



**।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "A" :: PUNE**

**BEFORE MS.ASTHA CHANDRA, JUDICIAL**  
**MEMBER, AND**  
**DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.1425/PUN/2024**

**निर्धारण वर्ष / Assessment Year: 2018-19**

|                                                                                                                     |        |                                           |
|---------------------------------------------------------------------------------------------------------------------|--------|-------------------------------------------|
| Lohiya Developers,<br>19, 432 Shivaji Nagar, Parli<br>Vajjnath, District Beed,<br>Beed – 431515.<br>PAN: AADFL8001D | V<br>s | The Income Tax Officer,<br>Ward-1, Jalna. |
| Appellant / Assessee                                                                                                |        | Respondent / Revenue                      |

|                       |                                                    |
|-----------------------|----------------------------------------------------|
| Assessee by           | Shri Girish Ladda –CA (Through<br>Virtual Hearing) |
| Revenue by            | Shri Ramnath P Murkude – DR                        |
| Date of hearing       | 24/10/2024                                         |
| Date of pronouncement | 25/10/2024                                         |

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] dated 29.04.2024 under section 250 of the Income tax Act 1961. The Assessee has raised the following grounds of appeal :

*“1) The Id. CIT(A)-NFAC erred in dismissing the appeal in limine without deciding the assessee's substantive grounds on merits as contemplated u/s 250(6) of the Act requiring to give points for determination followed by a detailed adjudication thereof.*



2) *The CIT (A)'s ex-parte order without discussing merits of the case is against the mandatory requirements of section 250(6) providing that appellate order shall state the points for determination, decision thereon and reasons for its decision. However, in the instant case the CIT(A) / NFAC has not followed the statutory mandate of section 250(6) of the Act, but has simply dismissed the appeal for non-prosecution, hence the order of the CIT(A) may please be set aside and matter may please be restored back for fresh de novo adjudication as per law.*

3) *The Id. AO erred in making addition of Rs 1,93,20,000 on account of WIP hence it may please be deleted.*

4) *The Id. AO erred in making addition of Rs 16,85,773 alleging unverified creditors hence it may please be deleted.*

5) *The Id. AO erred in making addition of Rs 2,34,92,833/- alleging unexplained advances from customers. The impugned addition may please be deleted as all these advances are genuine received from customers against bookings.*

6) *The Appellant seeks leave to add, alter, amend or drop any of the grounds taken above.”*

**Submission of Id.Authorised Representative(Id.AR) :**

2. The Id.Authorised Representative(Id.AR) for the Assessee submitted that assessee's appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Hence, Id.AR requested for one more opportunity of being heard to the assessee.

Ld.AR submitted written submission as under :

*“1) The CIT(A) NFAC has passed ex-parte order dismissing the appeal in limine without deciding the assessee's substantive grounds on merits as contemplated u/s 250(6) of the Act requiring to give points for determination followed by a detailed adjudication thereof.*



2) *The CIT (A)'s ex-parte order without discussing merits of the case is against the mandatory requirements of section 250(6) providing that appellate order shall state the points for determination, decision thereon and reasons for its decision. However, in the instant case the CIT(A) / NFAC has not followed the statutory mandate of section 250(6) of the Act, but has simply dismissed the appeal for non-prosecution.*

***Reliance is placed on Hon Bombay HC decision in CIT Vs Premkumar Arjundas Luthra 240 Taxman 133 (Bom HC)***

3) *The Assessee submits that, given an opportunity, we are in a position to substantiate our case before the lower authorities by submission of all required documents.*

4) *The appellant could not respond to the notices issued by NFAC CIT(A) as same remained unnoticed being delivered to the Spam folder of the e- mail.*

5) *Hence, in the interest of justice, one opportunity may please be given to substantiate the case, the order of the CIT(A) may please be set aside and matter may please be restored back for fresh de novo adjudication as per law.”*

**Submission of Id.Departmental Representative(ld.DR) :**

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and ld.CIT(A)[NFAC].

**Findings & Analysis :**

4. We have heard both the parties and perused the records. It is observed from the order of the ld.CIT(A)[NFAC] that the ld.CIT(A)[NFAC] did not decide the grounds of appeal on merit



but merely dismissed the appeal of the assessee for non-compliance. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the Id.CIT(A) vide its order dated 29.04.2024 has dismissed appeal of the assessee as under :

*“3.2. But the appellant has ignored even the last opportunity provided to the appellant to substantiate the appeal under reference. During the assessment proceedings, the appellant did not respond properly, to the notices and questionnaires issued by Id. AO. Ultimately, Id. AO was compelled to pass the assessment order u/s 143(3) read with section 144B of the Income Tax Act, 1961 on the basis of information available on record. It shows that the appellant assessee is not interested in representing his case and he has nothing to say on the merit of the case. Therefore, the appeal of the appellant is dismissed without any discussion on the merits of the case. Accordingly, the appeal of the appellant is not allowed.*

*4. In result, the appeal of the appellant is dismissed and not allowed.”*

4.2 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 Id.CIT(A) has to decide the appeal on merit and Id.CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of the above, the order of the Id.CIT(A)[NFAC] is set-aside to Id.CIT(A) for denovo adjudication. The Id.CIT(A) shall provide opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 25<sup>th</sup> October, 2024.

Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> 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, “ए” बेंच,  
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.



आदेशानुसार / BY ORDER,

// TRUE COPY //

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