

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1675/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

Venkateshwara Square Associates, A-3, Koregaon Park, South Main Road, Pune – 411 001, Maharashtra PAN : AAGFV1845C	Vs.	ITO, Ward-12(1), Pune
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Harshad S. Aaradhi  
Date of hearing : 08.10.2024  
Date of pronouncement : 09.10.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 24.06.2024 for the assessment year 2014-15.

2. Brief facts of the case are that the appellant is a firm engaged in the business of Building Construction as Promoters and Developers. Survey operations u/s.133A of the Income-tax Act, 1961 ('the Act') was conducted in the case of the appellant on 17.09.2013 during which the appellant declared additional income of Rs.49,15,000/-. The appellant had not filed the return of income under the provisions of section 139(1) of the Act. The case was reopened and notice u/s.148 was issued to the appellant on 26.10.2017. In response to show cause notice dated 28.11.2018, the appellant filed copies of return of income, financial statements and computation of income etc. Thereafter, the

appellant was issued another show cause notice dated 17.12.2018. In response to the said show cause notice, the appellant furnished explanation stating that the expenses of Rs.49,15,000/- was not transferred to Contract account/Expenses account. They were kept under Misc expenses for further debiting to Partners Capital Account in their profit sharing ratio. However, not convinced with the explanation tendered by the appellant, the Assessing Officer vide order dated 24.12.2018 completed the assessment u/s.143(3) r.w.s.147, making addition of Rs.49,15,000/- as unexplained expenditure u/s.69C of the Act.

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

4. Being aggrieved, the appellant is in appeal before this 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. I therefore proceed to dispose of the appeal *ex parte* after hearing the Id. Departmental Representative.

6. I heard the Id. Sr. DR and perused the material on record. It is an admitted position that the NFAC had dismissed the appeal of the appellant *ex parte* for non-prosecution. It is a trite law that the NFAC should have dealt with the merits of the issue in appeal, even in the case of *ex parte* order. From the perusal of Para nos. 5.2 and 5.3 of the impugned order, it would reveal that the NFAC had not gone into the merits of the issue in appeal, merely dismissed the appeal for non-prosecution, which is contrary to the settled position of law. In this

regard, reference is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) Bombay*/[2017] 297 CTR 614 (Bombay) wherein it was held that CIT(A) is obliged to dispose of the appeal on merits. Therefore, I deem it proper to remit the matter to the file of CIT(A)/NFAC for *de novo* disposal of the issues in appeal on merit afresh after allowing reasonable opportunity to the appellant, in accordance with law. I order accordingly.

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

Order pronounced on this 09<sup>th</sup> day of October, 2024.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> October, 2024.

*Satish*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.