

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

**BEFORE SHRI PARTHA SARATHI CHAUDHURY,**  
**JUDICIAL MEMBER AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.848/PUN/2023**

**निर्धारण वर्ष / Assessment Year : 2016-17**

Govind Milk and Milk Products Pvt. Ltd., Ganesh Sheri, Pune Pandharpur Road, At Post Kolki, Phaltan, Satara, Maharashtra. PAN: AAACG7588A	V s	The Income Tax Officer, Ward-3, Satara.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri R.Y.Balawade – Addl.CIT
Date of hearing	13/03/2024
Date of pronouncement	26/03/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This 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 25.05.2023. The assessee for A.Y.2019-20 has raised the following grounds of appeal :

*“1. The Ld CIT(A) erred in passing her order ex-parte without allowing appellant reasonable opportunity of being heard.*

*2. The Ld CIT(A) erred in upholding the disallowance of Rs.43,51,377/- under section 40(a)(ia) made by the Ld AO without*

*appreciating that the appellant was not required to deduct tax on this expense because of section 194A(3)(iii)(a).*

3. *Without prejudice to Ground No.2, the Ld CIT(A) erred in not considering the provisions of section 201(1) because of which the appellant was not to be considered in default in respect of the amount of Rs.1,45,04,591/-.*

4. *The Ld CIT(A) erred in sustaining the disallowance of Rs. 13,08,300/- out of expenses made in adhoc manner though the appellant had maintained reasonable records of expenses and the books of account were audited.*

5. *The above grounds of appeal are without prejudice to one another.*

6. *The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.*

7. *The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

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

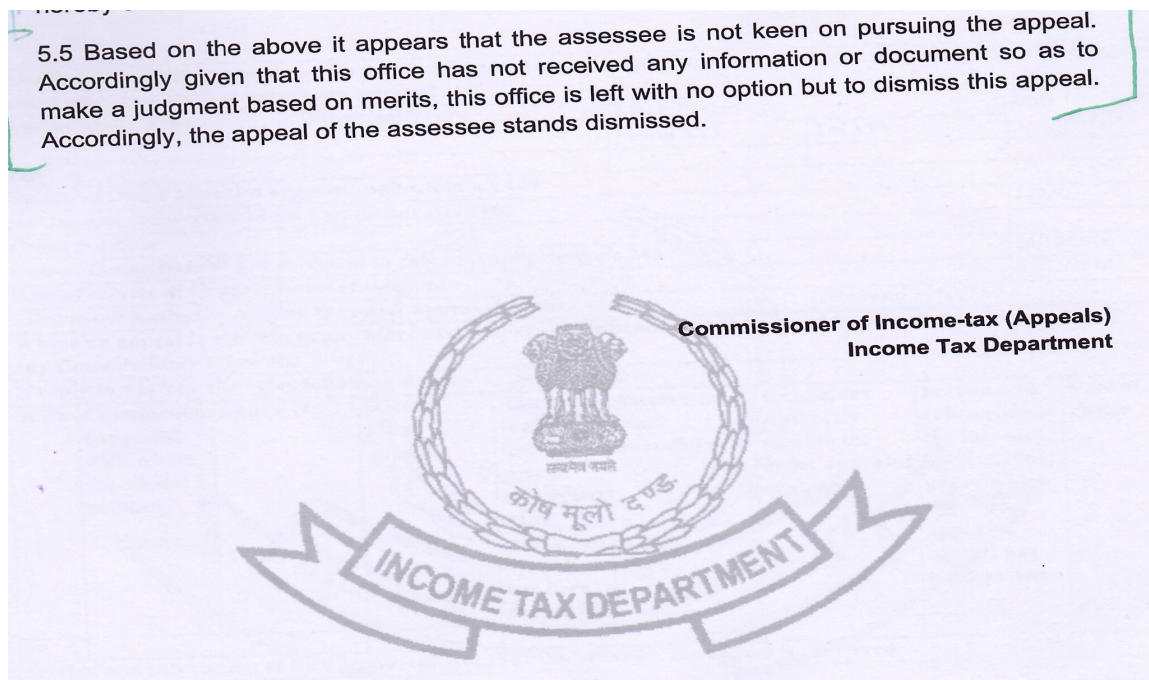
**Submission of Id.Departmental Representative(Id.DR) :**

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 Id.CIT(A) it is observed that Id.CIT(A) has dismissed the appeal without discussing merits, as assessee failed to file submission in

response to notices issued by Id.CIT(A).The Id.CIT(A) has decided this case as under :



4.1 In this case, Id.CIT(A) has dismissed the appeal of the assessee for non-prosecution. The Id.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) 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.848/PUN/2023 is allowed for statistical purpose.

Order pronounced in the open Court on 26<sup>th</sup> March, 2024.

Sd/- (PARTHA SARATHI CHAUDHURY) JUDICIAL MEMBER  
Sd/- (DR. DIPAK P. RIPOTE) ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> 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.