

।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.103/NAG/2023
निर्धारण वर्ष / Assessment Year : 2012-13

Apeak Infotech Private Limited, Room No.3, Ground Floor, Plot No.101, East High Court Road, New Ramdas Peth, Nagpur – 440010. PAN: AAFCA5453R	V s	The Assistant Commissioner of Income Tax, Circle-4, Nagpur.
Appellant/ Assessee		Respondent/Revenue

Assessee by	Shri Hitesh Shah – AR
Revenue by	Shri Abhay Y. Marathe – Sr.DR
Date of hearing	27/03/2024
Date of pronouncement	19/04/2024

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], Delhi under section 250 of the Income Tax Act, for A.Y.2012-13 emanating from assessment order under section 143(3) r.w.s

147 of the Act dated 02.12.2019. The assessee has raised the following grounds of appeal :

- “1. The Hon. CIT(A) was not justified in dismissing the appeal without affording sufficient opportunity to the appellant.*
- 2. The Ld. AO erred in reopening the assessment U/S.148.*
- 3. The Ld. AO is not justified in passing the Order U/S.144.*
- 4. The Ld. AO erred in making addition U/S.68 of Rs.48,00,000/- , without appreciating the facts and circumstances of the case.”*

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

2. The Id.Authorised Representative(ld.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case. Hence, ld.AR requested for one more opportunity of being heard to the assessee.

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

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed from the order of the Id.CIT(A)[NFAC] that the Id.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-

compliance. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the Id.CIT(A) vide its order dated 14.02.2023 has dismissed appeal of the assessee as under :

“5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly the appeal of the assessee stands dismissed and the order of the Assessing Officer is upheld.”

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 Id.CIT(A) has to decide the appeal on merit and

ld.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.103/NAG/2023 is allowed for statistical purpose.

Order pronounced in the open Court on 19th April, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 19th April, 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.