

।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.526/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Accuscan Daignostic Service Private Limited, 304, Rajat Apartmens, North Main Road, Lane-06, Koregaon Park, Pune – 411001. PAN: AABCA4647D	V s	The Income Tax Officer, Ward-1(1), Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Arvind Desai – DR
Date of hearing	10/06/2024
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 19.01.2024. The Assessee has raised the following grounds of appeal :

“1. That, on facts and in the circumstances of the case, the order of CIT(A), NFAC dated 19.01.2024 in dismissing the appeal filed by the appellant is arbitrary, erroneous, contrary to law, and is opposed to the principles of natural justice, equity and fair play.

2. That, on facts and in the circumstances of the case, the Ld.

CIT(A) has passed the order u/s 250 without giving sufficient opportunity of being heard and thus violating the principles of 'audi alteram partem'.

3. *That, on facts and in the circumstances of the case, the Ld. CIT(A) has passed the order u/s 250 in a mechanical way, without application of mind and without appreciating the overall facts of the case.*

4. *That, on facts and in the circumstances of the case, the Ld. CIT (A) has failed to consider that the assessee was prevented with reasonable cause from furnishing the Income Tax return, therefore the ex-parte assessment is illegal and bad in law.*

5. *That, on facts and circumstances of the case, The Ld CIT (A) has erred in confirming the addition of Rs 13,51,737/- received as Professional or Technical fees without any basis.*

6. *That, on facts and circumstances of the case, the Ld CIT(A) has erred in facts and law by confirming the addition of Rs 32,13,000/- as rental income without appreciating the facts of the case and without granting the sufficient opportunity of being heard.*

7. *That, on facts and circumstances of the case, the Ld. CIT(A) has erred in confirming addition of Rs 49,00,000/- on account of sale property without granting an adequate opportunity to substantiate the claim of deduction.*

8. *That on facts and circumstances of the case, the Ld. CIT(A) has erred in confirming additions of Rs 3,00,700/- u/s 69A without granting an opportunity to explain the source of the same.*

9. *That, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in passing the order u/s 250 without considering the fact that the application for High-Pitched assessment was submitted before the Pr. Commissioner of Income Tax-1, Pune on 23.11.2023 and copy of the same was also mailed to NaFAC through email.id: samadhan.faceless.assessment@incometax.gov.in on 20.11.2023.*

10. *That, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in passing the order u/s 250 without considering the fact that the assessee has not received any report from high-pitched committee in response to the application (High-Pitched).*

11. *The assessee may kindly be allowed to add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing.*

12. *Any other order in the interest of justice.”*

2. At the time of hearing, no one appeared on behalf of 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 ld.DR for the Revenue 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.

4.2 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.526/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.