

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 204/MUM/2024
Assessment Year: 2012-13**

Bhumika Rajesh Vatnani,
2601/02 Royal Empire, Shashtri
Nagar, Andheri (West),
Mumbai-400053.

PAN NO. ADMPV 7590 F
Appellant

24(1)(1),
Piramal Chamber,
Mumbai.

Vs.

Respondent

Assessee by : Ms. Ridhisha Jain
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 22/05/2024
Date of pronouncement : 30/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 28.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:

- 1. On the facts & in the circumstances of the case and in law the Hon'ble CIT (A) erred in passing an ex parte order and confirming*



the addition made by the Id. Assessing Officer and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder.

2. *On the facts & in the circumstances of the case and in law the Hon'ble CIT (A) erred in not issuing any fresh notice even though adjournment was sought and confirming the addition made by the Id. Assessing Officer and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder.*
3. *Without prejudice to the other ground of appeal, On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in dismissing the appellant's appeal in limine without considering the subject issues on merit. Therefore, the appeal may kindly be restored to the Hon'ble CIT(A) for fresh adjudication.*
4. *Without prejudice to the aforesaid grounds, On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition made by the Ld AO of Rs. 41,99,609/- on account of LTCG earned on sale of shares of Wagend Infra Venture Ltd claimed as exempt u/s 10(38) of the IT act as unexplained credit u/s 68 of the IT act 1961 and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*
5. *On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition made by the Ld AO of Rs. 1,25,988/- on account of hypothetical commission paid on sale of shares of Wagend Infra Venture Ltd as unexplained expenditure u/s 69C of the IT act 1961 and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*
6. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the penalty initiated by the Ld AO u/s. 271(1)(c) of the IT Act 1961 and the reasons assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*

2. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has decided the appeal ex-parte without deciding the issue in dispute on merit and therefore, appeal may be restored back to the file of the Ld. CIT(A) for deciding afresh on merit.

3. We have heard rival submission of the parties and perused the relevant material on record. We find that though the assessee did not comply to the various notices issued by the Ld. CIT(A), however, the Ld. CIT(A) has dismissed the appeal of the assessee in default



without deciding the issue on merit. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6. Decision

I have gone through the facts of the case, Statement of Facts filed alongwith Form No. 35 and the Assessment Order passed by the AO. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated supra. No reply whatsoever has been submitted by the appellant.

From the above sequence of event, it can be seen that appellant has not replied to any of the notices issued on various occasion although notices have been duly served on the E Mail id provided. As the appellant has not availed any of the opportunities allowed to him to represent the case, I am of the opinion that the appellant is not interested in pursuing his appeal matter and has to say nothing in the matter in addition to grounds of appeal taken by him. So, the appeal filed by the appellant is being disposed off ex-parte on the basis of the material available on records without allowing any further opportunity of being heard to the appellant. The maxim 'vigilantibus non-dormientibus jura subvenunt' i.e. "the law assist those who are vigilant and not those who sleep over their rights" is applicable in this case.

6.1 Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra, Land and housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee, 118 ITR 461 [SC] held that the appeal does not mean merely filing of the appeal but effectively pursuing it.

6.2 The Hon'ble Income Tax Appellate Tribunal, Mumbai in ITA No.6876/Mum/2008:Asst. Year 2005-2006 in the case of M/s. Classic Shares & Stock Broking Services Limited Vs. The Assistant Commissioner of Income-tax in the order dated 18.01.2012 has held as follows:-

"2. This appeal was fixed for hearing on 16.01.2012. However, despite notice, none appeared on behalf of the assessee nor has it moved any application for adjournment. It is, therefore, presumed that the assessee is not interested in prosecuting its appeal. Accordingly, by applying the ratio laid down by the ITAT Delhi Bench in the case of CIT Vs. Multiplan India (P.) Ltd. [(1991) 38 ITD 320], we dismiss this appeal filed by the Appellant-assessee as not maintainable.

3. In the result, the appeal is dismissed."



6.3 The Hon'ble Income Tax Appellate Tribunal, Delhi in ITA No. 5532(Del)/2010 of Assessment year: 2007-08 in the case of M/s Panwar Roshin & Turpentine Co. Ltd. vs Income-tax Officer has held as follows:-

"2. The appeal was filed on 08.12.2010 when an acknowledgement cum-notice was served on the bearer under which the appeal was fixed for hearing on 10.02.2011. None attended on that date. Thereafter, another notice dated 07.10.2011 was served on the assessee through the official courier, fixing the hearing on 13.12.2011. When the case was called for hearing on this date, neither anybody attended nor any adjournment was sought. Therefore, it is held that the assessee is not interested in prosecuting the appeal. In such a situation, the appeal is likely to be dismissed in limine, in view of the decision in the case of CIT Vs. Multiplan India (P) Ltd., 38 ITD 320(Del) and Estate of Late Tukajirao Holkar Vs. CWT, 223 ITR 480 (M.P). It is held accordingly.

