



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.2174/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Shri Venkatesh Nisarg Sahakari Gruhrachna Sanstha Maryadit, S.No.56/3/1, Vadagaon Bk, Near Hotel Ashirvad, Haveli, Pune – 411041. PAN: AARAS2349J	V s	The ACIT, Ward-9(1), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri B.C.Malakar – AR
Revenue by	Smt Shraddha Nichal – Addl.CIT(DR)
Date of hearing	12/12/2024
Date of pronouncement	16/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] for Assessment
Year 2018-19 dated 30.08.2024 passed u/sec.250 of the Income tax
Act, 1961. The Assessee has raised the following grounds of
appeal :

*“1. On the facts and in the circumstances of the case and in law the
Ld. CIT(A), ADDL/JCIT(A)-2, Bangaluru erred in dismissing the*



appeal of the appellant assessee society thereby confirming the computation of total income made in the Intimation u/s. 143(1) of the I.T. Act, 1961 dated 12/07/2019 issued by the DCIT, CPC Bangaluru assessing the total income in the case of the appellant at Rs.10,04,160/- ignoring and without appreciating the facts of the case appellant housing society that the appellant is a Mutual society created by the members and the source of its income was from the members only and therefore its income was qualified for exemption under the Act on concept of mutuality as a mutual concern. The appellate order passed by the appellate authority be quashed and the Assessing Officer be directed to re-compute the total income of the appellant at Rs. Nil treating the appellant as a mutual society.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A), ADDL/JCIT(A)-2, Bangaluru erred in dismissing the appeal of the appellant assessee society thereby confirming the computation of total income made in the Intimation u/s. 143(1) of the I.T. Act, 1961 dated 12/07/2019 issued by the DCIT, CPC Bangaluru assessing the total income in the case of the appellant at Rs.10,04,160/- ignoring and without appreciating the facts that the members of the appellant housing society were the contributors and the beneficiaries of its income/ fund and further that one cannot make profit from self and therefore its income under the concept of mutuality qualified for exemption under the Act on concept of mutuality as a mutual concern. The appellate order passed by the appellate authority be quashed and the Assessing Officer be directed to re-compute the total income of the appellant at Rs. Nil treating the appellant as a mutual society.

Without prejudice to the above,

3. On the facts and in the circumstances of the case and in law the Ld. CTT(A), ADDL/JCIT(A)-2, Bangaluru erred in dismissing the appeal of the appellant assessee society thereby confirming the computation of total income made in the Intimation u/s. 143(1) of the IT. Act, 1961 dated 12/07/2019 issued by the DCIT, CPC Bangaluru assessing the total income in the case of the appellant at Rs.10,04,160/- ignoring and without appreciating the facts that the appellant society was registered under the Maharashtra Co-operative Housing Society Act and its income qualified for deduction u/s. 80P(2)(a)(i)/80P(2)(d) of the IT Act, 1961 and therefore the return income disclosed at Rs. Nil



by the appellant should have been accepted by the CPC, Bangaluru without making any variation in the Intimation once such deduction eligible to the appellant had been considered. The appellate order passed by the appellate authority be quashed and the Assessing Officer be directed to re-compute the total income of the appellant at Rs. Nil treating the appellant as a mutual society.

4. On the facts and in the circumstances of the case and in law the Ld. CIT(A), ADDL/JCIT(A)-2, Bangaluru erred in dismissing the appeal of the appellant assessee society thereby confirming the computation of total income made in the Intimation u/s. 143(1) of the I.T. Act, 1961 dated 12/07/2019 issued by the DCIT, CPC Bangaluru assessing the total income in the case of the appellant at Rs.10,04,160/- ignoring and without appreciating the facts that entire its income was qualified for deduction being a co-operative housing society and income originated and expenditure incurred by it for the members of the society under the concept of mutuality and/or qualified for deduction u/s. 80P of the Act. The appellate order passed by the appellate authority be quashed and the Assessing Officer be directed to re-compute the total income of the appellant at Rs. Nil treating the appellant as a mutual society.

5. The appellant craves leave to add, alter, delete, amend, withdraw, modify change or substitute any ground or grounds of appeal or to add any new ground or grounds of appeal during or before the hearing of the appeal.”

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

2. The Id.Authorised Representative(ld.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.



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

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

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed from the order of the Id.CIT(A)[NFAC] that the Id.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 30.08.2024 has dismissed appeal of the assessee as under :

“Since, there is no response from the appellant and also in absence of any submission from the appellant, it is presumed that the appellant has nothing to say/submit in support of its claim in the present appeal and therefore, the action of the AO in computing the income as per the provisions of section u/s.143(1) of the I.T. Act, 1961.

Therefore, the grounds no.1 to 14 raised by the appellant are dismissed.

5. In the result, the appeal of the appellant is dismissed.”

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, in the interest of justice, we set-aside the order of the Id.CIT(A) to Id.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the Id.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open Court on 16th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 16th Dec, 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, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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