

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 60/GTY/2024
Assessment Year: 2017-18

Laxmi Narayan Packaging Industries	Vs.	Income Tax Officer, Ward- 2(1), Guwahati
(Appellant)		(Respondent)
PAN: AADFL0516B		

Appearances:

Assessee represented by: Ramesh Goenka Adv.

Department represented by: Kausik Ray, JCIT

Date of concluding the hearing : December 26th, 2025

Date of pronouncing the order : January 20th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-Central. NER, Guwahati [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 2017-18 dated



25.01.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 30.12.2019.

2. The assessee is in appeal before this Tribunal raising the following grounds of appeal:

“1. That the Ld. Commissioner of Income Tax (Appeals) was not justified in passing the impugned order without giving proper and meaningful opportunity of being heard to the appellant.

2. That neither the Id. Assessing Officer was justified in making addition of Rs. 65,00,000/- to the Total Income of the appellant merely on the basis of statement recorded during course of Survey, which was subsequently retracted while filing Income Tax Return, nor the Id. Commissioner of Income Tax (Appeals) was justified in confirming the same.

3. That the appellant craves leave to submit and/or alter any ground/s on or before the hearing of the appeal.”

3. The brief facts of the case of the assessee are that the assessee is engaged in the business of card-box manufacturing and filed its return of income for the impugned assessment year showing total income of Rs. 4,31,836/- and deduction under Chapter VIA was claimed on the same amount. A survey u/s 133A of the Act was conducted in the case of the assessee on 15.09.2016 in the office and factory premises cum godown and certain loose sheets were impounded and the inventory of stock was also prepared. The statement of Sh. Pinaki Ghose, Plant Head was recorded u/s 133A of the Act and the statement of Sh. Vivek Agarwal, Partner of the assessee firm was also recorded u/s 133A of the Act on 16.09.2016 who made disclosure of 1,25,00,000/- as undisclosed income of the assessee firm. It was distributed among 4 assessment years i.e. AY 2014-15, AY 2015-16, AY 2016-17 and AY 2017-18 and for the AY 2017-18 a disclosure of Rs. 65,00,000/- was made. However, this amount was not included while filing the return of income as in view of the assessee, there was no incriminating material



to support the same and therefore, the disclosure was retracted. In the course of the assessment proceeding, the assessee firm objected to the inventory of stock which was prepared during the course of the survey. However, the Assessing Officer (hereinafter referred to as Ld. 'AO') rejected the submission made and added a sum of Rs. 65,00,000/- as 'income from business or profession', out of which deduction u/s 80-IE of the Act was also allowed and the total income was computed at Rs. 'NIL'. However, the sum of Rs. 65,00,000/- was added while computing Adjusted Total Income and tax was charged accordingly.

3.1. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). It is stated that though the assessee's case was fixed several times before the Ld. CIT(A) by issuing the notice of hearing on several dates but the same escaped the attention of the assessee as the notices were issued through e-mail and the assessee not being conversant with the electronic IT proceedings, had no knowledge about these notices. Due to non-compliance to the notices issued, the Ld. CIT(A) passed an *ex-parte* order on 25.01.2024 by dismissing the appeal and upheld the assessment order. Aggrieved with the appeal order, the assessee has filed appeal before us.

4. We have heard rival contentions and the written submission filed by the assessee were also examined. Ground no. 1 relates to the Ld. CIT(A) not being justified in passing the impugned order without giving proper and meaningful opportunity of being heard to the assessee and ground no. 2 is against the addition of Rs. 65,00,000/- confirmed by the Ld. CIT(A) on the basis of the statement recorded during the course of survey which was subsequently retracted by filing the income tax



return. Ground no. 3 being general in nature does not require any separate adjudication.

4.1. As regards ground no. 2, it was submitted in the course of hearing before us as well as in the written submission filed that during the course of survey, several documents were impounded which are mentioned at page 7, 8 of the paper book filed which are loose sheets relating to the Excise, GRN register, Diesel record and Diesel issue register. It was submitted that no incriminating material was found. At page 9 of the paper book, there is inventory of machinery while pages 10 to 13 contain the inventory of raw material. Our attention was also drawn to pages 12 and 13 in support of the submission that while the format of the inventory of stocks mentions cost price/MRP, however it is not apparent from the list prepared whether the stock was valued at the cost or the market price. Further, our attention was also drawn to page 31 which is a summary of the inventory valued at Rs. 1,33,06,964/-. Pages 32 to 35 of the paper book contain details of finished goods. Our attention was also drawn to page 35, specifically last three items which at Sl. Nos. 39 to 41 mention corrugated box, loose sheet and old reels etc. and the amount of Rs. 30,00,000/-, Rs. 20,00,000/- and Rs. 40,00,000/- respectively has been mentioned therein making the total inventory of work-in-progress at factory premises at Rs. 9,34,130/- in respect of 8 items. Thus, the entire inventory was valued at Rs. 1,33,06,964/- and it is observed that the work-in-progress of Rs. 90,00,000/- has been included without giving any quantitative or other details. It was submitted that no measurement was carried out. The assessee objected that the inventory was prepared on ad-hoc basis, without mentioning necessary details such as quantity, weight, measurement or the price, hence, cannot be relied

