

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.717/PUN/2024
निर्धारण वर्ष Assessment Year : 2012-13

Rajendra Damodhar Jadhav, Shastri Colony, At Post Sillod, Tal. Sillod, Dist. Ahmednagar – 431 112 Maharashtra PAN : ASAPJ0708J	Vs.	ITO, Ward-1(1), Aurangabad
Appellant		Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri R.Y. Balawade

Date of hearing : 28.05.2024
Date of pronouncement : 28.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 29.11.2023 for the assessment year 2012-13.

2. Briefly, the facts of the case are that the appellant is an individual working as Salesman in Electrical Shop. No regular Return of Income under the provisions of section 139(1) of the Income-tax Act, 1961 (hereinafter referred to as 'The Act') was filed for the A.Y. 2012-13.

Subsequently, based on the receipt of the information that the appellant made a cash deposit of Rs.10,92,000/- in the Savings bank account maintained with State Bank of India, the AO formed a opinion that income escaped assessment of tax. Accordingly, notice u/s.148 was issued on 31.03.2019. In response to notice u/s.148, the appellant had filed Return of Income declaring total income of Rs.1,55,000/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide order dated 22.11.2019 passed u/s.144 r.w.s.147 of the Act by making addition of cash deposit of Rs.10,92,000/- for failure of the assessee to explain the source of cash deposit.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide impugned order dismissed the appeal for non-prosecution without entering into merits of the addition.

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

5. We heard the rival submissions and carefully perused the order passed by the CIT(A) and find that the ld. CIT(A)/NFAC had dismissed the appeal of the appellant *in limine* for non-prosecution. 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 an *ex-parte* order. From the perusal of para 4 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. In this regard, we would like to make a reference to a decision 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 it was 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. Relevant paragraphs of the judgment are reproduced below

:

“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.”

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.

6. In the result, the appeal filed by the assessee stands partly allowed for statistical purpose.

Order pronounced on this 28th day of May, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28th 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