

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

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

ITA No.1091/PUN/2023
(A.Y. 2009-10)

Lokmangal Cooperative Bank Ltd., 128, Murarji Peth, Opp. Sevasdan High School, Solapur-413001 (MH)	vs	ITO, Ward-2(1), Solapur.
PAN: AAAAL 0119 J		
Appellant		Respondent

Assessee by	:	Shri Pramod S. Shingte, CA
Revenue by	:	Shri Ramnath P. Murkunde, DR
Date of hearing	:	01/04/2024
Date of pronouncement	:	03/04/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 12.09.2023 for A.Y.2009-10 as per the grounds of appeal on record.

2. We have heard both the parties and perused the material available on record. We find that the NFAC had dismissed the appeal for non-prosecution and the rights and liabilities of the parties herein were not adjudicated on merits. That, on perusal of Para 6.1 of the NFAC's order, it is seen that the assessee or its authorised representative have not filed any written submission nor filed any letter seeking adjournment in response to the notices issued, thus the matter was dismissed for non-prosecution. The Hon'ble Bombay High

Court in the case of *CIT v. Prem Kumar Arjundas Luthra (HUF)*

[2017] 297 CTR 614 (Bom.) has held as follows:-

"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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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-s. (2) of s. 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 s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 s. 251(1)(a) and (b) and Explanation to Sec. 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."

4. The process of judicial adjudication requires Quasi-Judicial authority to adjudicate the case on merits and come out with a speaking order. In the present case, the NFAC was unable to do so because of the evasive nature of the assessee. However, keeping in mind the principles of natural justice and the very fact, the Income Tax Act is welfare legislation; we are of the considered view that one

final opportunity should be given to the assessee to represent its case on merits. In view thereof, we set aside the order of NFAC and remit the matter back to its file for de novo adjudication. The assessee is also directed to file written submissions with evidences/documents before the NFAC to present its case on merits before the NFAC and it shall adjudicate the same by passing a speaking order while complying with the principles of natural justice. In view of the aforesaid directions, we set aside the order of the NFAC and remand the matter back to its file.

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

Order pronounced in open Court on 03rd April, 2024.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 03rd April, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.