

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

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

आयकर अपील सं. / ITA No.925/PUN/2024

निर्धारण वर्ष / Assessment Year : 2011-12

Sandeep Satyanarayan Biyani, Plot No.98, Flat No.03, Parvati App., Jyoti Nagar, Aurangabad - 431002 Maharashtra PAN : ALEPB6232G	Vs.	ITO, Ward-1(1), Aurangabad
Appellant		Respondent

Assessee by : None
Revenue by : Shri Manoj Kumar Tripathi

Date of hearing : 16.07.2024
Date of pronouncement : 23.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 21.03.2024 for the assessment year 2011-12.

2. Briefly, the facts of the case are that the assessee is an individual, no regular return of income under the provisions of section 139(1) for the A.Y. 2011-12 was filed. Based on the AIR information available with the Department, the Assessing Officer (AO) noticed that the assessee made a cash deposit of Rs.27,37,960/- in his saving bank accounts maintained with City Union Bank Limited and Rs.10,89,300/- in his saving account maintained with State Bank of Hyderabad. Notice u/s.148 was issued to the appellant on 28.03.2018. In response

to notice, the assessee filed the return of income on 25.12.2018. However, the AO treated the return of income filed by the assessee as an invalid return as the assessee did not file the return within 30 days of issuing notice u/s.148. The assessee was called upon to explain the source of cash deposits made. The assessee in response to notice u/s.144 submitted that the said cash deposits were out of gift of Rs.27,00,000/- from his elder uncle Mr. Bhagwandas Bansilalji Biyani, Rs.3,00,000/- received from his mother Mrs. Taradevi Satyanarayan Biyani, Rs.3,00,000/- received from his sister Mrs. Deepali and Rs.6,40,000/- received from various employers. The assessee had submitted gift deed in support of gift received. Against the said return of income, the assessment was completed by the AO vide order dated 29.12.2018 passed u/s.144 r.w.s.147 of the Act determining total income of the assessee at Rs.37,83,260/-. While doing so, the AO made addition of Rs.33,00,000/- as unexplained cash u/s.69A, as the assessee had failed to submit any documentary evidence in order to substantiate the genuineness of gifts as well as credit worthiness of donors. The AO also made an addition of Rs.3,27,260/- as unexplained cash u/s.69A on failure of the assessee to submit any documentary evidence in support of salary received from earlier employers.

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. When the matter was called on, there was none to represent the case of the assessee despite due service of notice of hearing. Therefore, we proceed to dispose of the appeal *ex parte* qua the assessee.

6. The assessee vide Ground of appeal No.2 submits that the assessee's case was not represented before the authorities as the notices have been glossed over due to unavoidable circumstances. Given an opportunity, the assessee is able to submit the requisite information along with related documentary evidences.

7. On the other hand, the Id. Departmental Representative placing reliance on the orders of the authorities submits that no interference by this Tribunal is called for

8. We heard the Id. DR 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. Further, 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 issue 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 and submissions of the assessee vide grounds of appeal No.2, 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.

9. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 23rd day of July, 2024.

sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 23rd 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, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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