

**।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE**

**BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.767/PUN/2024
निर्धारण वर्ष / Assessment Year : 2012-13**

Sudhir Yashwant Kadam, H.No.127, Bahutule Wadi, Mavlange, Ratnagiri, Maharashtra – 415616. PAN: ABFPK2131A	V s	The Income Tax Officer, Ward-1, Ratnagiri.
Appellant / Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri Rajesh Gawali – Addl.CIT(DR)
Date of hearing	19/06/2024
Date of pronouncement	24/06/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], Delhi u/sec.250 of the Act dated 16.02.2024. The Assessee has raised following grounds of appeal :

“1. On the facts and circumstances of the case and in law the CIT(A), NFAC erred in confirming the addition made by the ITO of Rs.13,47,713/- representing the total of cash deposits in the Bank Account, ignoring submission of the appellant that: a. The source of the cash deposit being out of his business turnover no addition is

called for in respect of such cash deposits of Rs. 13,47,713/-. b. The entire deposits representing only the gross collection, the addition of the whole amount is incorrect, c. At the most the addition ought to have been of the income component of the appellant in the cash deposit.”

2. At the outset of hearing, no one appeared on behalf of the assessee. No adjournment application filed.

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.

4.1 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 Id.CIT(A) has to decide the appeal on merit and Id.CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of the above, the order of the Id.CIT(A)[NFAC] is set-aside to Id.CIT(A) for denovo adjudication. The Id.CIT(A) shall provide opportunity of hearing to the assessee.

7. Accordingly, appeal of the assessee in ITA No.767/PUN/2024 is allowed for statistical purpose.

Order pronounced in the open Court on 24th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 24th 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, "एस एम सी" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.