

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.892/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Latabai Vijay Jadhav, Mohida Road, Shahada, Dist. Nandurbar-425409 Maharashtra PAN : AJTPJ4255E	Vs.	ACIT, Dhule Circle, Dhule
Appellant		Respondent

Assessee by : Adjournment application rejected

Revenue by : Shri Ramnath P. Murkunde

Date of hearing : 30.07.2024

Date of pronouncement : 30.07.2024

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 29.02.2024 for the assessment year 2016-17.

2. Brief facts of the case are that the assessee is an individual engaged in the business of dairy, deriving income from sale of milk. The Return of Income for the A.Y. 2016-17 was filed on 12.10.2017 declaring total income of Rs.15,17,190/- and Agriculture income of Rs.24,08,750/-. The case was selected for Limited Scrutiny under CASS for verification of Cash in hand. Statutory notices u/s.143(2) and 142(1) were issued to the assessee to which the assessee furnished

the profit and loss account, balance sheet, bank statements, monthly cash sales, monthly cash deposits in bank etc. From the details so furnished, the Assessing Officer observed that the assessee had shown cash in hand to the tune of Rs.62,18,529/-. Further, the assessee made a cash deposit of Rs.47,27,350/- and withdrawn Rs.84,68,750/-, the details of which have been given on pages 2 and 3 of the assessment order. The AO was not convinced with the details furnished by the assessee and made addition of Rs.62,18,528/- as unexplained income u/s.68 of the Act on the ground that the assessee could not prove the availability of huge cash on hand. Further, the assessee had not produced the books of accounts showing the source of cash deposits in banks, the details of agricultural income and the supporting evidences were not furnished.

3. Being aggrieved by the above addition, the assessee preferred an appeal before the CIT(A)/NFAC who vide impugned order dismissed the appeal *in limine*, without going into the merits of the case.

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

5. When the matter was called on, none represented on behalf of the assessee, however, the assessee filed the adjournment petition for gathering the information. The adjournment petition filed by the assessee is rejected in view of dismissal of appeal by the CIT(A)/NFAC *in limine* without going into merits of the case.

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 could not prove the availability of huge cash in hand.

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. 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 30th day of July, 2024.

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 30th 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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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