



**।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.924/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2016-17**

More Deshpande and Associates, 113, 114, Nana Peth, Pune-411002  PAN : AABFM9425G	Vs	DCIT, Circle-4(5), Pune
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 14.03.2024 for the A.Y. 2016-17.

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

*"1. In view of the facts and circumstances of the case and in law, the Ld. Assessing Officer was not justified in making the addition to income as LTCG on sale of property of Rs.2,02,94,900/- under section 43CA of the Act.*



2. *The assessment be set aside to the file of the Assessing Officer for reassessment denovo in accordance with the law.*

3. *The appellant craves for leave to add/modify/alter/delete and or amend any grounds of appeal.”*

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 :

*“5.3.a) During appellate proceedings there has been no response/only adjournments sought by the appellant.*



b) *Since there is non-compliance and no submission has been received either on own instance or ample opportunities provided vide notices u/s 250 of the Act since inception of this appeal on 22.08.2022 i.e. even after passing of 1 years and 6 months, I am of the considered opinion that the appellant has no interest in pursuing the instant appeal. Accordingly, the appeal is being decided on the basis of materials available on record.*

c) *It is settled law that mere filing of an appeal is not a sufficient exercise of the rights available to the appellant and the same must be duly pursued in an effective manner.*

d) *The continued non-compliance leads to the conclusion that the appellant is not keen on prosecuting its appeal. Considering the facts and circumstances, and relying on the decision of the Hon'ble, ITAT, Delhi Bench, in the case of CIT Vs Multiplan India Ltd. reported in 38-ITD-320 and the judgement of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao Holker Vs. CWT (1997) reported in 223-ITR-480, I have no other alternative except to decide the appeal of the appellant ex-parte.*

e) *As noticed from the assessment order ample opportunities had been provided to the assessee. Moreover, the AO has appropriately explained the reasonings behind additions made.*

f) *In these facts and circumstances, I am constrained to be in agreement with the finding of the Assessing Officer and hold that the appellant is unable to substantiate its claims and is not able to controvert the assessment order. The addition made by the Assessing Officer is therefore confirmed.*

5.4 *The appellant has not been able to defend the grounds raised. Hence, grounds raised are rejected.”*



5.2 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.*

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) [NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld. 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 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.

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			