

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA Nos. 767 & 768/Ahd/2024
A. Y. 2016-17 & 2017-18**

Neelam Sachin Mehta, 8 Rajasthan Society, Opp. Meghdoot Petrol Pump Shahibaug, Ahmedabad PAN: AJEPS0551K (Appellant)	v.	The Income Tax Officer, Ward-1(3)(1), Ahmedabad
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**Assessee by: Shri Prakash D. Shah, A.R.
Revenue by: Shri M. Anand Kumar, Sr. D.R.**

Date of hearing : 18-06-2024
Date of pronouncement : 18-06-2024

आदेश/ORDER

These two appeals filed by the assessee in ITA Nos. 767/Ahd/2024 & 768/Ahd/2024 for assessment year 2016-17 and assessment year 2017-18 respectively with ITAT Ahmedabad Bench, Ahmedabad, which in turn has arisen firstly ITA No. 767/Ahd/2024 from appellate order dated 22-02-2024 in DIN & Order No: ITBA/APL/S/250/2023-24/1061345225(1) for assessment year 2016-17 which in turn has arisen from assessment order dated 22-12-2018 u/s.

143(3) vide order No. ITBA/AST/S/143(3)/2018-19/1014503767(1) for assessment year 2016-17, and second appeal in ITA No. 768/Ahd/2024 for assessment year 2017-18 has arisen from the appellate order of CIT(A) dated 29-02-2024 vide DIN & Order No. ITBA/NFAC/250/2023-24/1061755732(1) which in turn has arisen from the assessment order dated 26-12-2019 passed by Assessing Officer u/s. 144 of the Act.

2. Firstly, I shall take up the appeal of the assessee for assessment year 2016-17 in ITA No. 767/Ahd/2024.

3. The brief facts of the case are that the assessee is an individual and has filed return of income for assessment year 2016-17 on 15th March, 2018 declaring total of Rs. 2,80,650/-, which return of income was processed by Revenue u/s. 143(1). The assessee has claimed to have derived tuition income and income from pre-schooling consulting. The case of the assessee was selected by Revenue under CASS under limited scrutiny, and accordingly statutory notices u/s. 143(2) and 142(1) were issued by the Assessing Officer. The Assessing Officer observed that assessee has filed return of income on 15-03-2018 i.e. after 7th November 2016 (date of demonetization). There were cash deposits during demonetization period. The Assessing Officer asked the

assessee to furnish various details relating to deriving of income from tuition and pre-schooling consulting income , as are mentioned in page 2 of the assessment order. The assessee did not submit requisite details/documentary evidences. The Assessing Officer observed that there are credit entries of Rs. 13,96,398/- including cash deposits appearing in the bank account with Axis Bank Account No. 914010025535472. The show cause notice was issued by the AO to the assessee which is reproduced by the Assessing Officer in page no. 3 of the assessment order , but the assessee did not submit any detail. However, the assessee during the course of assessment order has submitted the detail/documents in respect of credit entries appearing in the bank account of Axis bank to the extent of Rs. 11,96,490/- being received as repayment of loans from Narayan Organics P. Ltd. and M/s. United Meta Chem. Industry to the tune of Rs. 10,58,793/- , and revenue receipt as tuition fee of Rs. 72,695/- and Rs. 65,002/- shown as repayment of Max Life Insurance. The assessee submitted copy of extracts of auditors to prove the return of loans from Narayan Organics P. Ltd. and M/s. United Meta Chem. Industry , but the same were not accepted by the Assessing Officer. The Assessing Officer further observed that the assessee has claimed to have made advance to these parties during the assessment years 2013-14 and 2014-15, but the assessee has not filed return of income

for the assessment year 2012-13 to 2015-16. The Assessing Officer further observed that the during the demonetization period, the assessee has deposited cash of Rs. 28,78,000/-. Ultimately the Assessing Officer framed the assessment by making addition in the hands of the assessee of the unexplained cash credit of Rs. 13,96,398/- as the credit entries appearing in the Axis Bank on being remained unexplained.

4. Aggrieved , assessee filed first appeal before Id. CIT(A), who dismissed the appeal of the assessee ex-parte in-limine, without discussing the issues on merit , by holding as under:-

“6. Decision:

I have carefully considered the facts of the case, the assessment order u/s 143(3) of the Act, 1961. The issue involved in this appeal is addition of Rs. 13,96,398/- as unexplained cash credits.

Despite being given many opportunities, appellant did not respond during appellate proceedings nor furnished any written submission or any evidence in support of the grounds of appeal raised. The assessment order of the AO has been carefully perused and I find that the assessment order is well reasoned and speaking order which has dealt in detail the issue before making the addition of Rs. 13,96,398/-as unexplained cash credits.

6.1 *In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect. However, in the instant case, appellant has not furnished any evidence / written submission in support of grounds of appeal raised by the appellant.*

6.2 As mentioned in Para 4.1 of this appeal order, this office has issued several letters / notices to assessee to file written submission. However, neither any adjournment was sought nor any written submissions were filed. The notices were issued on email available in the ITBA Module of the Income Tax Department.

6.3 From the above conduct of the appellant, it is evident that the appellant is not interested in pursuing its appeal. The Hon'ble Supreme Court in the case of **CIT Vs B. N. Bhattacharjee & Others [1979] 10 CTR 354 (SC)** observed that preferring an appeal, means effectively pursuing it. The Hon'ble M.P. High Court in the case of **Estate of Late Tukojirao Holkar Vs CWT [1979] 223 ITR 480 (MP)** dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the appellant in the present proceeding, I am of the view that the appellant is not interested in pursuing the appeal.

6.4 The Hon'ble Supreme Court in the decision pronounced on October 25, 2019 in the case of **PCIT vs. NRA Iron & Steel Pvt. Ltd in Civil Appeal No. of 2019 (Arising out of SLP (Civil) No. 29855 of 2018)** has held that if a notice is duly served upon the litigant through its authorized representative, and it was provided sufficient opportunity to appear before the Court and contest the matter but the litigant chooses to let the matter proceed ex-parte, the order cannot be recalled. In the case of the present appellant, the notices to the appellant u/s 250 of the I.T. Act, 1961, have been issued online through the ITBA software, as is required under the Faceless Assessment & Appeals now in practice.

6.5 The decision of the **Hon'ble High Court of Mumbai in the case of M/s. Chemipol v/s. Union of India [Central Excise Appeal No.62 of 2009]** clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial

pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of **Hon'ble Supreme Court in case of NandramdasDwarkadas, AIR 1958 MP 260**, is reproduced below: "Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

6.6 The principle that every court **that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default**, has been upheld by the Hon'ble Supreme Court in case of **Dr. P. NallaThampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242**. In the latter case, the Apex Court has held as under:- "That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be without its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

6.7 In its decision in the case of **CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA No.798 of 2009)**, the **Hon'ble High Court of Delhi** had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the

assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence as it would expose falsity and non-genuineness.

6.8 *During the appellate proceedings, the appellant has been provided more than sufficient opportunities but appellant failed to submit any submission or evidence during appeal proceedings in support of grounds of appeal as well as statement of facts, and remained non-compliant. The law assists those that are vigilant with their rights and not those that sleep there upon. Following this principle as embodied in the well-known dictum "vigilant bus non dormientibus, jura subveniunt", the grounds raised in this appeal as reproduced in para 3 supra are dismissed.*

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

5. Still Aggrieved , the assessee filed second appeal before the Tribunal. The ld. counsel of the assessee, Shri Prakash D. Shah, C.A. appeared on behalf of the assessee and submitted that the ld. CIT(A) has dismissed the appeal of the assessee ex-parte in-limine without discussing the issues on merit. He prayed that there is violation of section 250(6) hence the order of the CIT(A) is not sustainable in the eyes of law. The Ld. D.R. Shri M. Anand Kumar appeared and submitted that the assessee has not filed details before the authorities below and in fact despite several notices given, the assessee has not complied with the directions of ld. CIT(A). Further, The ld. DR fairly submitted that the matter may be set aside to the file of ld. CIT(A) for fresh adjudication.

6. I have heard rival submissions and perused the material on record. I have observed that the ld. CIT(A) has passed appellate order ex-parte in-limine without discussing the issues on merit. The ld. CIT(A) is required to pass order u/s. 250(6) by stating point for determination, the decision thereon and the reason for decision. The power of the CIT(A) is co-terminus with the power of Assessing Officer, which include even power of enhancement. The ld. CIT(A) also has powers to make further inquiries as he thinks and ld. CIT(A) may direct AO to make further inquiries and report the same to CIT(A) [Section 250(4)]. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned order on merits in accordance with law. The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and

reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices in limine without adjudicating appeal on merits of the issue, such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) and also higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . In the present case, it is observed that ld. CIT(A) has dismissed the appeal of the assessee ex-parte in-limine without discussing the issues arising in the appeal before him on merits, and hence the appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld , and that the assessee has not submitted details is not sufficient . The ld. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO. He could have made enquiries himself or have caused enquiries to be made by the AO and submit remand report to him to enable ld. CIT(A) to adjudicate the appeal. There are other vast powers vested under the 1961 Act . I have also noted that the assessee on its part did not comply with the directions/notices of the ld. CIT(A). Under such circumstances and in the interest of justice and fairness to both the parties, I set aside the appellate order passed by

CIT(A) and restore the matter back to the file of CIT(A) for fresh adjudication of the appeal of the assessee after giving opportunities to both the parties. The ld. CIT(A) shall pass the order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on her part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section 250(6) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes and the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. I order accordingly.

7. Thus, the appeal of the assessee in ITA No. 767/Ahd/2024 for assessment year 2016-17 is allowed for statistical purposes.

ITA No. 768/Ahd/2024 A.Y. 2017-18

8. Similar facts are in ITA No. 768/Ahd/2024 as were in ITA 767/Ahd/2024 adjudicated by us in the preceding para's

of this common order, wherein the ld. CIT(A) has passed the appellate order dated 29-02-2024 for assessment year 2017-18 ex-parte in-limine without deciding the issues arising in the appeal on merits and without complying with the provisions of section 250(6). The ld. CIT(A) has simply confirmed the order of the Assessing Officer. The power of ld. CIT(A) is co-terminus with the power of Assessing Officer. I have also noted that the assessee did not comply with the directions/notices of the ld. CIT(A). Thus, my decision in ITA no. 767/Ahd/2024 for assessment year 2016-17 shall apply mutatis mutandis to the appeal filed by the assessee in ITA no. 768/Ahd/2024 for assessment year 2017-18. The appellate order passed by ld. CIT(A) is set aside and the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee. The ld. CIT(A) shall pass the order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings, after giving opportunity to both the parties in compliance with principles of natural justice. Needless to say that the assessee will comply with the directions/notices issued by the CIT(A) in the set aside proceedings, and in case of failure of the assessee to comply with the directions/notices issued by ld. CIT(A), the ld. CIT(A) shall be free to pass such order ex-parte as may deem fit on merit in accordance with law after complying with the

provision of section 250(6). Thus, the appeal of the assessee is allowed for statistical purposes.

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

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18-06-2024 & reduced to writing & signed on 19-06-2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 19/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद