



।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.709/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2018-19

Audyogik Shikshan Prasarak Mandal, Annasaheb Vaishampayan Vidyalaya, Mahatma Nagar, Satpur, Nashik-422007  PAN : AAATA8178P	Vs	The Income Tax Officer (Exemption)-1(1), Nashik
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Sanket M. Joshi
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 is an appeal filed by Assessee against the order of Id. Commissioner of Income Tax (Appeal)/Addl./JCIT(A)-4, Bengaluru passed under section 250 of the Income tax Act, dated 11.02.2024 for the A.Y. 2018-19.

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



- “1] *The learned CIT(A) erred in confirming the action of the ADIT, CPC, Bangalore of assessing the entire gross receipts of Rs.72,33,362 declared by the appellant trust as total income for AY. 2018-19 by disallowing the entire expenditure of Rs.70,95,448 and by denying the exemption u/s 11 on the surplus of Rs.1,37,914 merely on the ground that the Audit Report in Form No.10B was filed after the due date of filing return u/s 139(1) without appreciating that the said action of the A.O. was beyond the scope of permissible adjustments u/s 143(1) of the Act.*
- 2] *The learned CIT(A) failed to appreciate that the condition of filing of audit report in Form 10B was directory in nature and therefore, the said delay could not have resulted into denial of exemption u/s 11 in view of the law laid down by various Hon'ble Courts and thus, the disallowance u/s 11 made on the above debatable issue, was outside the scope of permissible adjustments u/s 143(1) of the Act.*
- 3] *Without prejudice, the appellant submits that there was a reasonable cause due to which there was delay in filing audit report in Form 10B and the said delay may please be condoned by Hon'ble ITAT in view of the wide powers vested with Hon'ble Tribunal to do justice and thereby, the income of the appellant may be assessed at Rs. Nil after allowing exemption u/s 11.*
- 4] *Without prejudice, assuming without admitting that the exemption u/s 11 is not allowable to the appellant, still it is not submitted that the gross receipts of Rs.72,33,362 could not have been taxed as income and only net surplus of Rs.1,37,914 may be taxed as income in the hands of the appellant trust.*
- 5] *The appellant craves, leave to add, alter, amend and delete any of the above grounds of appeal.”*

**Submission of Id. Authorized Representative (Id.AR) :**

3. The Id. Authorized Representative (Id.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, Id. AR requested for one more opportunity of being heard to 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).

**Findings & Analysis :**

5. We have heard both the parties and perused the records. It is observed from the order of the Id. CIT(A) that the Id. CIT(A) 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 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 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.

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

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

Order pronounced in the open Court on 28<sup>th</sup> August, 2024.

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> 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.709/PUN/2024  
Audyogik Shikshan Prasarak Mandal

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			