

।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

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

आयकर अपील सं. / ITA No.1436/PUN/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Jaganath Tryambakrao Vyavahare, Sambhaji Chowk, Niphad, Nashik, Maharashtra – 422303. PAN: AIGPV5925R	V s	The Income Tax Officer, Ward-2(1), Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Smt. Deepa Khare – AR
Revenue by	Shri Ramnath P Murkude - DR
Date of hearing	06/03/2024
Date of pronouncement	07/03/2024

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] dated
09.08.2023 for A.Y.2015-16. The Grounds of appeal raised by the
assessee are as under :

*“1. The Ld CIT(A) erred in law and on facts in dismissing the
appeal and upholding the order of Ld AO without serving notice of
hearing on the registered address of the appellant.*

*2. The Ld CIT(A) erred in law and on facts in issuing notice to
the email address: SCN1Q61981@GIVIAII.COM which is not the
registered Email address of the appellant.*

3. *The Ld CIT(A) erred in law and on facts in holding that the appellant has not responded to the notices without appreciating that notices were not served to the appellant.*

4. *On the basic of facts and in the circumstances of the case and as per law the Ld CIT(A) is not justified in confirming addition of Rs 2,51,50,000/- without passing a speaking order and without giving specific reasons or finding for his action.*

5. *The learned CIT(A) erred in law and on facts in not considering the submissions made before Ld AO as well as in the statement of facts filed along with appeal.*

6. *The CIT(A) has failed to decide Ground No. 2 raised before him regarding not providing copy of reasons and Approval of High Authorities by Ld AO.*

7. *The Ld CIT(A) erred in law and on facts in not serving the order on the appellant on its proper or registered address within the meaning of Section 282 of the Act.*

8. *The assessee submits that there was a reasonable cause on its part for non compliance to the notices issued by the learned CIT(A) and accordingly, requests for one more opportunity to present its case before the learned CIT(A) / A.O.*

9. *The appellant craves for addition, deletion, alteration, and modification etc. of the grounds of appeal.”*

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

2. The Id.AR of the assessee had sought for adjournment vide letter dated 05.03.2024. However, we rejected the adjournment

petition. Ld.AR submitted that ld.CIT(A) had not adjudicated on merit.

Submission of ld.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. It is observed from the order of the ld.CIT(A)[NFAC] that the ld.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. In this case, ld.CIT(A) held as under in para 6 of the order as under :

“6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree with the approach adopted by the AO in making addition. 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. The grounds of appeal are therefore dismissed.”

4.1 Thus, as can be seen that the ld.CIT(A) did not adjudicate the grounds of appeal raised by the assessee.

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

Order pronounced in the open Court on 7th March, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 7th March, 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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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