

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.1321/PUN/2023
निर्धारण वर्ष / Assessment Year : 2015-16**

Dr.Nirmalkumar Phadkule Pratishthan, S No.6039, Dr.Nirmalkumar Phadkule Sabhagruh, Sidheshwar Peth, Near Sidheshwar Temple, Solapur – 413001. PAN: AABTD2883M	V S	The Income Tax Officer, Solapur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	02/05/2024
Date of pronouncement	06/05/2024

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] under section
250 of the Income Tax Act, 1961 for A.Y.2015-16 dated
31.10.2023. The assessee has raised following grounds of
appeal :

“1. *The CIT (Appeals):*

- i. *erred in dismissing the appeal on grounds that the appellant had not furnished within the appointed date 26.10.2023, any explanation to the points raised in his letter issued on 19.10.2023.*
- ii. *erred in presuming that the appellant had nothing to say in the matter and in drawing an adverse conclusion without appreciating the fact that the appellant had no tax liability which was evident from the record.*

2. *The CIT (Appeals) erred in ignoring the appellant's written request for adjournment and in passing an adverse order confirming the penalty u/s 271A(2)(e) on the basis of presumption and incorrect appreciation of law. The appellant pleads that the appellate order is contrary to facts S law and results in denial of justice when the appellant's assessed income was Rs Nil and there was no liability to pay tax/advance tax.*

3. *The appellant prays that the matter be restored to the file of CIT (Appeals), to be heard & decided in accordance with law.*

4. *Without prejudice the C I T (Appeals), without appreciating documents in record, erred in dismissing the appeal as infructuous on grounds that the information furnished in Sr No 9 of Form 35 was presumably correct and that the appellant had not made payment of advance tax due on it income. The appellant pleads that the CIT (Appeals) order is factually and legally incorrect and that the levy of penalty by the AO ought to have been deleted.*

5. *The appellant pleads for directions allowing the appeal and craves leave to, add to, alter, amend, modify or withdraw any or all grounds of appeal.”*

Findings and Analysis :

2. None appeared for the assessee. No adjournment letter on record. None appeared on behalf of the assessee on earlier dates i.e.14/04/2024, 05/03/2024, and 31/01/2024. No adjournment letters were filed for earlier dates. In these facts and circumstances, we heard Ld.DR and perused the records.

2.1 It is observed that the Ld.CIT(A) has dismissed the appeal of the assessee. The relevant paragraph 7 of the Ld.CIT(A)'s order is reproduced here under :

Quote, “7. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.” Unquote.

2.2 Thus, the Ld.CIT(A) has dismissed the appeal of the Assessee as infructuous for non-payment of the Advance Tax.

3. In this case the Assessee had not filed return of income for A.Y.2015-16 u/s.139(1) of the Act. The Assessing Officer based on the information received issued notice u/s 148 of the Act on

29/03/2022. In response to the notice u/s.148 of the Act the assessee filed Return of Income for AY 2015-16 on 18/01/2023 declaring Gross Total Income of Rs.32,65,885/- and Net Total Income at “NIL” claiming deductions under Section 11 of the Act. The Assessing Officer(AO) passed the Assessment Order accepting Retuned Income at “NIL” and allowing the Assessee’s claim of deduction u/s 11 of the Act. The Demand Notice u/s 156 issued by the Assessing Officer along with the Assessment Order dated 16/03/2023 shows Tax Payable at “NIL”. The AO issued Penalty notice u/s 272A(2)(e) of the Act for non-filing of return of income withing the statutory time limit. The AO levied the penalty u/s.272A(2)(e) of the Act. Assessee filed appeal against the Penalty order before the Ld.CIT(A) who has dismissed the appeal as non-fructuous for non-payment of Advance Tax.

3.1 The Section 207 of the Income Tax Act 1961 decides the Advance Tax liability of the assessee. The said section 207 is reproduced here as under :

“Liability for payment of advance tax.

207. (1) Tax shall be payable in advance during any financial year, in accordance with the provisions of [sections 208 to 219](#) (both

inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income".

(2) The provisions of sub-section (1) shall not apply to an individual resident in India, who—

(a) does not have any income chargeable under the head "Profits and gains of business or profession"; and

(b) is of the age of sixty years or more at any time during the previous year."

3.2 Thus, as per Section 207 of the Act the Advance tax is payable in respect of the Total Income of the Assessee which would be chargeable to Tax. In this case the Total Income of the assessee was "NIL" as admitted by the Assessing Officer in the Assessment order. Therefore, in this facts and circumstances of the case there was no Advance Tax Liability for the impugned year. Hence, the Ld.CIT(A) has erred in dismissing the appeal only on one ground that Advance Tax was not paid.

3.3 Therefore, the order of the Ld.CIT(A) is set-aside to the Ld.CIT(A) with a direction that the Ld.CIT(A) shall decide the grounds of appeal raised by the assessee on merits of the case. Accordingly, Ground No.3 of the assessee is allowed.

3.4 Since we have set-aside the order of ld.CIT(A) for denovo adjudication, the Ground No.1, 2, 4 and 5 become academic in nature. Accordingly, Ground No.1, 2, 4 and 5 are dismissed without adjudication on merits.

4. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 6th May, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 6th May, 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.