

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

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

**आयकर अपील सं. / ITA No.1059/PUN/2023**  
**निर्धारण वर्ष / Assessment Year: 2013-14**

|                                                                                                                       |        |                                                                            |
|-----------------------------------------------------------------------------------------------------------------------|--------|----------------------------------------------------------------------------|
| Anil Tarachand Kadu,<br>Gut No.115, Ranjankhol,<br>Tilaknagar, Ahmednagar,<br>Ahmednagar – 413720.<br>PAN: APLPK9182P | V<br>s | The Deputy<br>Commissioner of Income<br>Tax, Central Circle-1(1),<br>Pune. |
| Appellant/ Revenue                                                                                                    |        | Respondent /Assessee                                                       |

|                       |                           |
|-----------------------|---------------------------|
| Assessee by           | Shri Vinita Shah – AR     |
| Revenue by            | Shri Keyur Patel – CIT-DR |
| Date of hearing       | 02/05/2024                |
| Date of pronouncement | 07/05/2024                |

**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 for A.Y.2013-14 dated 07.08.2023 emanating from the assessment order u/s.143(3) r.w.s 153A of the Income Tax Act, 1961 dated 29.12.2017. The Assessee has raised the following grounds of appeal :

“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirmation the action of Learned Assessing Officer in making an addition of Rs 41,98,221/- on account of alleged undisclosed Long Term Capital Gain on sale of land, without considering the facts and circumstances of the case.

3. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

**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 ld.CIT(A)[NFAC].

**Findings & Analysis :**

4. We have heard both the parties and perused the records. It is observed from the order of the ld.CIT(A)[NFAC] that the

ld.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The ld.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the ld.CIT(A) vide its order dated 07.08.2023 has dismissed appeal of the assessee as under :

*“During the appellate proceedings, the appellant has chosen not to attend the appellate proceedings and therefore no submission in support of the grounds raised has been filed before me. Since the appellant has not filed anything to rebut the findings of the Assessing Officer, therefore, the penalty of Rs.41,98,221/- made by the Assessing Officer is upheld. The ground of appeal raised by the appellant is DISMISSED.”*

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 ld.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 three effective opportunities of hearings to the assessee.

7. Accordingly, appeal of the assessee in ITA No.1059/PUN/2023 is allowed for statistical purpose.

Order pronounced in the open Court on 7<sup>th</sup> May, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 7<sup>th</sup> 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.

| S. No | Details                                          | Date       | Initials | Designation |
|-------|--------------------------------------------------|------------|----------|-------------|
| 1     | Draft dictated on                                | 06.05.2024 |          | Sr. PS/PS   |
| 2     | Final Draft placed before author                 | 07.05.2024 |          | Sr. PS/PS   |
| 3     | Draft proposed & placed before the Second Member | .05.2024   |          | JM/AM       |
| 4     | Draft discussed/approved by Second Member        |            |          | AM/AM       |
| 5     | Approved Draft comes to the Sr. PS/PS            |            |          | Sr. PS/PS   |
| 6     | Kept for pronouncement on                        |            |          | Sr. PS/PS   |
| 7     | Date of uploading of Order                       |            |          | Sr. PS/PS   |
| 8     | File sent to Bench Clerk                         |            |          | Sr. PS/PS   |
| 9     | Date on which the file goes to the Head Clerk    |            |          |             |
| 10    | Date on which file goes to the A.R.              |            |          |             |
| 11    | Date of Dispatch of order                        |            |          |             |