upon. The Ld. AO in para 2 of the assessment order has estimated the closing stock at Rs. 2,81,22,868/- which was earlier valued at Rs. 1,12,77,092/- during physical verification of stock and acknowledged by the Plant Head. The Ld. AO required the assessee to explain the difference of Rs. 1,68,45,776/- between the valuation done at the time of survey and the closing stock estimated on the basis of recast trading account as per page 2 of the assessment order. It was also submitted before us that there was no adverse comment by the Ld. AO in para 3 and no fault was found with the books of accounts. In para 4 of the assessment order the submission made vide the reply dated 18.12.2019 by the partner of the firm has been reproduced which is as under:

“4. Subsequently notices u/s 142(1) of the Income tax Act. 1961 was issued to the assessee on 16/12/2019 and asking from assessee why the amount of Rs.65,00,000/- should not be added to the total income of M/ Laxmi Narayan Packaging Industries as disclosed during the survey proceeding. In its reply vide letter dated 18/12/2019 partner of assessee firm informed as under:

“That Sir, the physical verification of Stock at my factory was done by ... come-Tax Department personnel on 15/09/2017 which was incorrect. While taking physical stock, the majority of the stock items are taken on estimate basis e.g. there are 3 entries of Rs.40,00,000/-, Rs 30,00,000/- and Rs 20,00,000/- which were entered on estimate on lot basis and no individual items were mentioned there, whereas the stock items included/kept there were of much more value than as stated on lump sum. Our semi finished goods which were kept at Factory were also taken on estimates/assumptions. The entire stock was taken in 3-4 hours without weighment/measurement etc which is quite impossible in such short span of time. We have seen that they had left many items to include in list of Stock at factory e.g. complete section of semi used reels, Packing materials, Printing Dies, Mechanical spare parts and also few sections of semi processed goods etc. We have physically verified our Stock on 31/3/2017, a list of Stock in Trade as on 31/03/2017 is attached herewith.

At the time of Survey our books of accounts were not completed and I had replied in my statement keeping in mind my books of accounts and not physical verification of stock.

As regards disclosure of Rs 65,00,000/- during the F.Y.: 2016-17, I diseased on assumption of future turnover and business. However, the Financial Year 2016-17 was the worst Year for our business in regard to Sale s/Tu mover. Moreover some of our business expenses had gone up substantially e.g. Salary, Electricity Expenses etc. Details of Sales turnover for last 5 years are as under:

<u>Financial Year</u>	<u>Sale Turnover</u>	<u>Stock in Trade</u>
2012-13	7,95,10,284	1,35,62.361
2013- 14	7,65.71,083	2,40.40,552
2014- 15	7,53.18,004	2,48,17,641
2015 - 16	4,89,18,873	3,08.96.620
2016- 17	2,88,90,326	3,33.99,079

All our financial transactions are duly recorded in our books of accounts. We had submitted our audited financial statements for F. Y. 2016-17.

Under the above facts and circumstances we request your goodself to please not to add the amount of Rs.65,00,000/- and assess our income as we had disclosed in our Income Tax Return for A. Y.: 2017-18.”

4.2. It was submitted that 3 items were valued on estimated basis and no individual items are mentioned in the inventory. The assessee’s stock was of a higher value at Rs. 3,33,99,079/- during the FY 2016-17 and it was submitted before us that the stock list cannot be relied upon for addition. The assessee has relied upon the following two judicial pronouncements:

(a) *Utkal Alloys (P.) Ltd. Vs. D.C.I.T. (2002) 82 ITD 120 (Cuttack)(TM)* "Annexure - C" (at Pages 62 to 68).

(b) *Bansal Strips (P.) Ltd. Vs. A.C.I.T. (2006) 99 ITD 177 (Delhi)* "Annexure - D" (at Pages 69 to 83).

