

**।आयकर अपीलीय अधिकरण न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES :: PUNE**

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

**आयकर अपील सं. / ITA No.1426/PUN/2023**  
**निर्धारण वर्ष / Assessment Year : 2012-13**

Manoj Mahadevappa Menkudale, Menkudale Niwas, Pachamma Galli, Azad Chowk, Latur – 413512. PAN: BKSPM2680R	V s	The Income Tax Officer, Ward-1, Latur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri Sourabh Nayak – CIT-DR
Date of hearing	31/01/2024
Date of pronouncement	31/01/2024

**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), Delhi dated 27.10.2023 for A.Y.2012-13, emanating from Assessing Officer's order under section 144 r.w.s 147 of the Act dated 24.10.2016. The Assessee has raised following grounds of appeal :

“1. *On the facts and in the circumstances of the case and in*

*law the Id. CIT(A) erred in passing an ex parte order in as much as the appellant did not have the knowledge of notice of hearing issued by the CIT(A).*

2. *On the facts and in the circumstances of the case and in law the appellant prays before your honor to grant an opportunity to represent the matter before the Assessing Officer along with the supporting evidences for agricultural receipts.*

3. *On the facts and in the circumstances of the case and without prejudice to the Ground No. 1 the Assessing Officer has erred in making addition of Rs.27,46,000/- u/s 69A of the Income Tax Act, 1961.*

4. *On the facts and in the circumstances of the case and without prejudice to the Ground No.1 the Assessing Officer has grossly erred in making addition in respect of cash deposits of Rs.27,46,000/- ignoring the fact that the said deposits are duly explained out of agricultural receipts of the appellant an earlier cash withdrawals.*

5. *The above grounds of appeal may kindly be allowed to be altered, amended modified, deleted etc in the interest of natural justice.”*

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

2. The case was called twice, no one appeared on behalf of the assessee.

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

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

**Findings & Analysis :**

4. We have heard Id.DR for the Revenue and perused the records. In this case, the AO has passed an order under section 144 r.w.s 147 of the Act, dated 24.10.2016 making addition of Rs.28,02,529/-. Assessee had not filed Return of Income. On perusal of the order of the Id.CIT(A)[NFAC] it is observed that the assessee was given four opportunities but the assessee failed to submit his reply before the authorities. Subsequently, the Id.CIT(A) has dismissed the appeal without discussing merits, as assessee failed to file submission in response to four notices issued by Id.CIT(A).

4.1 Thus, it can be observed that Id.CIT(A)[NFAC] has not adjudicated the grounds of the assessee.

4.2 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 Id.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 31<sup>st</sup> January, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> January, 2024/ 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, बेंच,  
पुणे / DR, ITAT, Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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