



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

**BEFORE SHRI SATBEER SINGH GODARA,**  
**JUDICIAL MEMBER, AND**  
**DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.930/PUN/2024**

**निर्धारण वर्ष / Assessment Year: 2017-18**

The Income Tax Officer, Ward-I, Sangli.	V s	Balu Musa Dange, I DSP OFFICE VISHRAMBAG, Sangli. Maharashtra – 416415. PAN: ANCPD1861F
Appellant/ Revenue		Respondent /Assessee

Assessee by	None.
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	10/10/2024
Date of pronouncement	25/10/2024

**आदेश/ ORDER**

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

This is an appeal filed by the Revenue directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] dated 07.03.2024 under section 250 of the Income tax Act 1961. The Revenue has raised the following grounds of appeal :

*“(i) Whether the Ld.CIT(A) is justified in holding that if the similar addition is made in the case of assessee’s wife, the addition in case of assessee shall become protective.*

*(ii) Whether the Ld.CIT(A) is justified in deciding the issue on the*



*basis of statement of fact, as the assessee did neither attend before the AO nor before the CIT(A).*

*(iii) Whether the Ld.CIT(A) is justified in holding that addition of Rs.1,03,34,500/- shall become protective in assessee's hand without examining as who is the first holder of the bank account and whose cash is deposited in the bank account.”*

2. At the outset of hearing, no one appeared on behalf of the assessee. Even on 03.09.2024, no one had appeared on behalf of the assessee.

### **Findings & Analysis :**

3. We heard ld.DR for the Revenue and perused the records. The assessee is a Government Servant. As per assessment order, assessee had not filed Return of Income for A.Y.2017-18. The Assessing Officer(AO) had received information that assessee had made cash deposits of Rs.1,21,41,699/- in the Bank Accounts mentioned in the assessment order. The AO issued notice u/sec.148 of the Act, there was no compliance to the notice u/sec.148. Assessing Officer, then issued various notices u/sec.142(1) of the Act. Assessee had not complied any of the notices. Therefore, AO passed an order under section 144 r.w.s 147 of the Act. AO made an addition of Rs.1,21,41,699/-.



3.1 Aggrieved by the same, assessee filed an appeal before the Id.CIT(A) which was delayed by 153 days.

3.2 The Id.CIT(A) condoned the delay, though no separate petition for condonation of delay filed by the assessee. The Id.CIT(A) issued notices to the assessee. However, assessee failed to comply any of the notice. Therefore, Id.CIT(A) decided the case based on the statement of fact mentioned by the Assessee in the Form No.35. Ld.CIT(A) in para 5.4 and 6 held as under :

*“5.4 In light of the above, the Assessing officer is directed to verify the contentions made by the appellant regarding the alleged bank account in the IndusInd Bank (A/c No.,.: 100043941464) and in ICICI Bank (A/c No: 653401501607) are in the joint name of the appellant and his wife namely, Yasmin Balu Dange. The Assessing Officer is also directed to verify that as claimed by the appellant, whether the addition of Rs.1,01,34,500/- has been made in the case of Mrs.Yasmin Balu Dange for A.Y.2017-18 relating to the deposits in these bank accounts. If the contention of the appellant is found to be correct, the addition of Rs.1,01,34,500/- in the hands of appellant shall become protective in nature. The rest of the addition (Rs.1,21,41,699 – 1,01,34,500=20,0,7199) is sustained on substantive basis in the hands of the appellant.*

*6. In light of the above facts and with the above directions of the Assessing officer, in the result, the appeal is Partially allowed for statistical purposes.”*



3.3 Thus, ld.CIT(A) has considered the submission of the assessee that impugned bank accounts were in the joint names of Assessee and his Wife. Ld.CIT(A) has given direction to the AO to verify the same and directed that addition in the hands of assessee shall be on protective basis. Ld.CIT(A) thus, has set-aside the issue to the AO for verification. As per Section 251(1), the ld.Commissioner of Income Tax(Appeal) has the power to confirm, reduce, enhance or annul the assessment. Thus, Section 251(1) of the Act does not give any power to ld.CIT(A) to set-aside a issue for verification to the Assessing Officer. The relevant Section 251 of the Act is reproduced as under :

*251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;*

3.4 Thus, Section 251(1) of the Act does not give any power to ld.CIT(A) to set-aside the issue for verification to the Assessing Officer. The Finance Act, 2024 amended Section 251(1) w.e.f. 01.10.2024, giving power of set-aside to ld.CIT(A). However, in this case, ld.CIT(A)'s order is dated 07.03.2024. Therefore, the amended provisions are not applicable to present appeal. Section 250(4) of the Act gives specific power to ld.CIT(A) to make any



further enquiry or direct the Assessing Officer to make any enquiry and call for a report from the Assessing Officer.

*250. (1) The [Joint Commissioner (Appeals) or the] Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.*

*(2) The following shall have the right to be heard at the hearing of the appeal—*

*(a) the appellant, either in person or by an authorised representative;*

*(b) the Assessing Officer, either in person or by a representative.*

*(3) The [Joint Commissioner (Appeals) or the] Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.*

*(4) The [Joint Commissioner (Appeals) or the] Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the [Joint Commissioner (Appeals) or the] Commissioner (Appeals).*

3.5 Thus, ld.CIT(A) have independent powers of making enquiries. It means wherever assessee have not filed details, ld.CIT(A) can make an independent enquiry or call for a report from the Assessing Officer. However, in this case, ld.CIT(A) has not conducted any enquiries, but accepted assessee's submission without any evidence. Ld.CIT(A) has not brought on record copy of the impugned bank account to prove that it is in Joint Name. Ld.CIT(A) should have directed AO to enquire from the Bank regarding the persons who can operate the bank account.



However, in this case, no such enquiry has been conducted by the ld.CIT(A). We have already stated that in this case, ld.CIT(A) has set-aside the issue to the AO for verification and therefore, at the end mentioned appeal allowed for statistical purpose.Ld.CIT(A) do not have any such power. Similarly, ld.CIT(A) has given a direction to the AO to treat the addition on protective basis in the hands of the assessee, without any documentary evidence on record. Ld.CIT(A) has to specify the evidence on the basis of which he has given the impugned direction. In this case, ld.CIT(A) failed to do so. Therefore, the impugned direction given by ld.CIT(A) to treat the addition on protective basis is devoid of merits.

4. 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.*



4.1 Thus, Hon'ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit.

5. In these facts and circumstances of the case, for all the reasons discussed, respectfully following the Hon'ble Bombay High Court, we set-aside the appeal of the assessee to ld.CIT(A) for denovo adjudication. We direct the ld.CIT(A) to decide the appeal on merit by providing opportunity to the assessee. Accordingly, grounds of appeal raised by the Revenue are allowed for statistical purpose.

6. In the result, appeal of the Revenue is allowed for statistical purpose.

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

**Sd/-**  
**(S.S.GODARA)**  
**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.

ITA No.930/PUN/2024



आदेशानुसार / BY ORDER,

// TRUE COPY //

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