

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1135/KOL/2024  
Assessment Year: 2013-14**

Archana Baid, 2 <sup>nd</sup> Floor, Sadar Ghat, Manoranjan Complex, Silchar - 788001 (PAN: AKIPM4382P)	Vs	ITO, Ward 34(1), Kolkata, Aayakar Bhawan Poorva, 110 Shantipally, EM Bypass, Kolkata - 700107
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Manish Pugalia, Advocate  
Respondent by : Pradip Biswas, Addl. CIT

Date of Hearing : 23.07.2024  
Date of Pronouncement : 05.09.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2013-14, dated 18.03.2024, passed against the assessment order u/s. 147 read with section 144B of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 23.02.2022.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1 That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A), NFAC (hereinafter referred to as CIT(A)) erred in dismissing the appeal without according proper opportunity of hearing irrespective of the fact the appellant has sought for adjournment.

2. That under the facts and in the circumstances of the case, Ld. CIT(A) failed to appreciate the fact that the JAO lacks jurisdiction over the assessee on territorial ground.

3. That under the facts and in the circumstances of the case, Ld. CIT(A) erred in denying the fact that the initiation of proceedings U/s 147/148 are illegal, without jurisdiction, mechanical, without application of mind and unsustainable in law as well as on merits.

4. That under the facts and in the circumstances of the case, Ld. CIT(A) failed to acknowledge the fact that the reason recorded is vague and based on surmise and suspicion hence, the reopening is bad in law.

5. That under the facts and in the circumstances of the case, Ld. CIT(A) failed to acknowledge the fact that the copy of the reason recorded was provided at the fag end of the assessment proceedings by the Ld. AO and hence, the assessment order passed is in violation of principal of natural justice and therefore, liable to be quashed.

6. That under the facts and in the circumstances of the case, Ld. CIT(A) failed to acknowledge the fact that the addition of Rs. 26,75,340/- is erroneous and unsustainable in law as well as on merits.

7. That the appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time hearing.

*PRAYER: It is prayed that relief may be granted to the appellant.”*

3. Brief facts of the case are that the assessee is an individual, who filed her return of income for the AY 2013-14 on 31.03.2015 declaring total income at Rs. 6,77,000/-. The case was selected for scrutiny u/s 148 of the Act, and assessment order u/s 147 read with section 144B of the Income-tax Act was passed on 23.03.2022 and the income was assessed at Rs. 33,52,340/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) but the same was dismissed as two years had elapsed since the filing of the appeal yet the assessee could not gather relevant material evidences and despite giving the final opportunity, the assessee was seeking

adjournment. The adjournment was sought on the ground that the tax consultant was busy with the time barring matter and needed some time to comply with the notice, which was not granted. No further opportunity was provided by the Ld. CIT(A) and the appeal was decided on the basis of available material. Aggrieved with the order of the Ld. CIT(A), the assessee has filed this appeal before the Tribunal.

4. The appeal was filed before the Tribunal on 17/05/2024 and on 23/07/2024 the Ld. AR of the assessee sought adjournment but the same was rejected.

5. Brief facts of the case are that the Assessing Officer noted that the assessee had sold an immovable property for a consideration of Rs. 20,00,000/-; however the fair market value for the purpose of stamp duty was Rs.38,09,340/- and the provisions of section 50C were applicable. The case was reopened by issuing notice under section 148 of the Act and the assessee filed the return showing the same income of Rs.6,77,000/- which was filed in the original return. Before the Ld. AO, no compliance was made and adjournment was sought. The copy of reasons was given on 11.03.2021 and the order has been passed on 20.03.2022. Before the Ld. AO, the assessee submitted copy of registered documents for acquisition of the immovable property. Further, the Ld. AO noted that the cost of acquisition was Rs. 5,00,000/- including the cost of stamp duty while the assessee had claimed the same at Rs. 5,16,000/- in her return of income alongwith the claim for cost of improvement of Rs. 8,50,000/- and short-term capital gains was worked out after declaring full value of consideration of Rs. 20,00,000/-. In the submission made on 10.03.2022 before the Ld. AO, it was submitted that she was residing in Guwahati and the property was purchased in Rajasthan and had been trying hard to get the documents in support of the sale proceeds amounting to Rs.20,00,000/- but the same was taking some time. It was also informed

to the Ld. AO that the area/circle rate at the time of sale of the property was very low and she needed some time to explain this point with proper supporting documents. A copy of purchase deed was however attached with the reply. It was also claimed that she had built a boundary wall around the vacant land measuring around 10800.4 m<sup>2</sup> and for the same had incurred cost of Rs. 8,50,000/-. The assessee sought time to furnish the supporting evidences which she was trying to gather from multiple sources. However, the assessment order was passed on 23.03.2022. The Assessing Officer noted that the property had been purchased during FY 2009-10 for a consideration of Rs. 4,00,000/-, for which stamp duty of Rs.1,00,000/- had been paid. Since the copy of the sale deed submitted by the assessee was not properly scanned, the other charges payable were not legible. Therefore, the Ld. AO determined the total cost of acquisition of the property on the basis of the available document at Rs.5,00,000/- and did not allow the benefit of cost of improvement of Rs.8,50,000/- claimed by the assessee in the return. Accordingly, the difference between the value for the purpose of stamp duty and the cost of acquisition shown at Rs.38,09,340/- minus Rs. 5,00,000/- i.e. Rs. 33,09,340/- was worked out as short-term capital gain against which the assessee had declared total short-term capital gain of Rs. 6,34,000/- only. The difference of Rs. 26,75,340/- was added to the income shown in the return and the total income was assessed at Rs.33,52,340/-. The assessee could not succeed before the Ld. CIT(A) since due compliance was not made. The Ld. CIT(A) observed that the Assessing Officer had followed due procedure of principles of natural justice and had provided ample opportunities to the appellant to explain her case but the appellant failed to do so and confirmed the order of the Assessing Officer and dismissed the appeal of the assessee.

6. Before us also to no submissions have been made. The Ld. AO did not allow the cost of improvement of Rs. 8,50,000/- claimed by the assessee for which the assessee had sought time.

The Ld. CIT(A) has also not adjudicated upon the grounds of appeal raised by the assessee, one of which challenged the jurisdiction of the Ld. AO. The Ld. CIT(A) from page 3 to 9 has reproduced the order of the AO and has dismissed the appeal without discussion on the merits of the case. In this respect, it is relevant to examine the provisions of section 250(6) of the Act, which are reproduced as under:

*“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

6.1 Thus, section 250(6) casts a duty upon the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. In the present case before us, even though the assessee had sought time, due procedure does not appear to have been followed by the Ld. CIT(A) by not mentioning the reasons while disposing of the appeal nor the request for adjournment was considered and therefore, adequate opportunity was not allowed to the assessee. We also note that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee but the Ld. CIT(A) upheld the view of the AO and has not passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)**, it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings*

*as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

*7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.*

6.2 It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—*

*'Procedure in appeal*

*250 (1) . . . . .*

*(2) . . . . .*

*(3) . . . . .*

*(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

*(5) . . . . .*

*(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

*(6A) . . . . .*

*(7) . . . . .*

*Powers of the Commissioner (Appeals)*

*"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.*

*(aa) . . . . .*

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."*

*(c) . . . . .*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'*

*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 co-terminus 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.*

6.3 Accordingly, we deem it proper to set aside the order of the Ld. CIT(A) and remit the matter back to his file for disposal of the grounds taken by the assessee on merits by passing a speaking order afresh. The assessee shall produce all necessary evidence in support of the claim for cost of improvement and other charges paid and shall also not seek unnecessary adjournment before the Ld. CIT(A) who shall decide the appeal on merits and after considering the facts of the case. Accordingly, all the grounds taken by the assessee in her appeal are treated as allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 5<sup>th</sup> September, 2024.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Rakesh Mishra)**  
**Accountant Member**

***Dated: 5<sup>th</sup> September, 2024***

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata