IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No. 1350/KOL/2024
Assessment Year: 2020-21

AVR Storage Tank Terminals Private Limited 232/A, Acharya Jagadish Chandra Bose Road Minto Park Kolkata - 700030 (West Bengal)	Vs	Deputy Commissioner of Income Tax, Circle 11(1), Aaykar Bhavan, P-7, Chowringhee Square, Kolkata-700069
(Appellant)		**(Respondent)**
PAN: AAFCA6801R		

Present for:
Appellant by : Shri Dipran Mukherjee, AR
Respondent by : Shri P.P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 12.09.2024
Date of Pronouncement: 06.12.2024

O R D E R

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as "the Ld. CIT (A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21 dated 17.04.2024, which has been passed against the assessment order u/s 143(3) r.w.s. 144B of the Act, dated 24.09.2022 of the Assessment Unit, Income Tax Department (hereinafter referred to as "the Ld. AO").

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

"1. That on the facts and in the circumstances of the case, the National Faceless Appeal Center ("NFAC") erred in not adjudicating Ground Nos. 1 to 14 raised by the appellant before the NFAC.

2. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to compute the tax liability of the appellant as per the provisions of section 115BAA of the Act.

3. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to determine the capital gains chargeable to income-tax as per the revised computation furnished by the appellant during the course of assessment proceedings.

4. a) That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to allow depreciation as per the revised computation of depreciation furnished by the appellant during the course of assessment proceedings.

b) That on the facts and in the circumstances of the case, the NFAC erred in not appreciating that the claim of depreciation is mandatory as per the provisions of section 32 of the Art.

5. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to consider total income at Rs. 10,33,47,450 in the Computation Sheet issued along with the impugned assessment order instead of considering the total income of Rs. 10,33,48,516.

6. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to delete the interest charged under section 234A of the Act.

7. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to delete the interest charged under section 234B of the Act.

8. That on the facts and in the circumstances of the case, the NFAC erred in not directing the Assessing Officer to delete the excess interest charged under section 234C of the Act.

9. That on the facts and circumstances of the case, the NFAC erred in not directing the Assessing Officer to allow interest as per section 244A of the Act for the subject year till the date of issue of refund after giving effect to the above grounds.

10. That the appellant craves leave to add to, and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal.

In the Annexure to the Grounds of Appeal, the assessee has mentioned 15 Grounds some of which are elaboration of the grounds raised in the Form No. 36.

3. Brief facts of the case are that AVR Storage Tank Terminals Private Limited ("the Company" or "the assessee") is engaged in the business of third-party bulk liquid storage and transportation services. For the year ended 31 March 2020, the assessee filed its return of Income on 11 January 2021, i.e. within the applicable due date as per the provisions of section 139(1) of the Income-tax Act, 1961 ("the Act"), declaring its total income at Rs. 10,69,48,410. Subsequently, the assessee filed a revised return of income on 25 March 2021 for rectifying certain omissions in the original return of income filed by the assessee, wherein the total income was determined at Rs. 10,22,02,450 and an amount of Rs. 16,17,660 was determined as refundable to the appellant. The return of income filed by the appellant was selected for scrutiny assessment. During the course of assessment proceedings, the assessee furnished all the details and/documents. Thereafter, the assessment order dated 24 September 2022 was passed under section 143(3) read with section 144B of the Act, confirming the additions on Claim of deduction on account of Health and Education Cess and Donations debited to the Statement of Profit and Loss. The total income as per the aforesaid assessment order was determined at Rs. 10,33,47,450. However, the total income was inadvertently considered at Rs. 10,33,48,516 in the Computation Sheet issued along with the aforesaid assessment order. During the course of the assessment proceedings, the assessee vide its letters dated 23 December 2021, 13 September 2022 and 16 September 2022 prayed before the Ld. AO that the appellant had inadvertently committed certain errors in its revised return of income furnished on 25 March 2021 and accordingly, the assessee prayed that the modified computation of income furnished during the course of assessment proceedings vide letter dated 16 September 2022 may be considered before passing the