Further reliance was placed upon the decision of Hon'ble Madras High Court in the case of *C.I.T. Vs. S. Khader Khan Son (2008) 300 ITR 157 (Madras)* which was affirmed by the Hon'ble Supreme Court in the case of *C.I.T. Vs. S. Khader Khan Son (2013) 352 ITR 480 (SC)* and also upon the decision of the Hon'ble Delhi High Court in the case of *P.C.I.T.*



Vs. *ARN Infrastructure Ltd. 2023 (8) TMI 386* in support of the claim that the provisions of Section 133A of the Act do not empower any IT authority to examine any person on oath and that the addition made on the sole basis of statement recorded during survey, which later on was retracted and in the absence of any incriminating material to corroborate the same was liable to be deleted. The assessee has also relied upon (a) Circular No. F. No. 286/2/2003 - IT (Inv-II) dated 10.03.2003 and (b) Circular No. F. No. 286/98/2013-IT (Inv-II) dated 18.12.2014 in support of the claim that no addition should be made which are solely based on the statements recorded during the course of search and survey as these statements have no evidentiary value in absence of any incriminating material found.

4.3. The Ld. DR also drew our attention to the order of the Ld. CIT(A) in which the assessment order of the Ld. AO has been reproduced. On page 7 of the Ld. CIT(A)'s order, it is mentioned that 9 opportunities were provided to the assessee which were not complied with. The Ld. AR countered the submission of the Ld. DR by mentioning that the assessee is not computer savvy therefore, the notices could not be complied with and requested that the matter may be set aside to the Ld. CIT(A).

4.4. We observe from the order of the Ld. CIT(A) that the appeal was dismissed and the addition was confirmed by the Ld. CIT(A) by observing as under:

"It is observed from the records that on the day of survey, Manufacturing & Trading Account were drawn and physical verification of stock was done. On comparison, discrepancy of Rs. 1.68 crores was found in the stock. The statement of a partner of the assessee-firm, Mr Vivek Agarwal was recorded and he was asked to explain the discrepancy. As he could not reconcile the same, he declared total undisclosed income of Rs. 1.25 crores for several

years, out of which Rs. 0.65 crores was declared for AY 2017-18. Subsequently, the assessee filed its ITR for AY 2017-18 declaring total income of Rs. Nil, which did not include the additional income declared during the survey. The AO then issued show cause notice to the assessee to explain why the undisclosed income should not be added back to the income. In response to the same, Mr Agarwal submitted that he declared undisclosed income on the day of survey on the basis of incomplete Books of account and with future turnover in mind. The AO rejected the assessee's argument and went ahead with the addition of Rs. 65,00,000/-.

During the appellate proceedings, notice u/s 250 of the IT Act, 1961 was issued to the assessee by this office on various dates viz 06/01/2021, 13/07/2022, 16/12/2022, 20/04/2023, 08/05/2023, 04/09/2023, 03/11/2023, 01/12/2023 & 03/01/2024. There was no compliance on the part of assessee to any of the notices issued by this office. It is observed from the records that on the date of survey, the physical stock was taken in the presence of staff of the assessee-company. The Plant-Head, Mr Pinaki Ghose, who was in-charge of factory premises, confirmed in his statement that stock valuation done was correct. The partner, Mr Agarwal also acknowledged the discrepancy in his statement. The assessee reversed its stand during the assessment proceedings and retracted from the disclosure made during the survey. So, the AO was right in making the addition. It is clear that the profit was already booked on the day of survey since the disclosure itself was based on the issue of stock discrepancy. Since the assessee has not filed any submission in this office in spite of several opportunities, it is inferred that the assessee has nothing further to state in this matter. Hence, the addition of Rs. 65,00,000/- to business income made in the assessment order is hereby upheld. Ground No. 1 is dismissed accordingly.”

4.5. The assessee has also submitted that the inventory was of a higher value than that which was valued at the time of survey and therefore, the same could not be relied upon for making any addition nor the statement which was retracted subsequently could be relied upon.

4.6. We have gone through the submissions made. The Ld. CIT(A) has not given any finding on merits of the case and has dismissed the appeal primarily on account of non-compliance. We also note that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent by e-mail were not complied with but has not adjudicated

upon the merits of the case. In this respect, it is relevant to examine the provisions of section 250(6) which 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.”

5. 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. 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, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) 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.”

5.1. 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 Ld. CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. 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, we deem it appropriate to remit the matter back to the Ld. CIT(A) for disposal of the grounds taken by the assessee on merits, by passing a speaking order. 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 various grounds of appeal and the Ld. CIT(A) shall decide the appeal in accordance with law and after following Rule 46A of the Income-tax Rules, 1962, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 20th January, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 20.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Laxmi Narayan Packaging Industries, Near Arunoday Enclave, Amravati Path, Christian Basti, G.S. Road, Guwahati, Assam, 781005.**
2. **Income Tax Officer, Ward-2(1), Guwahati.**
3. CIT(A)-Central, NER, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata