

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.908/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Dhiraj Raman Bhujbal, Flat No.32, B-2, Damodar Villa, Kothrud, Pune 411 038, Maharashtra PAN : AOTPB2167G	Vs.	ITO, Ward-3(3), Pune
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Keyur Patel, CIT-DR  
Date of hearing : 31.07.2024  
Date of pronouncement : 31.07.2024

**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, dated 13.02.2024 for the assessment year 2017-18.

2. Brief facts of the case are that the assessee is an individual, not filed return of income for the A.Y. 2017-18 under the provisions of section 139(1) of the Act. The case of the assessee was reopened by way of issue of notice u/s.148, based on the information available with the Department that the assessee made a cash deposit of Rs.2,32,00,500/- in Indusland Bank, Kothrud Branch during demonetization period from 08.11.2016 to 31.12.2016 and the assessee along with his brother Mr. Suraj Raman Bhujbal had sold an

immovable property situated at Mauje Kothrud, Pune for sale consideration of Rs.1,00,00,000/-. Statutory notices u/s. 143(2) and 142(1) were issued to the appellant calling upon the assessee to furnish the information relating to source of cash deposit as well as the transaction of immovable property. On the failure of assessee to file the assessee filing the requisite details, the AO vide order dated 13.12.2019 completed the assessment u/s.144 r.w.s.147 of the Act. While doing so, the AO made addition of Rs.5,01,000/- on the ground that the assessee not submitted the sources of the cash deposit. He also made addition of Rs.50,00,000/- as short term capital gain, being 50% of the assessee's share in respect of the sale of immovable property.

3. Aggrieved by the above additions, the assessee filed an before the CIT(A)/NFAC who vide impugned order dismissed the appeal *in limine*, without going into the merits of the additions.

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

5. When the matter was called on, none represented on behalf of the assessee despite due service of notice of hearing. We therefore, proceed to dispose of the appeal after hearing the Id. Departmental Representative.

6. 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.

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

Order pronounced on this 31<sup>st</sup> day of July, 2024.

**sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

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

Pune / Dated : 31<sup>st</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, "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.