

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.551/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Hon Shri Babanrao Pachpute Vichardhara Trust Group of Institution Kashti, At Kashti, Taluka Shrigonda, Dist. Ahmednagar – 414 701 Maharashtra PAN : AAATH8463J	Vs.	DCIT, Aurangabad
Appellant		Respondent

Assessee by : Shri Prasad R. Kulkarni
Revenue by : Shri Keyur Patel, CIT-DR

Date of hearing : 01.08.2024
Date of pronouncement : 01.08.2024

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 11.01.2024 for the assessment year 2012-13.

2. Brief facts of the case are that the assessee is a Trust registered under Bombay Public Trust Act. No regular return for the A.Y. 2012-13 under the provisions of section 139(1) of the Act was filed by the assessee trust. Accordingly a notice u/s.148 was issued to the assessee trust on 30.03.2019 based on the information that the assessee trust had introduced its unaccounted money in the guise of loans routed through shell companies. Notice u/s.142(1) along with questionnaire was

issued to the appellant trust asking the assessee to explain genuineness of loans given to and received from different entities, to which there was part compliance. However, on failure of the assessee to furnish any explanation as to the genuineness of the transactions, the AO vide order dated 31.12.2019 passed u/s.143(3) r.w.s.147 completed the assessment assessing the total income at Rs.12,42,87,012/-.

3. 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 additions.

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

5. The Id. AR submitted that the assessee's case could not be represented before the authorities proper due to the reasons beyond its control. It is therefore prayed to remand the matter to the file of CIT(A)/NFAC for *denovo* adjudication.

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 trust is recalcitrant in pursuing its case.

7. We heard the rival submissions and perused the material on record. Undisputedly, we find 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 01st day of August, 2024.

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 01st August, 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.