

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.629/PUN/2024  
निर्धारण वर्ष Assessment Year : 2011-12

Shri Samarth Shikshan Prasarak Mandal, A/P. MOI, Great Road, Khed, Pune 410 501 Maharashtra PAN : AAKTS3449K	Vs.	ITO, Exemption Ward-2, Pune
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri Manoj Tripathi

Date of hearing : 02.05.2024  
Date of pronouncement : 06.05.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre, Delhi dated 02.02.2024 for the assessment year 2011-12.

2. Briefly, the facts of the case are that the appellant is a trust and no return of income was filed under the provisions of section 139(1) of the Act. The Assessing Officer (AO), on verification of ITS data, noticed that the appellant trust deposited cash of Rs.32,53,000/- in Corporation Bank during the previous year relevant to assessment

year 2011-12. The assessment was reopened by way of issue of notice u/s.148. In the absence of furnishing any cogent documentary evidences in support of cash deposits so made, the AO vide order u/s.143(3) r.w.s.147 dated 27.11.2018 made addition of Rs.32,53,000/- as unexplained cash credit u/s.69A of the Act. He also made addition of Rs.1,428/- being the interest earned from bank.

3. Being aggrieved by the above assessment order, an appeal was before the CIT(A)/NFAC, who vide impugned order dismissed the appeal of the assessee for non-prosecution.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. Heard the rival submissions and perused the material on record. It is an admitted position that the CIT(A)/NFAC had dismissed the appeal of the appellant *ex parte* for non-prosecution. Further, it is a trite law that the CIT(A)/NFAC should have dealt with the merits of the issue in appeal, even in the case of *ex-parte* order. From the perusal of paras 3.1 and 3.2 of the impugned order, it would reveal that the CIT(A)/NFAC had not gone into the merits of the issue in appeal, merely dismissed the appeal for non-

prosecution, which is contrary to the settled position of law. Our view is fortified by the judgment of the Hon'ble Bombay High Court in the case of Pr.CIT(Central) Vs.Premkumar Arjundas Luthra (HUF) Bombay)/[2017] 297 CTR 614 (Bombay) wherein the Hon'ble High Court held 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. Infact the CIT(A) is obliged to dispose of the appeal on merits. Infact 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.*

Thus, the Hon’ble Bombay High Court had 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 the circumstances, we are of the considered opinion that it is a fit case for remand of the matter to the file of the CIT(A)/NFAC for *de novo* consideration in accordance with law.

7. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 06<sup>th</sup> day of May, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 06<sup>th</sup> May, 2024

*Satish*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “SMC” बेंच, पुणे / DR, ITAT, SMC” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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