

।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE**

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

आयकर अपील सं. / ITA No.1105/PUN/2023

निर्धारण वर्ष / Assessment Year : 2012-13

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| Mr.Sunil Shankar Bandal, At Post Bavdhan BK, Taluka Mulshi, Pune – 411021. PAN: AJKPB8627M | V s | The Income Tax Officer, Ward-2(5), Pune. |
| Appellant/ Assessee | | Respondent /Revenue |

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| Assessee by | Shri Bhuvanesh Kankani – AR |
| Revenue by | Shri Sourabh Nayak – Addl.CIT-DR |
| Date of hearing | 14/02/2024 |
| Date of pronouncement | 14/02/2024 |

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(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 dated 22.08.2023. The assessee has raised the following grounds of appeal :

“1. On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Assessment Proceedings initiated u/s 147 of the Act are time barred since the notice issued u/s 148 of the Act is served after 6 years. Accordingly, the assessment proceedings so initiated be kindly quashed and Appellant be granted just and proper relief in this respect.

2. *On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Assessment Proceedings initiated and completed are not in accordance with the provisions of Act. Thus, the assessment proceedings be kindly quashed and Appellant be granted just and proper relief in this respect.*

3. *Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the addition of Rs.1,13,30,760/- so made by Ld. AO and that upheld by Ld. CIT(A) is incorrect. Accordingly, the additions so made be kindly deleted and Appellant be granted just and proper relief in this respect.*

4. *Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Assessment Proceedings so completed by Ld. ITO Ward 2(5) ('successor ITO'), lacks proper jurisdiction, since provisions of section 129 of the Act were not adhered by Successor ITO when jurisdiction of the case shifted from ITO Ward 2(3) to him. Ld. Successor ITO ought to have given opportunity to the Appellant vide notice u/s 129 of the Act intimating about change of jurisdiction. Accordingly, the Assessment Proceedings so completed be kindly annulled and Appellant be granted just and proper relief in this respect.*

5. *Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Assessment Proceedings so completed lacks adherence of the Principle of Natural Justice. Accordingly, the Assessment Proceedings so completed be kindly annulled and Appellant be granted just and proper relief in this respect.*

6. *Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Assessment Order passed, 6t so upheld, by making addition of Rs.1,13,30,760/- is a non-speaking order since Ld. AO has not at all mentioned under which provisions of*

the Act has the income been charged to tax. Accordingly, the additions so made be kindly deleted and Appellant be granted just and proper relief in this respect.

7. *Without prejudice to above grounds, on the facts and circumstances prevailing in the case it is prayed that since Appellant could not represent the case before Ld. CIT(A), he be kindly allowed to present the case before Your Honour's and also be allowed to submit additional evidences, if required.*

8. *The Appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing."*

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) of the assessee submitted that Id.CIT(A)[NFAC] had not adjudicated each ground of the assessee and merely dismissed the appeal of the assessee. The Id.AR submitted that the notices issued by Id.CIT(A) were served on a wrong email address, and therefore, assessee could not reply to those notices within time.

Submission of Id.DR :

3. The Id.Departmental Representative(Id.DR) for the Revenue relied on the order of the Assessing Officer.

Findings &Analysis :

4. We have heard both the parties and perused the records. In this case, Id.CIT(A) has dismissed the appeal of the assessee for

non-prosecution. The Id.CIT(A) has not adjudicated various grounds raised by the assessee.

4.1 The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) 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 CIT(A) has to decide the appeal on merit and CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of this, the order of the ld.CIT(A)[NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity of hearing to the assessee.

6.1 The ld.AR has not made any submission on the merits of the addition made by Assessing Officer. Since we have set-aside the order of ld.CIT(A) for denovo adjudication, we

do not intend to make any observation on the merits of the addition.

7. Accordingly, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 14th February, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 14th Feb, 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, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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