

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2071/MUM/2024  
Assessment Year: 2015-16**

Usha Khetan,  
Flat No. 1606, Samarpan Exotica,  
Western Express Highway, Food  
Corporation of India, Borivali East,  
Mumbai-400066.

**PAN NO. AEXPK 6415 Q**  
**Appellant**

ITO Ward 33(1)(1),  
Kautilya Bhavan, Avenue 3,  
Near Videsh Bhavan, Bandra  
Kurla Complex, Bandra East,  
Mubmai-400051.

**Vs.**

**Respondent**

Assessee by : Mr. Sumit Mantri  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 09/07/2024  
Date of pronouncement : 31/07/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 16.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:



*Ground - 1 On the facts and circumstances of the case and in law, the learned assessing officer erred in making the addition of Rs.3,49,50,853/- under section 69C as unexplained expenditure without appreciating that the assessee had not claimed the said expenses in books of accounts.*

*Ground - 2 On the facts and circumstances of the case and in law, the learned assessing officer erred in making the addition of Rs.3,49,50,853/- on account of difference in ITS details and financials without appreciating that the ITS details are related to the import made by the Priyansh fashion using the import and export code of appellant.*

2. Briefly stated, facts of the case are that the assessee filed its return of income on 27.07.2010 declaring total income at Rs. Nil. The return of income filed by the assessee was selected for scrutiny and notice u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and served upon the assessee. Subsequently, various notices were issued u/s 142(1) of the Act but same remained non-complied. During the assessment proceedings, the Assessing Officer noted that on the basis of the information available on record that import amounting to Rs.2,81,50,872/- was made citing Import Export Code (IEC) No. 308035658) of the assessee but in its profit and loss account, only purchases of Rs.8,87,500/- was appearing. The Assessing Officer issued show cause notice to assessee to explain the less amount shown in profit and loss account but same was also not replied and therefore, the Assessing Officer treated the same as unexplained expenditure u/s 69C of the Act amounting to Rs.3,49,50,853/- which included import value of Rs.2,81,50,872/- and corresponding custom duty paid of Rs.76,87,481/-.



3. On further appeal also no compliance was made by the assessee before the Ld. CIT(A) of the various notices issued and therefore, the Ld. CIT(A) upheld the disallowance observing as under:

*“4. During the course of appellate proceedings various notice were issued from time to time viz. on 26.02.2016, 01.02.2021, 09.02.2022, 02.06.2023 and finally on 29.01.2024. Through all these notices, the appellant was requested to file reply alongwith supporting documents. However, no submissions were made during the entire appellate proceedings. Finally, on 29.01.2024, a final notice was issued fixing the date of response on 05.02.2024. Details of opportunity accorded and communicated to the appellant is furnished in the following table:*

*Details of notices issued are as under:*

<i>S. No.</i>	<i>Date of notice</i>	<i>Date of compliance</i>	<i>Remarks</i>
<i>1.</i>	<i>20.02.2020</i>	<i>20.02.2020</i>	<i>No response</i>
<i>2.</i>	<i>01.02.2021</i>	<i>16.02.2021</i>	<i>No response</i>
<i>3.</i>	<i>12.01.2024</i>	<i>19.01.2024</i>	<i>No response</i>

*Now the final notice is being issued. Please note that in the absence of this notice by the stipulated date, appeal would be adjudicated based on materials available on record.*

*5. However, the final notice also remained non-responded. As it is clear that the appellant during the entire appellate proceedings did not comply with the notices, it shows that the appellant is not interested to pursue this appeal. In the absence of any reply from the appellant, the matter is being decided ex-parte based on material on record. The maxim 'Vigilantibus, non dormientibus, jurasubveniuntie. the law assists those who are vigilant and not those who sleep over their rights' is applicable in this case.*

*5.1 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarkadas AIR 1958 MP 260 wherein it was observed: - "Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to*



*remain present. The dismissal, therefore, is an inherent power which every tribunal possesses..."*

*5.2 The Hon'ble TAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.*

*5.3 Hon. ITAT in IT APPEAL NO. 323 (AGRA) OF 2012 IN THE CASE OF Shivangi Steel (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle\* has held that Where assessee inspite of large number of adjournments granted by Commissioner (Appeals) did not produce any document in respect of grounds of appeal, nor made written or oral submissions, Commissioner (Appeals) was justified in proceeding ex parte against assessee.*

*5.4 Hon. ITAT (Cochin Bench), in M.P. NOS. 71 TO 79 (COCH.) OF 2013 IN THE CASE OF Tourist Resorts Kerala Ltd. v. Assistant Commissioner of Income-tax, Circle -1(1), Thiruvananthapuram\* has held that Where assessee had failed to show that there was a reasonable cause for non-appearance on date of hearing of appeal, applications filed by assessee for setting aside ex parte order and restoring appeal were to be dismissed.*

*5.5 Reliance is also placed in the Supreme Court judgment in CIVIL APPEAL NO. 2463 OF 2019† IN THE CASE OF Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd.*

*5.6 Reliance is also placed upon the decision of Hon'ble Supreme Court in the case of Ashokji Chanduji Thakor Vs PCIT, [2021] 130 taxmann.com 131 (SC).*

*6. As noted from the facts of the case and material available on record, it is seen that the Assessing Officer made the above additions, based on materials available on record, after according proper and adequate opportunity to the appellant and after marshalling the facts. The appellant did not produce any evidence in support of his claim or made any response against the various notices issued from time to time during the entire appellate proceedings. There is no materials before me to deviate from the order of the Assessing Officer. Hence, it is held that the assessment order passed by the Assessing Officer u/s 143(3) of the Act, resulting into the assessed income amounting to Rs. 3,49,50,853/-, based on his findings and proper adjudication, is quite in order, and the same is hereby confirmed. Accordingly, Grounds of appeal of the appellant are dismissed."*



4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has passed the order without considering the submission of the assessee and therefore, the matter might be restored back to the Assessing Officer for deciding afresh.

5. The Ld. Departmental Representative (DR) on the other hand, objected and submitted that assessee remain non-complied before the Assessing Officer as well as Ld. CIT(A).

6. We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. counsel for the assessee submitted that the import transactions relates to another concern namely 'Priyansh Fashion' which had used IEC Code of the assessee and therefore, the matter need to be sent back for verification. We are of the view that sufficient opportunity was provided both by the Assessing Officer and the Ld. CIT(A). The Assessing Officer in the impugned order has recorded that notices u/s 142(1) of the Act were issued on 26.10.2017, 10.11.2017, 17.11.2017 and 27.11.2017 and thereafter a final opportunity was issued on 06.12.2017 as the assessment was getting barred by the limitation. The Assessing Officer passed the order on 12/12/2017 as the limitation for passing the order was expiring on 31st December, 2017. The assessee filed appeal against the said order however did not comply to the notice issued by the Ld. CIT(A) dated 24.01.2024. In view of facts and circumstances of the case and in the interest of justice that let the matter be decided on merit, we



feel it appropriate to restore the matter to the file of the Ld. CIT(A) for deciding afresh subject to a cost of Rs.25,000/- on the assessee, which shall be deposited in Prime Minister Relief Fund within one month of receipt of this order. The ld CIT(A) shall verify that cost imposed is paid by the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 31/07/2024.**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/07/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**