



।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A":: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.701/PUN/2024
निर्धारण वर्ष / Assessment Year: 2020-21

Bilidevalaya Lakshmi Narasimha Murthy, S-7 Vinayak Apartment, Vaishyawada, Sawantwadi, Maharashtra-416510 PAN : ACGPB9237N	Vs	The Income Tax Officer, Kudal
Appellant/ Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Ramnath P. Murkude
Date of hearing	26/08/2024
Date of pronouncement	28/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee against the order of Ld. Commissioner of Income Tax(Appeals) [NFAC], passed under section 250 of the Income Tax Act, 1961 dated 01.03.2024 for the A.Y. 2020-21.

2. The Assessee has raised the following grounds of appeal :

"1. On the facts and circumstances of the case and in law the Ld. CIT(A), NFAC, erred in confirming the addition made by the AO of Rs.1,35,52,006/- (Sundry Creditors Rs.41,42,506 and Unsecured Loans



Rs.94,09,500) being additions u/s 68.

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing”.

3. At the time of hearing, no one appeared on behalf of the assessee.

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

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

Findings & Analysis :

5. We have heard Id. DR for the Revenue and perused the records. It is observed from the order of the Id. CIT(A) [NFAC] that the Id. CIT(A) [NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The Id. CIT(A) has not adjudicated grounds raised by the assessee on merits.

5.1 It is observed that the Id. CIT(A) has dismissed appeal of the assessee as under :

Quote “4.3 I have gone through the assessment order and record available No reply has been filed by the Assessee so far in response to appeal notices. The Assessing Officer (AO) proposed additions under



section 68 of the Income Tax Act, 1961, for both sundry creditors and unsecured loans due to insufficient substantiation of the increase in liabilities by the assessee. Despite requests for clarification and submission of relevant details, the assessee failed to provide adequate evidence to substantiate the claims.

Given the circumstances described, where the assessee was unable to provide satisfactory evidence to support the increase in liabilities, the AO's decision to treat the credits as unexplained and tax them at special rates under section 115BBE seems justified. Section 115BBE provides for taxation of certain unexplained credits, investments, or money found during the course of a search or seizure at a higher rate.

Therefore, based on the record available, it is reasonable to confirm the additions and disallowances made by the AO under section 68 of the Income Tax Act, 1961, and the subsequent taxation at special rates under section 115BBE. The action of the AO appears to be in line in the circumstances of the case as described above.” Unquote.

5.2 Thus, the ld. CIT(A) has dismissed the appeal without adjudicating the grounds, which is mandatory u/s 250(6) of the Act.

5.3 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.



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

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

8. Accordingly, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 28th August, 2024.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 28th August, 2024

RK

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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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



ITA No.701/PUN/2024
Bilidevalaya Lakshmi Narasimha Murthy

S. No	Details	Date	Initials	Designation
1	Draft dictated on	27.08.2024		Sr. PS/PS
2	Final Draft placed before author	28.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			