3. In the result, the appeal is dismissed."

6.4 The Hon'ble Income Tax Appellate Tribunal "A" Bench, Kolkata in I.T.A No. 1038/Kol/2011 for Assessment Year 1997-1998 in the case of Shyam Sunder Somani, vs Deputy Commissioner of Income Tax in its order dated 11.04.2012 has dismissed the appeal in absence of attendance by holding as follows:-

"2. The case was fixed for hearing on 11.04.2012. However, on the date fixed for, i.e. 11.04.2012 neither anybody on behalf of the assessee is present nor there is any application for adjournment. It appears that the assessee is not interested in prosecuting this appeal.

3. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the wellknown dictum - "vigilantibus, non dormientibus, jura subveniunt".

4. Considering the facts and keeping in mind the provisions of Rule 19(2) of the ITAT Rules as was considered in the case of CIT -vs.- Multiplan India Pvt. Ltd. 38 ITD 320 (Del.) 2 ITA No. 1038/Kol./2011 and the judgment of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. C.W.T. reported in 223 ITR 480, we treat this appeal as dismissed.

5. In the result, the appeal filed by the assessee is dismissed."

6.5 The Hon'ble Income Tax Appellate Tribunal Bangalore Bench "A" in I.T.A. No.971/Bang/2010 for Assessment Year 2004-05; in the case of Shri C.S. Ashok Prop. Trupti Service Station vs. Income Tax Officer,



Ward 4(3), Bangalore in its order dated 18.04.2012 has held as follows:-

"This appeal is filed by the assessee. The relevant assessment year is 2004-05. The appeal is directed against the order of the Commissioner of Income-tax (Appeals)- II at Bangalore dated 22.01.2010. The appeal arise out of the assessment completed u/s 143(3) of the Income-tax Act, 1961.

2. At the time of hearing, it is noticed that the appeal was initially fixed for hearing on 9.8.2011 after allowing the Misc. Petition filed by the assessee. Afterwards, the case was adjourned several times for various reasons and finally fixed for hearing on 18.4.2012. The assessee's counsel appeared on 24.02.2012 and in his presence the case was adjourned. The assessee has been seeking adjournment on the earlier occasions. However today, even date, when the case is posted for hearing, none appeared for the assessee. In view of the same, we are of the opinion that the assessee is not interested in pursuing the appeal. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well-known dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT. Considering the facts and keeping in view the provisions of rule 19(2) of the Income-tax Appellate Tribunal Rules as were considered in the case of CIT vs. Multiplan India Ltd., (38 ITD 320)(Del) we treat this appeal as un-admitted.

3. Similar view has been taken by the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) wherein it has been held as under:

"... if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

5.7 Similarly, Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 ITR 495) returned the reference unanswered since the assessee remained absent and there was not any assistance from the assessee.

6.6 Their Lordships of Hon'ble Supreme Court in the case of CIT vs. B. Bhattachargee & Another(118 ITR 461 at page 477-78) held that the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

6. So by respectfully following the view taken in the cases cited supra, we dismiss this appeal filed by the assessee for non-prosecution.

7. In the result, the appeal of the assessee is dismissed"



6.7 A similar view has been expressed by the Hon'ble ITAT "B" Bench, Lucknow in the case of M/s. Kanchan Singh Bhuli Devi Shiksha vs CIT-1 in ITA No. 706 & 707 (LKW)/2010 in its order dated 12-01-2012 and by the Hon'ble ITAT, Amritsar in its order dated 21-06-2011 in IT No. 488(Asr)/2010 in the case of M/s Shamsheer Jang Bahadur vs ACIT, CC-1, Jalandhar that the appeal is to be dismissed for want of prosecution."

3.1 Under the provisions of section 250(6) of the Act, the Ld. CIT(A) is required to pass a reasoned order on the merit of the issue in dispute even in case of non-representation on the part of the assessee. The Ld. counsel on behalf of the assessee has given an undertaking that due compliance of the notices issued by the Ld. CIT(A) would be made in case matter is sent back to him. In the facts and circumstances, we feel it appropriate to restore this appeal back to the file of the Ld. CIT(A) for deciding afresh after providing opportunity of being heard to the assessee. The Ld. CIT(A) is directed to pass a reasoned order even in case of non-representation on the part of the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/05/2024.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/05/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai