

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCHES, BANGALORE**
BEFORE MRS. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No. 1393/Bang/2024
Assessment Year: 2008-09

Manohars Catering, and / or The Partners/ Legal Representatives of the Partners of Manohars Catering as Stipulated u/s 189(1), 189(3) & 189(4) of the 1961 Act Number 666, Indiranagar 1 st Stage Bengaluru-560038 Karnataka	v.	Assistant Commissioner of Income-tax, Circle-1, Bangalore (Present jurisdiction-Income Tax Officer-Ward7(2)(3), Bangalore)
PAN:AALFM1212B		
(Appellant)		(Respondent)

Assessee by:	Sh. Raghvendra, CA
Revenue by:	Ms. Neha Sahay, JCIT DR
Date of hearing:	05.09.2024
Date of pronouncement:	13.09.2024

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, in ITA No. 1393/Bang/2024 being filed by the assessee has arisen from the appellate order dated 30.01.2018 passed by Ld. CIT(A) under section 250 of the Act wherein ld. CIT(A) dismissed the appeal of the assessee ex-parte in the absence of the assessee for non-prosecution, the appellate proceedings before ld. CIT(A) had arisen from the assessment order dated 24.12.2010 passed by the ld. Assessing Officer under section 143(3) of the Act.

2. The grounds of appeal raised by the assessee in Memo of appeal filed with Income Tax Appellate Tribunal, Bangalore Benches, Bangalore, reads as under:

“ 1. The order of learned Commissioner of Income Tax(Appeals)-1, Bangalore is opposed to law and facts of the case.

2. The learned Commissioner of Income Tax(Appeals) has erred in dismissing the appeal filed by the appellant on the only ground that no one appeared for the hearing on 30.01.2018, However, the hearing notice was sent by Commissioner of Income Tax(Appeals) to appellant's postal address at “No. 6 & 7, St. Patrix, 157, Brigade Road, Bengaluru-560038” though appellant had mentioned in form 35 its Authorised representative postal address for serving notice viz. “ Digliya & Co. , L Block Unity Buildings, JC Road, Bangalore”

3. The learned CIT(Appeals) has erred in not deciding the appeal on the merits and has dismissed the appeal without proper servicing of hearing notice.

4. The Learned CIT(Appeals) has erred in not considering the grounds raised on facts and law with regard to disallowance of Rs. 4,27,076/- u/s 40(a)(ia) of the Income Tax Act, 1961 and disallowance of Rs. 5,50,820/- u/s 37 of the Income Tax Act, 1961.

5. The appellant prays before this court to direct the CIT(Appeals) to hear the appellant as per grounds of appeal submitted in the Form 35 dated 15.02.2011.

6. With these and such other grounds that might be urged at the time of hearing, the appellant prays for the relief sought for.”

3. The brief facts of the case are that the assessee filed its return of income for the impugned assessment year on 26.09.2008 , declaring loss of Rs.(-) 36,73,873/-. The assessee is a partnership firm. The return of income was processed u/s 143(1). The case was selected by Revenue for framing scrutiny assessment under CASS, and statutory notices u/s 143(2) and 142(1) were issued by the AO during the course of assessment proceedings. The assessee participated in assessment proceedings and furnished the requisite details. There were two additions made by the AO to the income of the assessee, firstly being on account of non deduction of income tax at source u/s 194I on hire charges to the tune of Rs. 4,27,076/- paid by the assessee to M/s Event Net work, and debited to its P & L Account, by invoking provisions of

Section 40(a)(ia). The second additions made by the AO was to the tune of Rs. 5,50,820/- on account of excess amount of delivery expenses and salaries and wages, debited to P&L Account with reference to earlier years compared to turnover, and 20% stood disallowed by the AO. The AO passed assessment order dated 24.12.2010 u/s 143(3) of the 1961 Act, making aggregate additions to the tune of Rs. 9,77,896/- on the above two counts.

4. The assessee filed first appeal with ld. CIT(A), which stood dismissed by ld. CIT(A) ex-parte in limine for non prosecution by the assessee, vide appellate order dated 30.01.2018, by holding as under:

"1. This appeal was filed on 15-02-2011 for the Assessment Year 2008-09 against the order dated 24-12-2010 passed under Section 143(3) of the IT Act by the ACIT, Circle-1(1), Bengaluru, which was served on 17-01-2011. Aggrieved by the said order, the appellant is in appeal under section 246A(1)(a) of the Act. In response to the notices of the hearing Issued by this office posting the hearing on the date 30-01-2018, no one appeared for the hearing.

2. I have considered the grounds of appeal filed by the appellant and also gone through the assessment order passed by the Assessing officer, the ground of appeal taken by the appellant cannot be disposed without factual verification. The appellant was given an opportunity on 30-01-2018 to appear before me to plead the appeal. The appellant apart from not showing up, it has neither replied to the hearing notice, nor furnished any written submissions. Further, it is seen that the notice issued to the address mentioned on the appeal document by the appellant returned back by the postal authorities with the remark that "addressee left and returned to the sender", The appellant has not updated the address on the appeal record. In the circumstances it won't serve any purpose by issuing any further notice in this matter.

3. In view of the same I am of the opinion that the appellant is not interested in pursuing its appeal. The law aids those who are vigilant and those who sleep upon/over their rights. This principle is embodied in well known dictum vigilantibus non Dormantibus Jura Subveniunt which has been followed in the case of CIT Vs. Multiplan India Ltd. reported in 38 ITD 320 by the Hon'ble ITAT. Therefore, the appeal is dismissed for want of prosecution."

5. The assessee has now filed an appeal belatedly with ITAT on 24.07.2024, aggrieved with the appellate order passed by ld. CIT(A) dated 30.01.2018.

6.1 When this appeal came for the hearing before the Division Bench, it is the averment of the ld. counsel for the assessee that the assessee filed the appeals before the Ld. CIT(A) on 15.02.2011 for assessment year 2008-09 against the assessment order dated 24.12.2010 passed by the AO u/s 143(3) which assessment order was received by the assessee on 17.01.2011, and the first appeal filed by the assessee before ld. CIT(A) on 15.02.2011 stood dismissed by Ld. CIT(A) on 30.01.2018 ex-parte in limine on account of non-prosecution by the assessee. It is also admitted by ld. counsel for the assessee that the appellate order dated 30.01.2018 passed by Ld. CIT(A) dismissing appeal of the assessee was received by the then Chartered Accountant of the assessee. There is no dispute as to this fact position. It is also the claim of the ld. counsel for the assessee that no notice of hearing was received from the office of the Ld. CIT(A) fixing date of hearing on 30.01.2018, although it is stated that notice of hearing was issued by the Ld. CIT(A) to the assessee to appear for personal hearing before Ld. CIT(A) on 30.01.2018. It is further the submission of the ld. counsel for the assessee that the assessee filed letter dated 7.02.2018 and 15.06.2018 before Ld. CIT(A) which are placed on record in file in Paper Book at Page nos. 93 & 94, requesting for rectification of appellate order dated 30.01.2018 , wherein it is claimed that the notice of hearing was not sent to the address mentioned in the Form No. 35. It is also submitted by ld counsel for the assessee that Ld. CIT(A) vide communication dated 18.06.2018(Paper Book/Page 95) has stated that the Form No. 35 filed by the appellate has not been signed in the form of verification by the Authorized Signatory , and hence the appeal was treated as invalid and not maintainable. The ld. CIT(A) also referred in its communication dated 18.06.2018 , that the name of the authorized signature has not been mentioned anywhere in the appeal documents in Form No. 35. It is stated by Ld. CIT(A) that the notice will be sent only to the address of the appellant as per

PAN and it would not be sent to the authorized representative's address . The Ld. CIT(A) directed the assessee to get PAN address updated . **Further, the ld. CIT(A) stated in its communication dated 18.06.2018 to assessee that it may file fresh appeal with a request for condonation of delay.** The said letter dated 18.06.2018 issued by ld. CIT(A) is reproduced , as hereunder:-

"Office of the Commissioner of Income Tax (Appeals)-1, Bengaluru

*Room No.751 7th Floor
BMTc Bldg. 80 Ft. Road
6th Block, Koramangala
Bangalore-560095*

Telephone:25625023 Fax:2562503

F. No. ITA 94/CIT(A)-1/BR/18-19

Dated:18th June, 2018

To

*M/s Dagliya & Co.,
Chartered Accountants
"1" Block, Unity Buildings
J.C. Road, Bengaluru-560002*

Sirs,

*Sub: Income tax appeal-M/s. Manohar Catering, Bengaluru-
(PAN:AALFM1212B) – Asst. Year 2008-09-reg*

Ref: Your letter dated 15.06.2018.

*It is seen from the record that the Form No. 35 filed by the appellant has not been signed in the form of verification by the Authorised Signatory. Hence, the appeal in Form No. 35 filed in the above case is invalid and the same is not maintainable. Even otherwise, the name of the Authorised Signatory has not been mentioned anywhere in the appeal documents in Form 35. Further, you are informed that as per the new procedure for online appeal proceedings initiated, the notice would only be sent to the address of the appellant as per the PAN and it would not be sent to the Authorised Representative's address. Considering the same, you are advised to get the PAN address of the appellant up to date. **In view of the above, you may take appropriate action to file a fresh appeal with a request for condonation of the delay.***

Yours faithfully,

Sd/-

(L. Raja Sekhar Reddy)
Commissioner of Income-tax
(Appeals)-1, Bengaluru

6.2. Further, it is the say of the ld. counsel for the assessee that the assessee followed the directions of Ld. CIT(A) vide aforesaid letter dated 18.06.2018 , and filed a fresh appeal again with Ld. CIT(A) u/s 246A, on 31.05.2019 , instead of filing appeal with Income Tax Appellate Tribunal against the appellate order dated 30.01.2018 passed by ld. CIT(A). The Ld. CIT(A) vide appellate order dated 12.02.2024(DIN No. ITBA/APL/S/250/2023-24/1060795551(1)) dismissed the second appeal of the assessee filed on 31.05.2019 on the ground that another appeal cannot be filed with ld. CIT(A) as the assessee's first appeal already stood dismissed by his predecessor ld. CIT(A) vide order dated 31.01.2018, and the correct forum to file an appeal against the appellate order dated 31.01.2018 passed by his predecessor ld. CIT(A) is with ITAT, vide order dated 12.02.2024 passed by ld. CIT(A) as under:-

"2. The appellant has already filed an appeal against the assessment order under section 143(1) passed by the ACTT, Circle-1 (1) Bangalore on 24- 12- 2010. The CIT (A) has decided/dismissed this appeal in ITA NO 94/CIT(A)1/Br/14-15/AY 2008-09 on 30/01/2018. The appellant cannot file another appeal against the same order before another first appellate authority. If the appellant thinks the order in ITA NO 94/CIT(A)1/Br/14- 15/AY 2008-09 on 30/01/2018 is not correct the appellant has to file an appeal before the ITAT. The CIT(A) cannot recall its order and can take a fresh decision only if the ITAT sets it aside to the CIT(A) for reconsideration. There is no prima-facie mistake in the order that can be rectified u/s154.

5.3 The second set of appeals filed against the assessment order before the first appellate authority is infructuous and not maintainable. In the result, the appeal is treated as Dismissed in limine."

6.3. Further, it is the say of the ld. counsel for the assessee that the assessee filed an appeal with Income Tax Appellate Tribunal against the appellate order dated 12.02.2024 passed by ld. CIT(A), and the ITAT dismissed the appeal of the assessee

vide appellate order dated 04.06.2024 in ITA No. 663/Bang/2024, by holding as under:-

“6. Admittedly, the first appellate order dated 30/01/2018 was not challenged by the assessee under the bona-fide belief that the assessee has filed another appeal. If assessee wishes to challenge such order dated 30/01/2018, he can do so, as per the provisions of law. The Id. DR also submitted that the appeal filed by the assessee against the second appellate order is not maintainable. In view of the above and after considering the facts in totality, we hold that the appeal filed by the assessee before us against the order of Id. CIT(A) dated 12/02/2024 is non-est and not maintainable. Accordingly, we dismiss the same as infructuous.

7. In the result, the appeal filed by the assessee is dismissed.”

6.4. The Tribunal dismissed the appeal of the assessee vide appellate order dated 04.06.2024 as the assessee did not challenged the first appellate order dated 30.01.2018 passed by Id CIT(A) before the ITAT , and instead again filed fresh appeal with Ld. CIT(A) on 31.05.2019 despite dismissal of first appeal by Id. CIT(A) on 30.01.2018 , which appeal filed again with Id. CIT(A) on 31.05.2019 stood dismissed by Id. CIT(A) vide appellate order passed on 12.02.2024 as infructuous and non maintainable. The appeal filed by the assessee before the Tribunal against the Id. CIT(A) order dated 12.02.2024 was consequently held to be non-est and not maintainable by ITAT , and was dismissed by ITAT vide appellate order dated 4.06.2024 in ITA No. 663/Bang/2024. It is the further say of the Id. counsel of the assessee that after the dismissal of the appeal of the assessee by Tribunal, vide appellate order dated 04.06.2024 , the assessee filed appeal with ITAT on 24.07.2024 which is listed as ITA No. 1393/Bang/2024 for the assessment year 2008-09 against the first appellate order dated 30.01.2018 passed by Ld. CIT(A). Now, it is prayed that there is a delay on the part of the assessee in filing the appeal with the Tribunal against the appellate order passed by Id. CIT(A) on 30.01.2018 , but the delay is due to the fact that the assessee was pursuing the alternate/other legal remedies, although mistakenly , under a bona fide belief that the assessee is

pursuing the correct remedy as ld. CIT(A) vide letter date 18.06.2018 had instructed **to the assessee that it may file fresh appeal with a request for condonation of delay**. The assessee has filed an affidavit dated 04.09.2024 which is placed on record in file, in which the aforestated facts are enumerated in brief. The authorities have dismissed the appeal of the assessee as enumerated above , and prayers was made by the assessee to condone the delay in filing this appeal belatedly with the Tribunal on the ground that the assessee was pursuing the alternate/other legal remedies bonafidely on the instruction dated 18.06.2018 issued by ld. CIT(A) to file fresh appeal along with condonation application, although under a mistaken belief. It is further averred in the affidavit that the assessee firm has not taken up its business activities since April, 2018 onwards and has kept its PAN number active only for the purposes of the appeals pending with Income-tax department. It is further averred that the assessee is filing 'Nil' return of income with Revenue for assessment years 2019-20 to 2024-25 . The copies of return of income filed from assessment years 2019-20 to 2024-25 are enclosed by the assessee with the aforestated affidavit, which are placed on record in file.

6.5. The ld. JCIT DR, on the other hand, submitted that there is a delay in filing this appeal with the Tribunal and the assessee ought to have been more careful in choosing the correct and appropriate legal forum , and the ld. JCIT DR fairly left the matter to be decided by the Tribunal.

7. We have considered the rival contention and perused the material on record. We have observed that the assessee has filed this appeal with Tribunal belatedly beyond the time stipulated u/s 253(3). We have also observed that the assessee's first appeal filed with Ld. CIT(A) was dismissed by ld. CIT(A) ex-parte in limine vide appellate order dated 30.01.2018, for non prosecution of its appeal. The assessee has claimed that no notice of hearing was received from ld. CIT(A) fixing appeal for hearing on 30.01.2018, as the notice was not sent to the wrong address and was not sent to the address stated in Form No. 35 for service of notice of

hearing. The assessee, admittedly received the appellate order passed by Ld. CIT(A) dated 30.01.2018. The assessee did not file appeal with ITAT, rather filed two rectification applications dated 7.02.2018 and 15.06.2018 with Ld. CIT(A). The Ld. CIT(A) issued letter dated 18.06.2018 in response to the aforesaid rectification applications filed by the assessee, wherein Ld. CIT(A) stated that the Form No. 35 filed by the appellant has not been signed in the form of verification by the authorized signatory, and hence the appeal was treated as invalid and not maintainable. The Ld. CIT(A) also referred in its communication dated 18.06.2018, that the name of the authorized signature has not been mentioned anywhere in the appeal documents in Form No. 35. It is stated by Ld. CIT(A) that the notice will be sent only to the address of the appellant as per PAN and it would not be sent to the authorized representative's address. The Ld. CIT(A) directed the assessee to get PAN address updated. **Further, the Ld. CIT(A) stated in its communication dated 18.06.2018 to assessee that it may file fresh appeal with a request for condonation of delay.** The said letter dated 18.06.2018 issued by Ld. CIT(A) is reproduced hereunder :-

"Office of the Commissioner of Income Tax (Appeals)-1, Bengaluru

*Room No.751 7th Floor
BMTc Bldg. 80 Ft. Road
6th Block, Koramangala
Bangalore-560095*

Telephone:25625023 Fax:2562503

F. No. ITA 94/CIT(A)-1/BR/18-19

Dated:18th June, 2018

To

*M/s Dagliya & Co.,
Chartered Accountants
"1" Block, Unity Buildings
J.C. Road, Bengaluru-560002*

Sirs,

*Sub: Income tax appeal-M/s. Manohar Catering, Bengaluru-
(PAN:AALFM1212B) – Asst. Year 2008-09-reg*

Ref: Your letter dated 15.06.2018.

*It is seen from the record that the Form No. 35 filed by the appellant has not been signed in the form of verification by the Authorised Signatory. Hence, the appeal in Form No. 35 filed in the above case is invalid and the same is not maintainable. Even otherwise, the name of the Authorised Signatory has not been mentioned anywhere in the appeal documents in Form 35. Further, you are informed that as per the new procedure for online appeal proceedings initiated, the notice would only be sent to the address of the appellant as per the PAN and it would not be sent to the Authorised Representative's address. Considering the same, you are advised to get the PAN address of the appellant up to date. **In view of the above, you may take appropriate action to file a fresh appeal with a request for condonation of the delay.***

Yours faithfully,

*Sd/-
(L. Raja Sekhar Reddy)
Commissioner of Income-tax
(Appeals)-1, Bengaluru*

7.2 In the aforesaid letter dated 18.06.2018, the ld. CIT(A) has stated that the notices of hearing shall be issued only to the address mentioned in the PAN and not to the address mentioned in Form No. 35 for service of notice , which observation of the ld. CIT(A) is contrary to provisions of Section 282 of the 1961 Act read with first proviso to Sub-rule (2) to Rule 127 of the Income-tax Rules, 1962. The ld. CIT(A) has stated in its appellate order dated 30.01.2018 that notice of hearing was received back unserved, then in that situation the ld. CIT(A) had to follow the procedure for serving of notice of hearing as is contemplated u/s 282 read with Rule 127, but instead ld. CIT(A) dismissed the appeal of the assessee ex-parte in limine , without complying with principles of natural justice . There is clearly a breach of principle of natural justice by ld. CIT(A), and prejudice has been caused to the assessee. The ld. CIT(A) vide its communication dated 18.06.2018 gave an observation contrary to scheme of the Act asking the assessee to file appeal again with ld. CIT(A) along with condonation application , despite knowingly well that the first appeal of the assessee was dismissed for non-prosecution by ld. CIT(A) vide appellate order dated 30.01.2018, which observations/directions issued by ld. CIT(A) were contrary to the

scheme of Act, because against the appellate order passed by ld. CIT(A) dismissing appeal of the assessee ex-parte in limine for non prosecution , the remedy available with the assessee was to file second appeal with ITAT. Thus, on the faith of the instructions/directions of Ld. CIT(A) vide letter dated 18.06.2018, the assessee has claimed to have filed fresh appeal with Ld. CIT(A) on 31.05.2019 instead of filing a second appeal with Tribunal, which is against the scheme of the Act as the appeal against the appellate order passed by ld. CIT(A) lies with ITAT u/s 253. The statutory authorities are vested with powers under the statute, and they need to observe utmost care while making such observations/directions. No doubt, there are delays and latches on the part of the assessee , and we reprimand and admonish assessee for such careless approach. The assessee has to be vigilant while pursuing legal remedy. This second appeal filed by the assessee with ld. CIT(A) on 31.05.2019 was dismissed by ld. CIT(A) on 12.02.2024 as being not maintainable, as already ld. CIT(A) has dismissed the first appeal vide appellate order dated 30.01.2018 and the assessee cannot file appeal again afresh with ld. CIT(A) while the first appeal already stood dismissed by ld. CIT(A) vide orders dated 30.01.2018, and the remedy lies by filing appeal with ITAT against dismissal of the appeal by ld. CIT(A) vide appellate order dated 30.01.2018. Despite dismissal of the appeal by ld. CIT(A) vide appellate order dated 12.02.2014 as not being maintainable, the assessee instead of filing appeal with ITAT against the appellate order dated 30.01.2018 passed by ld. CIT(A), filed appeal with ITAT against dismissal of appeal by ld. CIT(A) vide appellate order dated 12.02.2024. The said appeal was dismissed by ITAT vide orders dated 04.06.2024 in ITA no. 663/Bang/2024. The assessee then filed appeal with ITAT on 24.07.2024 against the appellate order dated 30.01.2018 passed by ld. CIT(A), which appeal is listed by ITAT as ITA no. 1393/Bang/2024, of which presently we are seized off. We have observed that the delay which occurred in filing this appeal with ITAT is both on account of wrong observations and directions given by ld. CIT(A) vide letter dated 18.06.2018 as well there are certainly delays and latches on the part of the assessee also as its conduct was of carelessness, for

which we admonish and reprimand assessee. But, it could not be said that there was a malice in the conduct of the assessee , and the assessee has been through persuing legal remedy albeit at wrong forum. The assessee has filed affidavit dated 23.07.2024 praying for condonation of delay in filing this appeal, which is placed on record. Under these facts and circumstances and in the interest of justice, we are of the considered view that the delay in filing of this appeal with ITAT in the instant case needs to be condoned, but at the same time we admonish and reprimand the assessee for its carelessness. When technicalities are pitted against the substantial justice, the Courts will lean towards advancement of substantial justice rather than technicalities, unless the malafide on the part of the assessee is at writ large. Under the facts and circumstances, we do not find any malafide on the part of the assessee in filing this appeal belatedly, and in the interest of justice, we condone the delay w.r.t. this appeal and proceed to adjudicate this appeal on merits in accordance with law. We Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**.

7.3 The Ld. CIT(A) passed an appellate order dated 30.01.2018 under section 250 of the Act wherein Id. CIT(A) dismissed the appeal of the assessee ex-parte in limine for non-prosecution of its appeal by the assessee, by holding as under:-

"1. This appeal was filed on 15-02-2011 for the Assessment Year 2008-09 against the order dated 24-12-2010 passed under Section 143(3) of the IT Act by the ACIT, Circle-1(1), Bengaluru, which was served on 17-01-2011. Aggrieved by the said order, the appellant is in appeal under section 246A(1)(a) of the Act. In response to the notices of the hearing Issued by this office posting the hearing on the date 30-01-2018, no one appeared for the hearing.

2. I have considered the grounds of appeal filed by the appellant and also gone through the assessment order passed by the Assessing officer, the ground of appeal taken by the appellant cannot be disposed without factual verification. The appellant was given an opportunity on 30-01-2018 to appear before me to plead the appeal. The appellant apart from not showing up, it has neither replied to the hearing notice, nor furnished any written submissions. Further, it is seen that the notice issued to the address mentioned on the appeal document by the appellant returned back by the postal authorities with the remark that "addressee left and returned to the sender", The appellant has not updated the

address on the appeal record. In the circumstances it won't serve any purpose by issuing any further notice in this matter.

3. In view of the same I am of the opinion that the appellant is not interested in pursuing its appeal. The law aids those who are vigilant and those who sleep upon/over their rights. This principle is embodied in well known dictum vigilantibus non Dormantibus Jura Subveniunt which has been followed in the case of CIT Vs. Multiplan India Ltd. reported in 38 ITD 320 by the Hon'ble ITAT. Therefore, the appeal is dismissed for want of prosecution."

7.4 It is observed that the ld. CIT(A) dismissed the appeal of the assessee vide appellate orders dated 30.01.2018 ex-parte in limine without deciding the issues on merits, which is not in consonance with mandate of Section 250(6). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6), by stating point for determination , his decision thereon and reason for the decision. The ld. CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report the result of the same to ld. CIT(A), as is provided u/s 250(4). Thus, ld. CIT(A) has to adjudicate issues arising in the appeal on merits in accordance with law. There are other powers vested with ld. CIT(A) as is provided under the 1961 Act, including power of enhancement .Thus, the appellate order dated 30.01.2018 passed by ld. CIT(A) ex-parte in limine without deciding the issues arising in appeal on merits, is not in consonance with the scheme of the Act particularly Section 250(6), and hence not sustainable in the eyes of law and is liable to be set aside. Further, the ld. CIT(A) has issued only one notice of hearing fixing the date of hearing on 30.01.2018. The said notice was not served on the assessee and returned unserved. The assessee is contending that the notice was sent to wrong address and was not sent to the address mentioned in Form No. 35. The return of notice of hearing is also confirmed by ld.CIT(A) , and further in communication dated 18.06.2018 , the ld. CIT(A) stated that notice will be issued only to the address mentioned in PAN database. First of all there is a clear breach of principles of natural justice as by issuing solitary notice, the ld. CIT(A) dismissed the appeal of the assessee ex-parte in limine without deciding the issues

arising in the appeal on merits. Secondly, procedure as contemplated u/s 282 read with Rule 127 was not followed by Id. CIT(A). Once the address for serving of notice of hearing is mentioned in Form No. 35 , it was obligatory on the part of Id. CIT(A) to send notice of hearing to said address as is envisaged in first proviso to sub-rule (2) to Rule 127 of the 1962 Rules. Thus, the appellate order passed by Id. CIT(A) is also liable to be set aside on these grounds. The assessee has vide ground no. 2 and 3 has raised this issue of breach of principles of natural justice , improper service of notice as well not deciding the issues arising in the appeal on merits.

7.5 Further, it is stated by the assessee that the business of the assessee was closed since 2018, but there is no evidence brought on record that the assessee intimated revenue about the closure of its business as is required u/s 176(3). It is for the first time in affidavit dated 04.09.2024 filed before ITAT, this factum of closure of business is brought on record by the assessee. It is stated that PAN number was kept alive as litigation with Income-tax department is continuing, and 'Nil' Returns of income were filed with department. The copies of return of income for assessment year 2019-20 to 2024-25 declaring 'Nil' Income are placed on record. The assessee is a partnership firm. The assessee has to make true, complete and correct disclosure of its status and current state of affairs. The assessee has to come out with complete, correct and true facts and state of affairs as to whether it stood dissolved or it is an existing entity although business stood discontinued. Reference is drawn to provisions of Section 176(3), 189(1) 189(3) and 189(4) of the 1961 Act. Section 176(3) of the 1961 Act, which clearly stipulates that in case of discontinuance of business, it is obligatory on the part of the assessee to give notice to the AO of such discontinuance of business within fifteen days thereof. There is no evidence brought on record by the assessee that the assessee did inform the AO about such discontinuance of its business. An evidence which could be produced but is not , shall be deemed to be against the person who withheld the same. Thus, there is a failure on the part of the assessee in making compliance of Section 176(3). The

assessee is a partnership firm, and Reference is drawn to Section 189(1), which is relevant. Similarly Section 189(3) provides that in case the firm is dissolved or business discontinued, every person who has at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased , shall be jointly and severally liable for the amount of tax, penalty or other sum payable , and all the provisions of this Act, so far as may be , shall apply to any such assessment or imposition of penalty or other sum. Further reference is also drawn to provisions of Section 189(4), which stipulates that where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3)(i.e partners of the firm , and the legal representative of any such person who is deceased) from the stage at which the proceedings stood at the time of such discontinuance or dissolution , and all the provisions of this Act shall, so far as may be , apply accordingly. Provisions of Section 176(3) and Section 189 are reproduced hereunder:

“L.—Discontinuance of business, or dissolution

176. Discontinued business.—

(3) Any person discontinuing any business or profession shall give to the 2 [Assessing Officer] notice of such discontinuance within fifteen days thereof.

*** “

“189. Firm dissolved or business discontinued.—

(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the 4 [Assessing Officer] shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the 4 [Assessing Officer] or the 5 [Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such firm as is

referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159”

7.5.1 These are especial facts which are within the knowledge of the assessee and the same were to be brought on record by the assessee whether the business stood discontinued or there was dissolution of the firm. It was the duty of the assessee to have brought complete, true and correct facts on record before the authorities, as to whether the assessee firm stood dissolved or the business stood discontinued. The assessee has filed appeal in its own name as well ITR's are filed in its own name, which indicate that the assessee firm did not stand dissolved although business might have been discontinued, but it required inquiry so that true, correct and complete facts are brought on record. Under these facts and circumstances, we are of the considered view, that complete inquiry is required in this regard thereto keeping in view provisions of Section 176(3), 189(3) and 189(4), and the assessee is directed to furnish complete, true and correct facts in connection thereto before Id. CIT(A) to enable Id. CIT(A) to conduct aforesaid inquiry, the powers of Id. CIT(A) being co-terminus with the powers of the AO.

7.6 Thus, keeping in view entire facts and circumstances of the case, we are inclined to set aside the appellate order dated 30.01.2018 passed by Id. CIT(A), and restore the matter back to the file of Id. CIT(A) for denovo adjudication of the appeal of the assessee. The Id. CIT(A) is directed to pass orders in compliance with the

provisions of section 250(6) of the Act. Needless to say that ld. CIT(A) shall give proper opportunity of being heard to both the assessee as well AO. The assessee is directed to comply with the directions / notices of hearing issued by the Ld. CIT(A) in the appellate proceedings, otherwise Ld. CIT(A) will be within its right to pass an *ex parte* order on merits, in accordance with law. The appeal of the assessee is allowed for statistical purposes. We clarify that we have not commented on the merits of the issue arising in this appeal. We order accordingly.

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

Order pronounced on /09/2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 13/09/2024

Sh (on tour)

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR ,
4. CIT,
5. The CIT(A)

By Order

Assistant Registrar,
ITAT, Bangalore