

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SONJOY SARMA, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 148/KOL/2024
Assessment Year: 2011-12**

Provash Adhikari	Vs.	ITO, Ward-46(4), Kolkata
(Appellant)		(Respondent)
PAN: AGTPA0795R		

Appearances:

Assessee represented by : None.

Department represented by : Sanjoy Paul, Addl. CIT, Sr. DR.

Date of concluding the hearing : September 12th, 2024

Date of pronouncing the order : November 29th, 2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

The present appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as the 'Id. CIT(A)'] for AY 2011-12 dated 28.11.2023 arising out of the assessment order framed u/s 143(3)/147 of the Act dated 26.12.2018.



1.1. None appeared on behalf of the assessee and the appeal was heard with the assistance of the ld. DR.

2.The grounds of appeal raised by the assessee are reproduced as under:

1. *For that on the facts and circumstances of the case, the Ld. CIT(A) was not justified in passing an ex parte order.*
2. *For that the Ld. CIT(A) ought to have considered that the reassessment order dated 26.12.2018 framed u/s 143(3)/147 is void and nullity before the eyes of law as there are no recorded reasons to believe that the income chargeable to tax has escaped assessment.*
3. *Without prejudice to Ground No. 2, the Ld. CIT(A) ought to have considered that the recorded reasons to believe are invalid and improper and as such, the reassessment framed vide order dated 26.12.2018 is bad before the eyes of law.*
4. *For that the Ld. CIT(A) ought to have considered that the re-assessment order dated 26.12.2018 is vitiated in law inasmuch as there was absolutely no independent application of mind and no independent enquiry on the part of the A.O. in respect of the purported information allegedly received by him from the DDIT(Inv.), Kolkata.*
5. *For that the Ld. CIT(A) ought to have considered that the re-assessment order is invalid on the ground of "change of opinion" on the same set of facts.*
6. *For that the Ld. CIT(A) erred in confirming the addition of Rs. 93,57,008/- made by the A.O. on account of alleged undisclosed income u/s 68.*
7. *The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.*

2. The brief facts of the case of the assessee as mentioned in the order of the Ld. CIT(A) are as under:

"The assessee filed his return showing a total income of Rs.2,43,444/-. The matter was selected for scrutiny and finally the assessment proceedings was completed by making various additions as under-



1. Addition of Rs.7,57,837/- on account of alleged undervaluation of closing stock.
2. Addition of Rs.49,83,680/- on account of alleged unexplained expenditure.
3. Addition of Rs. 79,23,000/- on account of unexplained investments.

Then the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) allowed the appeal of the assessee vide an order dated 22.02.2016. The department preferred an appeal before the Hon'ble Tribunal against the order of the CIT(A). The Hon'ble Tribunal vide an order dated 25.07.2018 restored the issue of addition on account of unexplained investment to the file of the A.O. with the following observations –

"We find that before the CIT-A the assessee produced another statement along with supporting documents involving the addition on hand. The CIT-A considering the same deleted the addition made by the AO. It was contested by the Id. DR that a new statement by way of new additional evidence was before the CIT-A, which was not available before the AO, which is clearly evident from the impugned order of the CIT-A. Therefore, taking into considerations the submissions of the Id. DR and in the interest of justice, we deem it fit and proper to remand this issue to the file of the AO for his fresh consideration. The AO shall consider this issue afresh and pass a fresh order, as per law. The AO shall give an opportunity of hearing to assessee. The assessee shall be at liberty to file requisite evidences, if any, to substantiate its claim and contention. This ground of revenue's appeal is allowed for statistical purpose. "

Meanwhile, proceedings u/s 147 was initiated against the assessee on the basis of alleged information regarding huge cash deposits. During the course of re-assessment proceedings, the assessee submitted various documents as per the requisitions of the Ld. A.O. However, the Ld. A.O. completed the reassessment by passing an order u/s. 147/143(3) by making an addition of Rs. 93,57,008/- on account of alleged unexplained cash credit."

2.1. Aggrieved with the assessment order, the assessee filed an appeal before Ld. CIT(A) who observed that 5 notices issued at the e-mail addresses i.e. (i) A.PROVASH@GMAIL.COM and (ii) saassociates.adv@gmail.com, which were available on the ITBA portal were not complied with. Hence after reproducing the observations of the Assessing Officer (hereinafter referred to as the ld. 'AO') in respect of the



addition of Rs. 93,57,008/-, he dismissed the appeal for want of prosecution. The Ld. CIT(A) while dismissing the appeal has relied upon the decisions in the following cases:

- (i) *M/s. Chhabra Land and Housing Ltd., ITA No. 1025-1027/CHANDI/2005,*
- (ii) *M/s. Classic Shares & Stock Broking Services Ltd., ITA No. 6876/MUM/2008*
- (iii) *M/s. Panwar Roshin & Turpentine Co., ITA No. 5532/DEL/2010*
- (iv) *Shyam Sunder Somani, ITA No. 1038/KOL/2011*
- (v) *M/s. Kanchan Singh Bhuli Devi Shiksha, ITA No. 706-707/LKW/2010*
- (vi) Hon'ble Supreme Court in the case of *B.N. Bhattachargee* reported in *118 ITR 461 (SC)*

The Ld. CIT(A) did not go into the rest of the grounds of appeal, which were found to be general in nature nor has given any specific comments on the merits of the case. We also note that the Ld. AO made the addition by giving the following finding, which is mentioned in para 4 of the appellate order and is reproduced as under:

“Information received from DDIT (Inv.) Koi. regarding huge cash deposits about Sri Provash Adhikari during the Asstt. Year 2011-12 undisclosed income of the assessee through unexplained cash credit amounting to Rs. 93,57,008/-. In this case-initiated proceedings u/s. 147 of I.T. Act 1961. Necessary approval obtained from PR. CIT-16, Kol. Reason recorded and Notice u/s 148 issued to assessee on 30/03/2018.

Thereafter notice u/s. 142(1) and Notice u/s. 143(2) issued and served on assessee. As per requisition of assessee reason of re-opening supplied on 22/06/2018

In response to notice u/s. 148 assessee filed ITR -V on 03/12/2018 through on-line. Notice u/s. 142(1) issued on 31/10/2018, notice u/s. 143(2) issued on 21/12/2018 and served on the assessee through on-line.



In response to notices (final opportunity and showcause) assessee submitted ITR(Copy), 3CB Form, Bank statement against show cause dtd, 03/12/2018. Vide letter No. ITBA/AST/F/17/2018-19/1013979327(1) DTD. 03/12/2018. AND. SHOW CAUSE Vide letter No. ITBA/AST/F/147(SCN) /2018-19/1014107183(1) DTD. 07/12/2018 respectively.

Finally ON 17/12/2018 show-cause vide letter No. ITBA/AST/F/147(SCN)/2018-19/1014356031(1) DTD. 17/12/2018 & 17/12/2018 respectively that the submission is not commensurate with bank transactions. But assessee did not comply on-line till 23/12/2018 against show-cause.

Penalty Proceeding u/s, 271(1)(c) of LT. Act 1961 initiated separately.

As per above discussion total income of the assessee is computed below:-

Income as per ITR:Rs. 2,43,444/-

Add: (as discussed above) Rs. 93,57,008/-

Assessed income: Rs. 96,00,452/-

R/O: Rs. 96,00,450/-

Assessed u/s 147/ 143(3) of the LT. Act 1961 on a total income of Rs96,00,450/- Computation of total income and tax thereon as calculated in online which is an integral part of the order. Copy of the order and demand notice, notice u/s. 271(1)(c) and computation sheet & A.O. are issued to the assessee."

2.2. The ld. DR relied upon the order of Ld. CIT(A).

3. We observe that the Ld. CIT(A) has dismissed the appeal on the ground of non-compliance to the notices issued and has not decided the appeal on merits. The provisions of Section 250(6) of the Act are reproduced as under:

"250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

4. In this respect, we note that Section 250(6) casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for



determination and a decision as well as the reason for arriving at such decision. We also note that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the five notices sent by e-mail were not complied with, however, the Ld. CIT(A) upheld the view of the AO and has not passed a reasoned order for arriving at his decision, as is required u/s 250(6) of the Act. We further note that in **Aji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by the Commissioner (Appeals) on the basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”

4.1. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A)



to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

"7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—

'Procedure in appeal

250 (1)

(2)

(3)

(4) 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 Commissioner (Appeals).

(5)

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(6A)

(7)

Powers of the Commissioner (Appeals)

"Section 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.

(aa)

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."

(c)

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the



order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'

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 co-terminus 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.

5. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for disposal of the grounds taken by the assessee on merits, by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission he wants to make in support of his grounds of appeal.



Accordingly, all the grounds taken by the assessee in this appeal are allowed for statistical purposes.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 29th November, 2024.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.11.2024

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Provash Adhikari, C/o Subash Agrawal & Associates, Adv. Sidha Gibson, 1, Gibson Lane, suite 213, 2nd Floor, Kolkata, West Bengal, 700069.**
2. **ITO, Ward-46(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata