



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHIR VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1341/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

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| Uday Damodar Bajaj, Near Jog Maharaj, Bhajani Math, Dhammagiri Road, Varachi Peth, Igatpuri – 422403. PAN: AHYPB2584P | V s | The Income Tax Officer, Ward-1(1), Nashik. |
| Appellant/ Assessee | | Respondent / Revenue |

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|-----------------------|---------------------------------|
| Assessee by | Shri Rajendra Agiwal – AR |
| Revenue by | Shri Sandeep P Sathe – JCIT(DR) |
| Date of hearing | 22/08/2024 |
| Date of pronouncement | 23/08/2024 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Assessee against the order of
ld.Commissioner of Income Tax(Appeal)/JCIT(A)-7, Kolkata
passed under section 250 of the Income tax Act, dated 19.04.2024
for the A.Y.2017-18. The assessee has raised the following
grounds of appeal :

*“The Appellant, aggrieved by the order passed by Ld. Additional / Joint
CIT(A) - 7, Kolkata u/s 250 of the act dated 19.04.2024 preferred this*



appeal before the Hon'ble ITAT on the following grounds of appeal which are independent and without prejudice to each other:

In the facts and circumstances of the case and in law –

Erroneously passed order u/s 144

1. The Ld. AO erred in passing the order u/s 144 without appreciating the fact that the appellant has responded to the notice and submitted the necessary details considering the taxpayer's status as small businessman and having no taxable income.

General ground

2. The Ld. Additional / Joint CIT(A) erred in upholding the assessment order passed u/s 144 assessing the total income at Rs.6,42,180 as against the income computed by the appellant at Rs.2,24,182.

Reason for non-attendance

3. The Ld. Additional / Joint CIT(A) erred in passing the ex-parte order holding that the appellant is not interest in prosecuting the appeal. The Ld. Additional / Joint CIT(A) failed to appreciate that in the faceless regime when notices are served through email ID, the small taxpayers particularly residing in small towns, villages are not techno savvy and thereby miss the opportunities of hearing. The order passed by the CIT(A) is bad in law.

Addition u/s 69A made erroneously

4. The Ld. Additional / Joint CIT(A) erred in confirming the addition u/s 69A on account of cash deposits of Rs. 4,18,000 in old currency (SBN)

Order is passed without considering merits

5. The Ld. Additional / Joint CIT(A) ought to have passed the order on merits and erred in dismissing the appeal in limine.

6. The Ld. Additional / Joint CIT(A) erred in passing the order without considering the merits which is in violation of provisions of section 250(6).

Erred in not considering source of cash deposit

7. The Ld. Additional / Joint CIT(A) failed to appreciate that the appellant is small businessman engaged in the business of whole sale trading of Tea Powder and the cash is deposited into the bank account out of proceeds of cash sales. The addition made u/s 69A as unexplained money is unsustainable.



8. *The Ld. Additional / Joint CIT(A) failed to appreciate that the addition made by the Ld. AO is only on the basis of surmises and conjecture and without any material on record.*

Deeming fiction to be strictly construed

9. *The Ld. Additional / Joint CIT(A) failed to appreciate that section 69A is a deeming fiction which needs to be construed strictly. The appellant vide his submission dated 10.06.2019 before the Ld. AO submitted that cash is deposited out of cash sales, the addition cannot be made without bringing any contrary evidence on record.*

Initiation of penalty

10. *The Ld. AO erred in initiating penalty u/s 271AAC, u/s 270F, u/s 271A of the Act.*

The appellant craves leave to add, alter, modify, and delete all or any of the grounds of appeal on or before hearing.”

Submission of Id.Authorised Representative(ld.AR) :

2. The Id.Authorised Representative(ld.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Hence, ld.AR requested for one more opportunity of being heard to the assessee.

Submission of Id.Departmental Representative(ld.DR) :

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and ld.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed from the order of the ld.CIT(A)[NFAC] that the



ld.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The ld.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the ld.CIT(A)/JCIT(A) vide its order dated 19.04.2024 has dismissed appeal of the assessee as under :

*““4.2 Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and Another, 118 ITR 461 (SC) observed that preferring an appeal means more than formally filing it but effectively prosecuting it. Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Holkar vs. CWT, (1997) (223 ITR 480) (M.P.) dismissed the reference in def and for not taking necessary steps. Similar view has been taken I.T.A.T. Delhi Bench in the case of CIT Vs. Multiplan India (P) L (1991)(38 ITD 320). Considering the above, it appears that the appellant is not interested in prosecuting his appeal. Therefore, the appeal filed by the appellant is **dismissed** for nonprosecution.*

5. *In the result, the appeal is dismissed.”*

4.2 The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) 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. 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 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.



5. Thus, the Hon'ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of the above, the order of the ld.CIT(A)[NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 23rd August, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd August, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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