

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2224/MUM/2024
Assessment Year: 2017-18**

Jansevak Nagari Sahakari
Patpedhi Ltd.,
4 Suraj Mani CHS, Gupte Cross
Road, Near Everest Colony,
Dombivli West,
Maharashtra-421202.
PAN NO. AAATJ 6670 K
Appellant

Vs.

Commissioner of Income Tax,
Faceless,
Office of The Asstt.
Commissioner of Income Tax,
Circle 3, Kalyan-421306

Respondent

Assessee by : Mr. Nilchandra Kulkarni
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 08/07/2024
Date of pronouncement : 11/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 17.01.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:



1. Ground No. 1 - Incorrect facts established

1.1. On the facts and in the circumstances of the case and in law, CIT(A) has erred in confirming the order of the Assessment Officer (hereinafter referred to as the 'Learned Assessing Officer') by dismissing the Appeal filed.

1.1 The CIT(A) has erred in confirming the following incorrect facts determined by the Learned Assessing Officer:

1.2.1. The Learned Assessing Officer has failed to appreciate the fact that the Appellant has regularly filed its return of income as per the provisions of the Act.

1.2.2. The Learned Assessing Officer has blatantly stated that the Appellant has accepted the illegal currency notes from its members during the demonetisation period and deposited the same without appreciating the fact that the Appellant is a co-operative credit society having cash-in-hand as it regularly accepts savings of its members in the form of daily deposits, monthly deposits, quarterly deposits, etc.

1.2.3. The Learned Assessing Officer has erred in understanding the risk involved in safe deposit of public money and thus stated that the Appellant is not prudent in its timing for depositing the specified bank notes.

2. Ground No. 2 - Provisions of Section 69A of the Act are not applicable

2.1 On the facts and in the circumstances of the case and in law, the CIT(A) has erred in accepting the Learned Assessing Officer's action for invoking the provisions of Section 69A of the Act by ignoring the material available on record.

3. Ground No. 3 - Erroneous determination of income

3.1 On the facts and in the circumstances of the case and in law, the CIT(A) has erred in confirming that deposits accepted by the Appellant from its members which are eventually deposited in the bank account of the Appellant on account of demonetization is the income of the Appellant.

4. Ground No. 4 - Incorrect levy of interest

4.1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in confirming the levying interest under section 234A and 234B of the Act and the said levy of interest being wholly unjustified, ought to be deleted.

Ground No. 5 - Initiation of the penalty proceedings

5.1 On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in initiating penalty proceedings under section 271AAC(1) of the Act



2. Before us, the Ld. counsel for the assessee submitted that the impugned appeal has been filed with the delay of 30 days from date of limitation. He submitted that delay was for the reason that order of ld CIT(A) was received on e-mail address, which belonged to ex-employee of the organization and same was not communicated to the board of the assessee trust. While going through the year end compliance, the assessee came to know the impugned order of ld CIT(A) from the income-tax web portal and thereafter immediately filed this appeal. The relevant submission of the assessee are reproduced as under:

“We understand that there has been a delay of 30 days in filing the appeal before Your Honour. There is a delay as the order was received on the email addresses (R p joshi2000@yahoo.com and apurva.malshe@gmail.com) which belongs to the ex-employee of the organisation. The same was not communicated to the Board for rightful action. Further, due to the year-end compliances, we were able to Login in to the Income Tax Portal in the month of April wherein we realised that the Commissioner of Income-tax (Appeals) had issued various notices which were left unanswered and resultantly an order was also issued. On becoming aware of the order, the Appellant immediately hired a Chartered Accountant for prompt action.

In order to avoid such errors, we request you to send all the correspondences on:

Email address - maheshbhi@yahoo.co.in and jansevakpat92@gmail.com

Office address - 4 Suraj Mani CHS, Gupte Cross Road, Near Everest Colony, Dombivli West-421202.”

3. We have heard rival submission of the parties on the issue of delay in filing the appeal. We find that assessee was prevented by sufficient cause for not filing the appeal on time and therefore, the delay in filing the appeal is condoned and the appeal is admitted for adjudication.



4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has passed the order ex-parte due to non-compliance of the notices. The Ld. counsel for the assessee submitted that notices were issued at the e-mail address of ex-employee(s) and therefore, same could not be complied. He submitted that assessee is willing to appear before the Ld. CIT(A) and file all the submissions required for adjudication for issue in dispute.

5. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has dismissed the appeal in default observing as under:

“4.1 The appeal was filed by the assessee on 17.02.2020 against order u/s 143(3) of the Act dated 10.12.2019 for the AY: 2017-18. In connection to the appeal, opportunities were provided to the assessee to substantiate his grounds of appeal on or before the following dates:

1) 11.01.2021

2) 11.03.2021

3) 27.12.2023

4) 08.01.2024

5) 16.01.2024

On verification of the ITBA portal, it is observed that all the notices got successfully delivered to email: R_p_joshi2000@yahoo.com and apurva.malshe@gmail.com. Against all these notices, assessee is not interested in filling any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

4.2 It has been held by the Hon'ble Supreme Court in the case of B.N.Bhattacharjee and another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution



as held by the Hon'ble Bombay High Court in the case of *M/s Chemipol vs. Union of India* in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in *Sunderlal Mannalal Vs. Nandramdas Dwarakadas* AIR 1958 MP 260 wherein it was observed:

"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...."

4.3 This appeal has been filed by the appellant with a prayer to this office that the additions made by the AO be deleted. In such situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who has made the claim by filing the appeal. Further, if the appellant claims that the addition made should be deleted, the burden is on the appellant to prove it why it should be deleted. Same is the position in case of all allowances, deduction, exemptions, claims or loss etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed or levied fee/interest, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. Hence, respectfully following the above mentioned judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed."

5.1 We find that the Ld. CIT(A) has not adjudicated the appeal on merit. Under the provisions of section 250(6) of the Income-tax Act, 1961 (in short 'the Act'), the Ld. CIT(A) is required to adjudicate the appeal on the merit even without representation on the part of the assessee. Further, the Ld. counsel for the assessee has submitted before us that due to notices issued on the ex-employee(s) the assessee could not comply before ld CIT(A) and now assessee has expressed his willingness to file submissions and comply before the Ld. CIT(A) if matter is restored. In view of the above facts and



circumstances of the case and in the interest of substantial justice, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after considering submission of the assessee.

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

Order pronounced in the open Court on 11/07/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 11/07/2024
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