

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1974/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

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| VMK Image,<br>Shop No.1-4,<br>Gangubai Khange Sankul,<br>Khandge Colony,<br>Talegaon Station,<br>Talegaon Dabhade,<br>Tal. Maval, Dist. Pune<br>Maharashtra-410507 | Vs. | Income Tax Officer,<br>Ward-8(3), Pune |
| Appellant  |     | Respondent                             |

|                       |   |                   |
|-----------------------|---|-------------------|
| Assessee by           | : | None              |
| Revenue by            | : | Shri Arvind Desai |
| Date of hearing       | : | 11.11.2024        |
| Date of pronouncement | : | 12.11.2024        |

**आदेश / ORDER**

**PER DR.MANISH BORAD, ACCOUNTANT MEMBER:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the order passed u/s.250 of the Income Tax Act, 1961 [in short "the Act"] by the National Faceless Appeal Centre, Delhi [in short 'Id.CIT(A)'], dated 20.08.2024 arising out of the Assessment order passed u/s.147 r.w.s.144B of the Act, dated 22.03.2022.

2. Assessee has raised following grounds of appeal :

“1. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in treating Rs.2,16,00,000/- as unexplained investment under section 69.

2. The appellant craves leave to add/delete/modify amend all or any of the grounds of appeal.”

3. When the matter was called for, none appeared on behalf of the assessee despite due service of notice of hearing. We therefore proceed to dispose of this appeal *ex parte qua* the assessee after hearing the ld. Departmental Representative.

4. Tersely stated, the facts of the case are that the assessee for the year under consideration has not filed return of income under the provisions of section 139(1) of the Act. Based on the information available with the Income Tax Department that the assessee has purchased an immovable property amounting to Rs.2,16,00,000/-, the case of assessee was reopened by way of issuance of notice u/s.148 of the Act. Subsequently notice u/s.142(1) was also issued calling upon the assessee to furnish certain information. The assessee neither complied with notice u/s.148 nor complied with notice u/s.142(1). Responding to a notice issued, the assessee once sought adjournment. Thereafter, the assessee did not furnish any information. In absence of any compliance forthcoming from the side of assessee substantiating the sources for the investment, the Assessing Officer vide order dated 22.03.2022 completed the assessment u/s.147 r.w.s.144B of the Act. While doing so, the AO made addition of Rs.2,16,00,000/- as unexplained investment invoking the provisions of section 69 of the Act.

5. Being aggrieved by the above assessment order, assessee preferred an appeal before the ld. CIT(A) who vide impugned order dismissed the appeal *in limine* for non-prosecution, without discussing anything on merits.

6. We have heard the ld. Departmental Representative and perused the record placed before us. We find the impugned order passed by the ld. CIT(A)/NFAC is *ex parte*. The ld. CIT(A)/NFAC dismissed the assessee's appeal without dealing with the merits even when the assessment records were available with him. Ld. CIT(A)/NFAC is required to pass a speaking order dealing with the merits of the case as contemplated u/s.250(6) of the Act which provides that for adjudicating the appeal, the ld. CIT(A)/NFAC should dispose of the same in writing and shall state the points for determination, the decision thereon and the reason for that decision. The settled position of law mandates the CIT(A) NFAC to dispose of the appeal by adjudicating the issue raised in appeal on merits. 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 NFAC is obliged to dispose of the appeal on merits. The observation of the Hon'ble High Court is reproduced below :

*“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.”*

Thus, the Jurisdictional 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.

7. Since the ld. CIT(A) has not adhered to the provisions of section 250(6) of the Act and has not passed a speaking order, we are of the considered view that, in the interest of

natural justice, the issue raised in the instant appeal deserves to be restored to the file of ld. CIT(A)/NFAC for *denovo* adjudication. For doing the needful reasonable opportunity has to be granted to the assessee to furnish submissions and other evidences if needed, in order to substantiate the investment made by assessee. On due consideration of the same, ld. CIT(A)/NFAC shall pass a speaking order in accordance with law. The assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause, failing which the ld. CIT(A)/NFAC shall be free to proceed in accordance with law. Finding of the CIT(A)/NFAC is set aside and Grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 12<sup>th</sup> day of November, 2024.

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> November, 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, "B" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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