

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.910/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Yogesh Balwant Patil, 104, Krishna Residency, Bankar Mala, Near Trikoni Garden, Kathe Lane, Dwarka, Nashik – 422 011 Maharashtra PaN : AZHPP9973D	Vs.	ITO, Ward-2(1), Nashik
Appellant		Respondent

Assessee by : None
Revenue by : Shri Sourabh Nayak
Date of hearing : 25.07.2024
Date of pronouncement : 29.07.2024

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 29.12.2023 for the assessment year 2017-18.

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. 2017-18 was filed. Based on the information available with the Department, the Assessing Officer (AO) noticed that the assessee made a cash deposits to the tune of Rs.76,55,422/- which includes Rs.15,08,850/- made with Kotak Mahindra Bank, Nashik during the

demonetization period. Notices u/s.142(1) were issued to the appellant on 24.11.2017 and 23.04.2019. There was no compliance by the assessee to such notices. In the circumstances, the AO vide order dated 02.12.2019 completed the assessment u/s.144 of the Act making addition of Rs.76,55,422/- as unexplained money in the hands of the assessee and brought to tax as per the provisions of section 115BBE of the Act.

3. Aggrieved by the above addition, 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, none represented on behalf of the assessee. We therefore, proceed to dispose of the appeal after hearing the Id. Departmental Representative.

6. The Id. Departmental Representative placing reliance on the orders of the authorities submits that no interference by this Tribunal is called for as the assessee is recalcitrant in pursuing his case before the authorities.

7. We heard the Ld. DR and perused the material on record. Undisputedly, the CIT(A)/NFAC had dismissed the appeal of the appellant *in limine* without going into the merits of the issues. It is also a fact that the assessment was also completed u/s.144 of the Act. 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 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 CIT(A)/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 29th day of July, 2024.

sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 29th 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.