

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.715/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Yashwant Limji Chaudhari, S.No.902, Plot No.138, Varad, Mumbai-Agra Highway, Chetana Nagar, Nashik-422009 Maharashtra PAN : ADLPC0225H	Vs.	ITO, Ward-1(1), Nashik
Appellant		Respondent

Assessee by : Shri Sanket Joshi  
Revenue by : Shri Sourabh Nayak  
Date of hearing : 15.07.2024  
Date of pronouncement : 23.07.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the *ex parte* order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 09.02.2024 for the assessment year 2018-19.

2. Briefly, the facts of the case are that the assessee is a Contractor providing services to the BBNL and BSNL during the year under consideration. The Return of Income for the A.Y. 2018-19 was filed on 27.10.2018 declaring total income of Rs.44,57,140/-. The case was selected for selected for scrutiny for verification of excess contribution to provident fund, superannuation fund or gratuity fund. The AO observed that the assessee debited salaries and wages amounting to Rs.3,72,663/- to the profit and loss account and an amount of

Rs.2,20,037/- as contribution to recognised provident fund was also debited to P&L account. Notices u/s.143(2)/142(1) were issued to the appellant calling for the requisite information. In response, the assessee submitted certain details. However, the AO was not convinced with the information provided by the assessee. Against the said return of income, the AO vide order dated 06.04.2021 completed the assessment disallowing Rs.7,07,137/- being the difference between the salary payment as per the return of income (Rs.10,79,800 – Rs.3,72,663/-). He also made addition of Rs.2,88,819 on account of failure of the assessee to produce evidence of payment of PF-Rs.2,20,037/- + other fund Rs.68,782/-)

3. Being aggrieved by the above assessment order, an appeal was filed before the CIT(A)/NFAC who vide impugned order dismissed the appeal in *limine* for non-prosecution.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The Id. Authorised Representative for the assessee submits that the assessee was not in the practice of checking the e-mails as he was under the impression that notices would be served physically by Post, thus the notices remained unnoticed. Further the CIT(A) dismissed the appeal of the assessee in *limine* for non-prosecution. In the circumstances, it is, therefore, prayed for remand of the matter to the file of CIT(A)/NFAC for *denovo* adjudication.

6. The Id. Departmental Representative placing reliance on the orders of the authorities submits that no interference by this Tribunal is called for.

7. We heard the rival submissions and perused the material on record. Undisputedly, the CIT(A)/NFAC had dismissed the appeal of the appellant *ex parte* without going into the merits of the issues. It is a trite law that the CIT(A)/NFAC should have dealt with the merits of the issue in appeal, even in the case of *ex-parte* order. From the perusal of the impugned order, it would reveal that the CIT(A)/NFAC had not gone into the merits of the issues in appeal, merely dismissed the appeal for non-prosecution, which is contrary to the settled position of law. The Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs.Premkumar Arjundas Luthra (HUF) Bombay*/[2017] 297 CTR 614 (*Bombay*) has held 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. Infact the CIT(A) is obliged to dispose of the appeal on merits. Infact 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.*

Thus, the Hon’ble Bombay High Court has categorically held that CIT(A) has to decide the appeal on merit and CIT(A) does not have any power to dismiss appeal for non-prosecution. Considering the entirety of the facts and circumstances, we are of the considered opinion that it is a fit case for remand of the matter to the file of the NFAC for *de novo* consideration in accordance with law after affording due opportunity of hearing to the assessee.

8. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced on this 23<sup>rd</sup> day of July, 2024.

**sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Pune / Dated : 23<sup>rd</sup> July, 2024.  
*Satish*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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