

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.247/NAG/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Ritesh Gandhare, 01, Near Central Excise, Datala Road, Opp.Agresan Bhawan, Jagannath Baba Nagar, Chandrapur – 442402. Maharashtra PAN: AHJPG2827M	V S	The Income Tax Officer, Ward-2, Chandrapur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Mahavir Atal – AR
Revenue by	Shri Vijay Kumar Subrahmanyam– Sr.DR
Date of hearing	28/12/2023
Date of pronouncement	29/12/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income Tax (Appeal)(NFAC) dated 13.07.2022 for A.Y.2017-18, emanating from Assessing Officer's order under section 144 of the Act dated 17.12.2019.

The Assessee has raised following grounds of appeal :

“1. Whether on the facts and circumstances of the case, learned CIT(A) was justified in issuing an order under section 250 without adjudicating the case on merits.

2. Appellant craves leave to add or alter any other ground that may be taken at the time of hearing.”

Submission of Id.Authorised Representative(ld.AR) :

2. The Id.Authorised Representative(ld.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case. Hence, ld.AR requested for one more opportunity of being heard to the assessee.

Submission of Id.Departmental Representative(ld.DR) :

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and ld.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. On perusal of the order of the ld.CIT(A)[NFAC] it is observed that ld.CIT(A) has dismissed the appeal without discussing merits, as assessee failed to file submission in response to two notices issued by ld.CIT(A).

4.1 The Hon'ble Bombay High Court in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF Bombay)/[2017] 297 CTR 614 (Bombay) has held as under :

Quote, "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 Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 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. Section 251(1)(a) and (b) 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-section (2) of Section 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 Section 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 with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer 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 Section 251(1)(a) and (b) and Explanation to Section 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.” Unquote.

5. Thus, Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution. However, in this case ld.CIT(A) has dismissed appeal of the assessee without discussing merits of the case and only on one ground i.e. Non-prosecution. In these facts and circumstances of the case, we set-aside the order of ld.CIT(A)[NFAC] to the file of ld.CIT(A) for denovo adjudication after giving opportunity of hearing to the assessee. The assessee shall provide all the necessary document required by the ld.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 29th Dec, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th Dec, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.