

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “E”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3319/MUM/2024 (A.Y: 2021-22)**

Hatz Manufacturing Pvt. Ltd., Vs. **CPC/ITO Ward 7(2)(1),**
1777-A, Nilgiri House, V. S. Marg, Aayakar Bhawan, M. K. Road,
Mahim (West), Mumbai-400 016 Churchgate, Mumbai-400 020
PAN: AAACN4698Q

(Appellant)

(Respondent)

Assessee Represented by	: None
Department Represented by	: Shri Hemanshu Joshi, Sr. DR
Date of conclusion of Hearing	: 09.12.2024
Date of Pronouncement	: 10.12.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the orders of Learned Commissioner of Income Tax (Appeals)/Addl. JCIT(A)-4, Kolkata [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated



07.05.2024 for the A.Y. 2021-22, wherein the Ld. CIT(A) has dismissed the appeal of assessee on the ground that assessee is not interested in pursuing the case, therefore the Ld. CIT(A) passed an ex parte order and the matter was not decided on merits.

2. It is evident from the grounds raised by the assessee that Ground no. 1 pertains to ex-parte order passed by Ld. CIT(A) and Ground no. 2 is with regard to merit of the case which has not been adjudicated by the Ld. CIT(A). The Ld. DR supported the judgment of the Ld. CIT(A) stating that assessee has failed to prosecute the case effectively and there is no merit in the appeal, therefore the Ld. CIT(A) has rightly dismissed the appeal of the assessee.

3. We have considered the orders of lower authorities and submission of Ld. DR. Section 250 sub section 2(a) of "*the Act*" provides as under:

"Section 250 (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 authorized representative;"

4. It is evident from the provision that the hearing to be given is not a formality but an effective hearing is sine qua non for the purpose of



upholding the principal of natural justice. We have examined the impugned order of the Ld. CIT(A) observed as under: -

E3] It is seen that the Appellant has furnished a routine reply without any supporting evidence. Not a single document has been attached as asked u/s 250 though about 14 days time has been allowed. Finally, a notice u/s. 250 of the Income-tax Act, 1961 was issued to the appellant vide DIN & Notice No: ITBA/APL/F/APL_1/2024-25/1064185433(1) on 18.04.2024 which is as under:-

"In response to the Notice u/s 250 dated 04.04.2024 issued by this Office vide DIN & Notice No: ITBA/APL/F/APL_1/2024-25/1063890725(1), the compliance date of which was on or before 18.04.2024, the Appellant has furnished its reply on 17.04.2024 seeking adjournment for 15 days in order to submit necessary documents as asked by this Office.

So, the Appellant has been granted adjournment. The reply, if any, has to be uploaded within the scheduled date and time. This is the last opportunity given to the Appellant."

As such adjournment was granted till 29/04/2024. The said final notice was sent to all the above three e-mail addresses and delivered on 18/04/2024 at 03:12:03 PM. However, the appellant has not furnished any reply till date

F] Findings & Decision:-

Ground No 1, 2, 3:- It is seen that the Ground of Appeal no. 1 2 3 are related issue of adjustment made u/s 143(1). Hence these 3 grounds are to the single adjudicated together.

The intimation, Form-35, grounds of appeal and ITR, Statement of Facts furnished have been perused.



The Appellant has not replied. No information has been uploaded regarding the reason for

The Appellant has not replied. No information has been uploaded regarding the reason for non-submission of any reply. In the notice u/s 250, on Page 1, it was written as:- "7. If no submissions/information/documents is/are received within the stipulated time period, it will be presumed that you have nothing to say in this matter. The Department may proceed ahead based on material available on record."

The Appellant could have uploaded his reply at any time till today as long as the order is not passed and the e-proceedings are kept open. Now it is not that the Reply has to be uploaded on the Scheduled date and at the time of the hearing fixed. It can be uploaded at any time till the order is passed. So, from 03/04/24 to 07/05/24, 34 days time has been allowed. When a notice or communication is issued through the ITBA, a text message is also sent automatically to the registered mobile number. No response has been received though earlier an adjournment petition was filed on 17/04/2024 for 15 days time. Since then 20 days time has been passed. No reply has been received.

It proved that the Appellant has nothing to furnish against the findings as clearly mentioned in the notice u/s 250. It may also be treated as the Appellant has admitted the findings and hence, no reply has been filed.

From non-compliance on the part of the Appellant to statutory notice issued, it is evident that Appellant is intransigent in not complying. The Appellant has failed to display any action that can lead to believe that Appellant would co-operate in the proceedings. No further adjournment petition has been filed. No explanation or document has been filed regarding the findings as mentioned in the notice u/s 250 as above in para E above.



In these circumstances, it has to believe that the Appellant is not interested in pursuing his/her own case. Appellant has failed to discharge the primary onus cast upon him/her to furnish the details required to complete the proceedings in the case. There is a well-known dictum of law Vigilantibus Non Dormientibus Jura Subveniunt, which means that the law assists only those who are vigilant and not those who are careless of their right. In order to claim one's right, she/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to benefits of law. Law confers rights on persons who are vigilant of their rights. The assessee has failed to discharge its duty and has scant regard for due process of law. Therefore, there is no other option but to finalize the proceedings on ex-parte basis based on material available on record.

5. It is thus evident from the contents of the impugned order extracted above that Ld. CIT(A) has decided the appeal on the ground that assessee has failed to prosecute the case and has not decided the appeal on merits. It is noticed that in response to notice u/s 250 of the Act dated 04.04.2024, the assessee has simply sought adjournment for 15 days in order to submit necessary documents, but assessee has failed to upload the documents within time and last opportunity was given on 29.09.2024, but again assessee has failed to furnish any reply, accordingly the case was dismissed.

6. We are of the considered opinion that no effective opportunity of hearing has been given and there is no proof that the notice sent on various dates were duly served or brought to the notice of the



appellant/assessee. For these reasons, we are of the considered opinion that matter needs to be restored to the file of the Ld. CIT (A) for giving effective hearing to the assessee who shall present its case before the Ld. CIT(A) within 60 days. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.12.2024

Sd/-

(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Mumbai / Dated 10.12.2024
Dhananjay, Sr.PS

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai