



।आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1871 & 1872/PUN/2024

निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

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| Nav Maharashtra Chakan Oil Mills Limited, 43, Nav Maharashtra House, Near Shaniwar Wada, Shaniwar Peth, Pune – 411030. PAN: AAACN9941J | V s | The Income Tax Officer, Ward-2(4), Pune. |
| Appellant / Assessee | | Respondent / Revenue |

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|-----------------------|----------------------------------|
| Assessee by | Shri Nikhil Pathak – Advocate |
| Revenue by | Shri Prakash L Pathade – CIT(DR) |
| Date of hearing | 16/10/2024 |
| Date of pronouncement | 22/10/2024 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These are two appeals filed by the Assessee against the two separate orders of Id.Commissioner of Income Tax(Appeal), Pune dated 27.07.2022 and 20.11.2023 for A.Y.2013-14 and 2014-15 respectively. Since the issue involved is common, both these appeals were heard together and decided by the common order.



1.1 We will take the A.Y.2013-14 as a lead case. The assessee has raised following Grounds of appeal :

“1) The learned CIT(A) erred in dismissing the appeal of the assessee ex- parte on the ground that there was non compliance on the part of the assessee to the various notices issued by him and thereby erred in confirming the addition of Rs.19,43,14,369/- made by the learned A.O.

2) The assessee submits that there was a reasonable cause on its part for the non compliance to the notices issued by the learned CIT(A) and accordingly, requests for one more opportunity to present its case before the learned CIT(A).

3) The assessee submits that the notices were issued by the learned CIT(A) on the e-mail ID which was not being used and hence, the assessee was not aware of the notices issued by the learned CIT(A) and accordingly, there was non compliance on the part of the assessee to the various notices issued by the learned CIT(A) and hence, the assessee requests for one more opportunity to present its case before the learned CIT(A).

4) The learned CIT(A) erred in confirming the Transfer Pricing addition of Rs.19,43,14,369/- in respect of the specified domestic transactions entered into by the assessee company without appreciating that no such addition was warranted on the facts of the case.

5) The assessee submits that the addition of Rs.19,43,14,369/- made by the learned TPO is totally incorrect and hence, the same may kindly be deleted.

6) The assessee further submits that the ld. CIT(A) failed to consider that the assessee company was having only specified domestic transactions under section 92BA read with 40A(2)(b) in respect of which TP Adjustment made by the learned TPO/AO and since the transfer pricing provisions were amended by Finance Act, 2017 to exclude specified domestic transactions which are under section 92BA read with 40(2)(6) from the purview of transfer pricing regulations, the said addition made of Rs.19,43,14,369/- was not justified and hence, the same may kindly be deleted.

7) The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”



Submission of ld.AR :

2. The ld.AR for the Assessee submitted that Assessee had not received the notices send by ld.CIT(A). Ld.AR submitted that practically Assessee Company has closed down its business, therefore, there is no one to receive or check the Emails. Ld.AR invited our attention to the copies of the GST Returns filed at page no.49 to 101 of the paper book to demonstrate that as per GST Returns, turnover of the assessee is Nil from F.Y.2019-20. Ld.AR also invited our attention to copies of the Return of Income filed by the assessee for A.Y.2020-21 onwards to demonstrate that actually there were no business activities. Ld.AR submitted that since most of the Assessee's employees have left, the Emails have not been checked. Ld.AR submitted that there was no malafide intention in not complying notices issued by ld.CIT(A). Ld.AR submitted that an opportunity may kindly be provided. Ld.AR also submitted that ld.CIT(A) has merely confirmed the addition without discussing the merits of the addition.

Submission of ld.DR :

3. Ld.DR agreed that ld.CIT(A) has not discussed the merits of the additions and hence, case may be set-aside to the ld.CIT(A).



Findings & Analysis :

4. We have heard both the parties and perused the records. It is a fact that there was a non-compliance before the Id.CIT(A). However, there was a reasonable sufficient cause for non-compliance. Also, as per Section 250(6) of the Act, Id.CIT(A) has to state the points for determination and the reasons for his decision, meaning thereby Id.CIT(A) has to discuss the merits of the addition. In this case, assessee has raised the issue that Specified Domestic Transactions u/sec.92BA were excluded by Finance Act, 2017. Admittedly, the Transfer Pricing Adjustments are only with reference to Specified Domestic Transactions. This issue has not been discussed by the Id.CIT(A).

4.1 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.

5. 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.

6. 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. Accordingly,



grounds of appeal raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

ITA No.1872/PUN/2024 :

8. Since we have already discussed the issue in the “lead case” at length and the facts of ITA No.1872/PUN/2024 are similar to the facts of ITA No.1871/PUN/2024, therefore, our decision shall apply *mutatis mutandis* to this appeal also, accordingly, grounds of appeal raised by the assessee in ITA No.1872/PUN/2024 are allowed for statistical purpose.

9. In the result, two appeals of the Assessee i.e.ITA Nos.1871 & 1872/PUN/2024 are allowed for statistical purpose.

Order pronounced in the open Court on 22nd October, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd Oct, 2024/ SGR*



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, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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