final assessment order. However, the Ld. AO passed the assessment order without considering the claims made by the assessee. Further, the Ld. AO erred in dealing with only one of the several claims/issues raised by the appellant and rejected the said claim arbitrarily relying on the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd [284 ITR 323]. The assessee had opted to be governed by the provisions of section 115BAA of the Act. Accordingly, the Company had filed the prescribed Form 10-IC on 26 December 2020 as per the requirements of section 115BAA of the Act read with Rule 21AE of the Income-tax Rules, 1962 ("the Rules"). The assessee filed an appeal before the Ld. CIT(A), who vide order dated 17/04/2024 and after considering the submission made by the appellant and in view of the facts of the case, as well as the judicial precedent cited, allowed the grounds of appeal and the additions made by the Ld. AO were deleted and the appeal was accordingly allowed. **However, the grounds of appeal raised by the assessee were not adjudicated upon**. Hence the appeal before the Tribunal has been filed.

4. At the outset, the Ld. AR for the assessee contended before us that the Ld. CIT(A) had committed a serious mistake as the appeal was filed on several grounds but various grounds of appeal raised were not adjudicated upon and on page 27 of the appeal order, the order of the Hon’ble Bombay High Court in the case of Sesa Goa Ltd. v. Joint Commissioner of Income-tax, Range 1, Panaji [2020] 117 taxmann.com 96 (Bombay) has been reproduced and apparently some other order had been copied. As regards the delay in filing the appeal before the Tribunal, it was stated that there was no delay as the last day was Sunday and the next day was a holiday and the appeal was filed on the immediately next working day. The Ld. AR also submitted that the grounds of

appeal, the assessment order of the Ld. AO and the submission of the assessee had been copied in the order of the Ld. CIT(A) but none of the grounds raised before him had been decided by him even though the appeal was allowed. The Ld. AR, therefore, requested that the matter may be set-aside to the Ld. CIT(A) for deciding the appeal afresh for rectification of this grave error. The Ld. DR did not oppose the request of the Ld. AR.

5. We have gone through the order of the Ld. CIT(A). The Ld. CIT(A) has mentioned 15 grounds of appeal on pages 2 to 3 of his order, reproduced the order of the Ld. AO on Pages 4 to 7, the submissions filed by the assessee doing the course of the appeal proceedings from Pages 7 to 14 and his decision starts from page 14 to 27 relating to condonation of delay, mention of filing of Form No. 10-IC and Form 3CA on Page 27 and the order of the Hon'ble Bombay High Court in **Sesa Goa Ltd. (supra)** relating to section 9 read with sections 5 and 40(a)(i) and Section 40(a)(ii) r.w.s. 28(i) of the Act on pages 27 to 41 and he has finally concluded on Page 41 that "**these grounds of appeal are accordingly, allowed and the addition made by the Ld. AO on this account is hereby, deleted**" and the appeal is allowed.

6. 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. The provisions of section 250(6) 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."*

In the present case before us, even though the assessee had made its submissions along with supporting documents before the

Ld. AO which are on record, compliance has not been made by the Ld. CIT(A) by not mentioning the reasons after examining the assessment records while disposing of the appeal nor the grounds of appeal raised before him have been decided. Though, the Ld. CIT(A) allowed the appeal but he has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji 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 Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose 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.*

7. 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 and the procedure to be adopted for deciding the appeal. 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.

6. Accordingly, as the Ld. CIT(A) has not deliberated upon nor decided the various grounds of appeal raised before him, we find it appropriate to set aside the impugned order of the Ld. CIT(A) and

remit the matter back to the file of Ld. CIT(A) for disposal of all the grounds raised by the assessee on merits by passing a speaking order *de novo*. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal. Accordingly, all the grounds taken by the assessee in his appeal before us are allowed for statistical purposes.

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

Order pronounced in the Court on 6th December, 2024 at Kolkata.

Sd/-	**Sd/-**
(SANJAY GARG)	**(RAKESH MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Kolkata, Dated 06.12.2024

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata
6. गार्ड फाईल /Guard file.

आदेशानुसार/ **BY ORDER,**

TRUE COPY

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata