

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, PUNE**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.774/PUN/2024

निर्धारण वर्ष / Assessment Year: 2016-17

Ratilal Dagadulal Mutha, S.No. W 181/6A, Gajanana Housing Society, Dound, Baramati, Pune-413801 Maharashtra PAN : ARWPM4183H	बनाम / V/s.	Income Tax Officer, Ward-14(5), Pune
.....अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 03.09.2024
घोषणा की तारीख / Date of Pronouncement : 03.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre, Delhi dated 11.03.2024 passed u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) for the assessment year 2016-17.

2. Briefly, the facts of the case are that the appellant is an individual, no regular Return of Income for the A.Y. 2016-17 was filed under the provisions of Income tax Act, 1961. The case of the appellant was reopened and proceedings u/s.147 were initiated against the appellant by

way of issue of notice u/s.148 on 30.03.2021. Notice u/s.142(1) was issued to the appellant on 30.06.2021. The appellant neither complied with notice issued u/s.148 nor with notice u/s.142(1) of the Act. In the circumstances, the Assessing Officer was constrained to complete the best judgment assessment vide order dated 20.03.2022 passed u/s.147 r.w.s.144 read with section 144B of the Act. While doing so, the Assessing Officer based on the information available with the Department brought to the tax the cash deposit of Rs.1,63,04,980/- made by the appellant as unexplained money.

3. Being aggrieved, an appeal was filed before the NFAC who vide impugned order dismissed the appeal for non-prosecution without going into merits of the addition.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. When the appeal was called on, none appeared on behalf of the appellant despite due service of notice of hearing. We therefore proceed to dispose of the appeal ex parte after hearing the Id. Departmental Representative.

6. We heard the Id. Sr. DR and perused the material on record. Admittedly, in the present case, the assessment order was passed u/s.147 r.w.s.144B of the Act. We find the NFAC had also dismissed the appeal of the appellant *in limine* without giving any finding on merits of the issue. Further, it is a trite law that the NFAC should have dealt with the merits of the issues in appeal, even in the case of *ex-parte* order. From the perusal of the impugned order, it would reveal that the NFAC had not gone into the merits of the issues in appeal, merely dismissed the appeal for non-prosecution, which is contrary to the settled position of law. The Hon'ble Bombay High Court in the case of Pr.CIT(Central)

Vs. Premkumar Arjundas Luthra (HUF) Bombay)/[2017] 297 CTR 614 (Bombay) has held 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. Infact the CIT(A) is obliged to dispose of the appeal on merits. Infact 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.

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

the facts and circumstances, we are of the considered opinion that it is a fit case for remand of the matter to the file of the NFAC for *de novo* consideration in accordance with law after affording due opportunity of hearing to the appellant.

7. In the result, the appeal filed by the appellant stands partly allowed for statistical purposes.

Order pronounced in the open court on 03rd September, 2024.

Sd/-
S.S. GODARA
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd September, 2024

Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune