

**।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.382/NAG/2022
निर्धारण वर्ष / Assessment Year : 2014-15**

Prakash Ramesh Sharma, Plot No.69, PMG Society, Behind Ganesh Mandir, Narendra Nagar, Nagpur. Maharashtra – 440015. PAN: AVOPS5603A	V s	The Income Tax Officer, Ward-4(5), Nagpur.
Appellant/ Assessee		Respondent/Revenue

Assessee by	None.
Revenue by	Shri Abhay Y. Marathe – Sr.DR
Date of hearing	27/02/2024
Date of pronouncement	28/02/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeals)[NFAC], under section 250 of the Income Tax Act, 1961 dated 15.09.2022 emanating from the order under section 143(3) of the Act, 1961 dated 28.12.2016. The grounds of appeal raised by the Assessee are as under :

“1. The order passed by Hon'ble CIT(A) is illegal invalid and bad in law. The Hon'ble CIT(A) erred in sustaining the action of the Ld. AO on total additions of Rs. 60,07,500/- is incorrect, unjustifiable, excessive and should be quashed.

2. The Hon'ble CIT(A) erred in law and on facts in dismissing the appeal of the appellant. That on facts and in law, the Hon'ble CIT (A) ought to have decided the appeal on merits instead of dismissing the appeal for non-attendance

3. That the Hon'ble CIT(A) erred in law and on facts by sustaining the additions made by Ld. AO as detailed under:

[a]	Addition u/s.56(2)(vii)(b)(ii)-Rs.39,44,000/-
[b]	Addition u/s.56(2)(vii)(b)(ii) - Rs.20,63,500/-
	Total addition Rs.60,07,500/-

4. The above grounds of appeal are without prejudice and notwithstanding each other. Any consequential relief, which the appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted. The appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal and the factual and legal arguments against the addition by the Ld.CIT(A)/ Ld. AO at the time or before the course of appellate proceedings in the interest of natural justice.”

2. At the time of hearing, no one appeared on behalf of the assessee. No adjournment letter was found on record.

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.Departmental Representative for the Revenue 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 notices issued by ld.CIT(A).The ld.CIT(A) has decided this case as under :

Order u/s 250 of Income Tax Act,1961

Instituted on 30/01/2017 from the order of WARD 4(5), NAGPUR dated 28/12/2016

Appeal No	CIT (A)- 4, Nagpur/10443/2016-17 (Manual Appeal Register Number: 163/2016-17)
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	143(3)
Date of Order under which the order appealed against was passed	28/12/2016
Income/Loss Assessed (in Rs.)	7002810
Tax/Penalty/Fine/Interest Demanded (in Rs.)	2473320
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

The appellant was sent notices of hearing/submission on 25/01/2021, 25/03/2022 & 06/09/2022. There was no reply from the appellant at given address. Therefore, it seems appellant has no interest in pursuing the appeal. Hence, I do not find any reason to interfere with the order passed by the assessing officer. In sum, appeal is dismissed.

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

4.1 In this case, ld.CIT(A) has dismissed the appeal of the assessee for non-prosecution. In this case, order of ld.CIT(A) contains only four sentences. The ld.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.2 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, the 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.

7. Accordingly, appeal of the assessee in ITA No.382/NAG/2022 is allowed for statistical purpose.

Order pronounced in the open Court on 28th February, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 28th 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, 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.