

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.426/SRT/2024

(Assessment Year: 2017-18)

(Physical Hearing)

Sureshbhai Raghubhai Thorat, Siddharth Villa, At Post Ozar, Mota Pondha B.O., Valsad – 396191	Vs.	The ITO, Ward – 7, Vapi
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: ACAPT3507F		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Ravi Kant Gupta, CIT-DR
Date of Hearing	02/01/2025
Date of Pronouncement	03/01/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 16.02.2024 by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

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

"1) The Id. CIT(A) has erred in law and on facts in dismissing the appeal on ground of non-compliance by the appellant to his notices for hearing.

The CIT(A) ought to have decided the appeal on the abasis of merits and facts of appellant's case.

2) The Id. CIT(A) has erred in law and on facts in upholding, without adjudication, the action of the Id. ITO of commencing and completing the re-

assessment proceedings u/s 147 r.w.s. 144 of the Act on the basis of invalid notice issued u/s 148 of the Act.

3) The Id. CIT(A) has erred in law and on facts in upholding, without adjudication, the action of the Id. ITO of commencing and completing the reassessment proceedings u/s 147 r.w.s. 144 of the Act on the basis of invalid notice issued u/s 148 of the Act.

4) The Id. CIT(A) has erred in law and on facts in upholding, without adjudication, the action of Id. ITO of completing the assessment u/s 144 of the Act in defiance principles of natural justice, equity and fairness.

5) The Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.4,10,00,000/- made on the ground of unexplained investment.

6) Each ground of appeal is without prejudice to the grounds of appeals.

7) The Appellant craves leave to add, amend, alter, modify, substitute, delete, change or vary all or any of the Ground or Grounds of Appeal.”

3. The case was initially posted for hearing on 10.07.2024. Shri Dhruvang Diwan learned Authorized Representative (Id. AR) appeared on 10.07.2024 and submitted that though the appeal was filed through his office, but the assessee is not responding despite repeated calls and reminders. He requested that he may be discharged from this appeal. Thereafter, three notices were issued fixing the hearing on 10.07.2024, 05.09.2024 and 19.11.2024. None appeared on behalf of the assessee nor any written submission nor any request for adjournment was made. Hence, no useful purpose would be served by prolonging the proceedings before us.

4. Facts of the case in brief are that the assessee had not filed his return of income for the AY.2017. An information was flagged under High Risk CRIU/VRU category. A survey operation u/s 133A of the Act was conducted at the premises of M/s Balaji Scrap Traders, proprietor of Shri Dharmesh Bharatbhai

Thakkar. During the survey proceedings, back-up computer and mobile were taken and impounded. On verification of back-up mobile of Shri Dharmesh Thakkar, a notarized agreement dated 21.12.2019 was found. The agreement had been executed between three persons. In point No.4 of the agreement, it was mentioned that the assessee had invested Rs.4,10,00,000/- in the project. The case was re-opened u/s 147 of the Act after necessary approval from the competent authority. It may be stated that assessee had not filed his return for AY.2017-18 u/s 139 of the Act. Various notices u/s 148 and 142(1) of the Act and show cause notice were issued to the assessee. However, the assessee had failed to submit any reply. The AO observed that assessee had made huge investment as per agreement of Rs.4,10,00,000/-. The source of above huge investment made by the assessee was not proved. The assessee failed to discharge his onus to prove the source of the transactions. The AO observed that in the absence of specific details of source of fund, ledger a/c and other supporting evidence, it was not possible to verify the genuineness of the source of investments. The AO made the addition of Rs.4,10,00,000/-, which was treated as unexplained investment u/s 69 of the Act and added to the total income of the assessee. The same was taxed as per provisions of section 115BBE of the Act. Penalty proceedings u/s 270A of the Act are initiated by AO.

4.1 Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). In the appellate proceedings, the appellant had not filed any written submission. Three notices were issued by CIT(A) fixing the hearings on

07.03.2023, 07.06.2023 and 14.11.2023. But the appellant was non-compliant to the notices. The CIT(A) dismissed the appeal for non-prosecution as well as on merit. He observed that no corroborative submissions were filed in respect of grounds of appeal and onus to prove investments was not discharged by assessee. Hence, appeal was dismissed.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The appellant did not respond to the calls and reminders of the Id. AR who had filed appeal for the assessee. Therefore, he withdrew himself from the appeal. Thereafter, three notices were issued to the assessee which were not complied by appellant. The assessee has also not filed any written submission and details in support of the grounds raised in the appeal. The assessee has also not requested for any adjournment.

6. On the other hand, the learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) for the revenue supported the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. The assessee had not filed the return of income for AY.2017-18. As discussed in the facts of the case, assessee had invested Rs.4,10,00,000/- in a project during the year. The case was re-opened and assessee was given three opportunities to explain the source of investments. The assessee did not comply to the said notices and therefore order u/s 144 r.w.s. 147 of the Act was passed by making addition of Rs.4,10,00,000/- u/s 69 of the Act. In the

appellant proceedings before CIT(A), three opportunities of hearing were provided which remained unattended. Due to non-prosecution of appeal and failure to support the grounds of appeal by corroborative submissions, the appeal was dismissed. Before us, the appellant was provided four opportunities of hearing. The assessee did not respond to the calls and reminders of his Counsel. He also did not respond to the notices issued by us nor any written submission was made. Thus, we find that assessee has no material to support the grounds raised by him; otherwise, there was no reason for the silence of the assessee before the AO, CIT(A) and the Tribunal. In absence of explanation regarding nature and source of investment, the addition of Rs.4,10,00,000/- u/s 69 of the Act by the AO, which has been confirmed by CIT(A), does not require any interference. Hence, the grounds are dismissed.

8. It has also been held in a number of cases that dismissal of appeal is an inherent power which every Tribunal possesses. The Hon'ble Bombay High Court in case of M/s Chemipol vs. UOI, Central Excise Appeal No.62 of 2009, referred to the decision in case of Sundarlal vs. Nandramdas, AIR 1958 MP 206 where it was observed that though the Act does not give any power of dismissal, it is axiomatic that no Court or Tribunal is supposed continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every Tribunal possesses. This was approved in Dr. P. Nalla Thampy vs.

Shankar, 1984 (Supp) SCC 631. In New India Assurance vs. Srinivasan, (2000) 3 SCC 242, it was held that every Court or judicial body or authority which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called of for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. The Hon'ble Supreme Court in case of CIT vs. B. N. Bhattacharjee & Ors., (1979) 10 CTR 354 (SC) observed that preferring an appeal means effectively pursuing it. Following the above authoritative precedents, the appeal is also liable to be dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order is pronounced on 03/01/2025 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 03/01/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat