

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.495/Ind/2024
Assessment Year:2013-14

Navneet Kumar Sancheti Prop. M/s Navnet Kumar Sancheti, Krishi Upaj Mandi Ashta (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	NFAC Delhi (Revenue/Respondent)
PAN: ACNPS5570J		
Assessee by	Shri Govind Rinwa, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.01.2025	
Date of Pronouncement	23.01.2025	

आदेश / O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi passed u/s 250 of the Income Tax Act, 1961 dated 18.04.2024, which has emanated from the order of the Assessing Officer dated 22.03.2016 passed u/s 143(3), ITO, Sehore.

2. The grounds of appeal taken by the assessee in the memorandum of appeal are as follows:

“1. That the disallowances of Rs.3,43,28,791/- being F & O Loss debited in the Profit & Loss Account be held to be bad, unreasonable and unjustified. The disallowances made be held to be without basis and be quashed.

2. That the disallowances of Rs. 76,94,771/- being Share Loss debited in the Profit & Loss Account be held to be bad, unreasonable and unjustified. The disallowances made be held to be without basis and be quashed.

3. That the disallowances of Rs.4,62,369/- being Share Expenses debited in the Profit & Loss Account be held to be bad, unreasonable and unjustified. The disallowances made be held to be without basis and be quashed.

4. That the disallowances of Rs. 12,230/- being Commodity Expenses debited in the Profit & Loss Account be held to be bad, unreasonable and unjustified. The disallowances made be held to be without basis and be quashed.

5. In the alternative and without prejudice to the grounds stated above, the disallowances made be held to be high, unreasonable and without basis and be suitably reduced.

6. The appellant craves leave to add, amend or alter any Ground of Appeal before or during the course of appellate proceedings.”

3. The brief facts of the case are that the assessee is an individual engaged in the trading of soyabeans and wheat products and has disclosed a gross profit of Rs.75.46 lakhs against total turnover of Rs.24.41 crores , which works out to 3.09 % , and he has also engaged in share and commodity trading during the year, claiming an expenditure of Rs.4.24 crores on account of commodity expenses, share expenses, F & O Loss and share loss , which resulted in a net returned **loss of Rs. 3.77 crores** . However, due to inadequacy of documentary evidences and due to reasons contained in the assessment order, the expenditure

of Rs. 4.24 lakhs claimed by the assessee on account of share transaction, was treated as speculative loss, and the expenditure claimed has been disallowed in assessment proceedings u/s 143(3) of the Act 61, resulting in a total income of Rs.47,54,860/- which has been subsequently rectified u/s 154 of the Act 61 to NIL total income.

4.The matter was carried in appeal before the Ld CIT (A) NFAC , on various grounds contained in the memorandum of appeal in Form 35 , challenging the disallowance of Rs. 4.24 crores. In absence of any response or representation to the various notices issued from the office of the first appellate authority, on five different dates of hearing , as evident from the appellate order , the appeal has been dismissed by the Ld CIT (A) , without adjudication on the grounds of appeal on merits .

5. Now the assessee is before the tribunal on the grounds contained in the memorandum of appeal. The Ld AR of the assessee, submitted that no notice of hearing of the appeal case has been received by the assessee from the office of the Ld CIT (A) NFAC, *on the email id provided in form 35* and no notice of hearing has been received vide post either. Referring to the details contained in the appellate order in respect of the issue of notice on five different dates, he submitted that notice might have been uploaded in the department portal but the

assessee was unaware of any such date of hearing because none has been issued through email id as mentioned in form 35.

6. The Ld DR , relied on the order of the Ld CIT (A) and argued that since an appeal is preferred by the assessee , it is an obligation on the part of the assessee and his AR to keep track of the appeal portal , till disposal of the above appeal.

We have considered the rival arguments and considered the materials on record and we find that the email id specially mentioned in *row 17 of Form 35* is rarinwa@gmail.com , for issue of notices for hearing , but no notice of hearing has been issued through the given mail id, and none by post either. The Ld DR has also not been able to put forth any evidence regarding issue of notices through the given mail id mentioned in Form 35.

7. We also observe that, uploading of notice of hearing in the departmental portal is not exactly as per provisions of section 282 of the Act 61 (*rwr 127 of the IT Rules '62.*) , as opined by the Hon'ble Punjab and Haryana High court in the case of *CWP-21028-2023 (O&M) Date of Decision: 04.03.2024*

*MUNJAL BCU CENTRE OF INNOVATION AND
ENTREPRENEURSHIP, LUDHIANA THROUGH ITS AUTHORIZED
SIGNATORY SH. BHARAT GOEL.Petitioner V/s.*

COMMISSIONER OF INCOME TAX EXEMPTIONS, CHANDIGARH

(Relevant portion reproduced)

In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated herein above. The provisions do not mention of communication to be "presumed" by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc.. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed. 9. Having noticed as above, this Court is of the firm view that the petitioner has not been given sufficient opportunity to put up his pleas with regard to the proceedings under Section 12A(1)(ac)(iii) of the Act of 1961 and as he was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

7.1 Moreover, in the instant case , we observe that all documentary evidences regarding the claim of the assessee has been filed before the AO and are on record , but the Ld CIT (A) , in absence of any representation from assessee , has dismissed the appeal in *limne* without adjudication on merits of the case on the grounds contained in the memorandum of appeal , which is not in accordance with the statutory requirements of section 250(6) of the Act 61 , because the Ld first appellate authority is obliged to dispose of appeal on merits even in cases of non prosecution. The relevant findings in the case of [Premkumar Arjundas Luthra](#) (HUF),[2016] (240 Taxman 133 Hon'ble Bombay HC, are extracted for ready reference, as under:

".....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 dear 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 dear 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."

7.2 Respectfully following the law laid down by the Hon'ble courts and in the interest of justice we remand the matter back to the Ld CIT (A) to decide the appeal afresh on the merits of the case as per the grounds contained in the memorandum of appeal after allowing reasonable opportunity to the assessee to represent his case and the assessee is also directed to file all necessary documentary evidences and submissions in support of his appeal and to fully cooperate in the appellate proceedings.

8.As a result the appeal is allowed for statistical purpose.

Order pronounced in the open court on 23.01.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 23/01/2025
Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore