

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No. 5821/MUM/2024
(Assessment Year: 2017-2018)**

Vivek Ramrao Paraskar

Ramlata Gas Agency, Shop No.1,
Dattakrupa Building, Dattakrupa Housing Society,
Near Gorai Bus Depo, In Front of Gorai Dumping,
Boriwali (West), Mumbai - 400092
Maharashtra
[PAN: AGUPP5590J]

..... **Appellant**

Vs

**Assistant Commissioner of Income Tax
Circle 32(2), Mumbai**

7th Floor, Kautilya Bhavan,
C-41 to C-43, G Block,
Bandra Kurla Complex
Bandra (East), Mumbai - 400051
Maharashtra

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Ajay Singh

Date

Conclusion of hearing : 23.12.2024
Pronouncement of order : 23.12.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 06/10/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'], whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**') for the Assessment Year 2017-2018.

2. The Assessee has, inter alia, raised following grounds of appeal :

- "1. *Hon'ble CIT(Appeal) erred in dismissing Appeal.*
2. *Hon'ble A.O. passed order without considering evidences which is invalid and bad in law.*
3. *Hon'ble A.O. not consider the claim of improvement which was already covered and allowed by A.O. in order u/s.143(3) of the Income Tax Act, 1961 for AY 2011-2012.*
4. *Order passed by Hon'ble A.O. was without giving opportunity to be heard which is bad in law."*

3. The relevant facts in brief are the appeal preferred by the Assessee against the Assessment Order dated 28/12/2019 passed under Section 143(3) of the Act was dismissed by the Ld. CIT(A), vide order dated 06/10/2024, holding as under:

- "5. *The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition made by the AO should not be sustained.*
6. *In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree with the approach adopted by the AO in making the addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed."*

4. On perusal of above it is clear that the CIT(A) had disposed off the appeal without adjudication upon the grounds raised by the Assessee on merits. In response to query in this regard, the Learned Departmental Representative supported the order passed by the CIT(A) and submitted that since the Assessee did not participate the in appellate proceedings, the CIT(A) had no option but to dismiss the appeal. Sufficient opportunity of being heard was granted to the Assessee. However, the Assessee failed to avail the same. Therefore, the CIT(A) was justified in dismissing the appeal.

5. On perusal of the record, we find that the Assessee was proceeded ex-parte and that the CIT(A) had dismissed the appeal observing that the Assessee had not pursued the appeal despite having been granted several opportunities. While the CIT(A) has recorded that the appeal is being decided on merits, there is no discussion in the order impugned about the grounds raised in appeal before the CIT(A). Thus, in effect, the appeal has been dismissed by the CIT(A) for non-prosecution. In the case of Commissioner of Income Tax (Central), Nagpur Vs. Premkumar Arjundas Luthra (HUF): [2016] 240 Taxman 133 (Bombay)/[2017] 297 CTR 614 (Bombay)[25-04-2016], it has been held by the Hon'ble Bombay High Court that the provisions of the Act do not empower the CIT(A) to dismiss the appeal preferred by an assessee on account of non-prosecution. Accordingly, the CIT(A) was required to dispose of the appeal on merits. Therefore, we set aside the order, dated 06/10/2024, passed by the CIT(A) and restore the appeal to the file of the CIT(A) with the direction to decide the appeal on merits as per law after granting the Assessee reasonable opportunity of being heard. The Assessee has directed to cooperate in the appellate proceedings before the CIT(A) and not seek unnecessary

adjournment. Further, the Assessee is also directed to file all the relevant submissions/documents/details on which the Assessee wishes to place reliance before the CIT(A) forthwith on receiving notice of hearing. It is clarified that in case the Assessee fails to enter appearance or file relevant documents/details/submission, the CIT(A) would be at liberty to adjudicate the appeal on merits on the basis of material on record.

6. In terms of the above, Ground No. 1 raised by the Assessee is allowed for statistical purposes whereas all the other grounds raised by the Assessee are dismissed as being infructuous.
7. In result the present appeal is allowed for statistical purposes.

Order pronounced on 23.12.2024.

Sd/-
(Omkareshwar Chidara)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.12.2024
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Sr. No.	Details	Date	Initials	Designation
1	Typed/Dictated directly on PC			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Order pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			