

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H (SMC)", MUMBAI

**BEFORESHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**I.T.A No.3214/Mum/2024  
(Assessment Year: 2017-18)**

<b>Rayirth Holding and Trading Company Pvt Ltd,</b> 205, Welspun House, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai-400 013 <b>PAN : AACCI9234K</b>	<b>vs</b>	<b>Income-tax Officer, Ward 8(1)(1), Mumbai</b> Room No.662A, 6 <sup>th</sup> Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri M.M. Golvala  
Respondent by : Shri AnoopHiwase, Sr. DR  
  
Date of hearing : 13/08/2024  
Date of pronouncement : 13/ 08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax, Appeal Addl / JCIT(A), Kanpur [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 30.05.2024. The impugned order was emanated from the order of the Id. Income-tax Officer 8(1)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 28/06/2019.

2. The brief fact of the case is that the assessment was completed with an addition under section 14A of the Act read with Rule 8D of the Income Tax Rule, 1962, amounting to Rs.12,50,341/- related to the expenditure against the exempted income. The assessee also incurred, for earning dividend income and, therefore, has disallowed an additional amount of Rs.1,93,793/- under same provision of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) issued the notice in the wrong email account. The appeal order is passed ex parte and upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

3. We heard the rival submission and considered the documents available in the record. The Ld.AR filed a written submission which is kept in record (in short, APB). The Ld.AR in argument placed that the email mentioned in specific column in Form 35 (**APB, page-24**) is duly mentioned as [santosh.daule@hitechgroup.com](mailto:santosh.daule@hitechgroup.com). But the notice was wrongly issued in the email [jatin.shah@danienterprises.co.in](mailto:jatin.shah@danienterprises.co.in). Several notices are issued in the wrong email address which was deemed to be absence of service on the assessee and the assessee has no information about the notice of the appellate authority. Finally, the notice was correctly issued in the email as mentioned by the assessee and the assessee filed an adjournment petition for filing the evidence before Id. CIT(A). Further, the Ld.AR mentioned that the employee, who was entrusted with the matter has already left the job. The copy of the resignation is annexed in **APB pages 53-54**. The filing of adjournment letters is duly annexed in **APB page- 55**. The Ld.AR relied on the order of Hon'ble **High Court of Bombay in CIT, Central,**

**Nagpur vs Premkumar Arjundas Luthra (HUF) (2016) 69 taxman.com 407**

**(Bom).**The relevant part of the judgment is extracted below:-

*“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 for determination and then render in writing after stating the points 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. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact 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 co-terminus 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.”*

*9. In the above view, the question as raised does not give rise to any substantial question of law. Thus, not entertained.*

10. Accordingly, Appeal dismissed. No order as to costs.”

4. The Id.DR fully relied on the order of both the revenue authorities. Considering the above submission of the Ld.AR, we are of the considered view that the reasonable opportunity was denied to the assessee which is gross violation of the natural justice. The assessee was prevented from submitting the evidence before the Id.CIT(A) in due appeal proceedings. We fully relied on the order of the Hon’ble **Bombay High Court** in **Premkumar Arjundas Luthra (HUF)** (supra). We dismiss the appeal order and direct to remand back the matter to file of the Id. CIT(A) to pass a speaking order. Both the rival parties have accepted the direction of the bench. We are not expressing any view on merit which will impair the appeal proceedings before the Id. CIT(A).Needless to say, the assessee should get a reasonable opportunity of hearing in set aside appeal proceedings.

5. In the result, **ITA No.3214/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 13<sup>th</sup> day of August, 2024.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai,दिनांक/Dated: 13/08/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**