

।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.542/PUN/2024
निर्धारण वर्ष / Assessment Year : 2015-16

Mukesh Lalu Jadhav, 92, Anand Park, IT Road Aundh, Pune – 411007. PAN: AFEPJ4215K	V s	The Income Tax Officer, Ward-2(1), Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Arvind Desai – DR
Date of hearing	11/06/2024
Date of pronouncement	11/06/2024

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 dated 24.01.2024. The Assessee has raised the following grounds of appeal :

- “1. CIT(A) has erred in confirming the Presumptive Turnover and Percentage of Profit respectively @ Rs.6,98,20,894/- and 8% i.e. Rs.55,85,672/-

Appellant prays reasonable estimate of Gross Receipts and

Grain Broking Transactions.

- 2. CIT(A) has erred in arriving at Turnover/Gross Receipts figure @ Rs.6,98,20,894/- without considering the fact that Bank Deposits includes the Refund of Hand Loans made out of Compensation Receipts on which Interest of Rs.32,15,667/- is earned.*

Appellant Prays relief for the same.

- 3. The proceedings u/s148 and Assessment Order is bad in law.*

Additions made are without Jurisdiction.

- 4. Without prejudice to above the Appellant prays that addition should be restricted to reasonable amount of the Business Receipts of the Assessee to apply for Presumptive Taxation.*
- 5. Lower Authorities have erred in charging Interest u/s234A and u/s234B.*

Appellant prays for deletion of the same.

- 6. Appellant Denies Liability of Interest u/s234A and u/s234B on said Addition.*
- 7. Appellant prays to add, alter, amend, take additional grounds, submit additional evidence, and/or withdraw the ground/s, during appellate Proceedings.”*

2. At the time of hearing, no one appeared on behalf of the assessee.

Submission of Id.Departmental Representative(Id.DR) :

3. The Id.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard Id.DR for the Revenue and perused the records. It is observed from the order of the Id.CIT(A)[NFAC] that the Id.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the Id.CIT(A) vide its order dated 24.01.2024 has dismissed appeal of the assessee as under :

“6. The aforesaid non compliances reveals beyond doubt that the appellant has nothing to say in the matter of present appeal. Thus, it appears that the assessee is not interested in prosecution of the present appeal and the same is liable to be dismissed on this ground itself. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known dictum “VIGILATIBUS, NON DORMENTIBUS, JURA SUBVENIUNT”.

Considering the facts and relying on the decision of the Hon'ble, ITAT, Delhi Bench, in the case of CIT Vs Multiplan India Ltd. reported in 38-ITD-320 and the judgement of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao Holker Vs. CWT (1997) reported in 223-ITR-480 the present appeal is liable to be 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 the above, the order of the ld.CIT(A)[NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity of hearing to the assessee.

7. Accordingly, appeal of the assessee in ITA No.542/PUN/2024 is allowed for statistical purpose.

Order pronounced in the open Court on 11th June, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 11th June, 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.