appeal. The mere facts mentioned in Form No. 35 cannot be considered in the absence of any supporting documentary evidence and submissions. 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. All the grounds of appeal are therefore dismissed”.

4. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate its case with documentary evidence to the satisfaction of the learned CIT (A) NFAC.

5. The learned DR, on the other hand, strongly objected to the arguments advanced by the assessee.

6. We have considered rival arguments and perused the available material on record. It is an admitted fact that the assessee failed to submit the details when two opportunities were

granted by the learned CIT(A). Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned CIT (A) NFAC with a direction to grant one last opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT (A) NFAC on the appointed date without seeking any adjournment under any pretext failing which the learned CIT (A) NFAC is at liberty to pass appropriate order as per law. At the same time, due to the callous attitude of the assessee in ignoring the notices of the learned CIT (A) NFAC, we levy a cost of Rs.3000/- on the assessee which is to be paid to the PMs Relief Fund. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 21st September, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st September, 2023.

Vinodan/SPS

Copy to:

S.No	Addresses
1	Venkata Sai RCC Pipes & Infrastructures, SY No.297, Kuntloor Hayatnagar Sarada Nagar, S.O KV Ranga Reddy, Hyderabad 500070
2	Dy.CIT, Circle 9(1) IT Towers, Masab Tank, Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order