

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 353/PAT/2024
Assessment Year: 2015-16**

Sri Ram Constructions	Vs.	ITO, Ward-6 (5), Patna
(Appellant)		(Respondent)
PAN: ABXFS6139S		

Appearances:

Assessee represented by : None.

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : January 27th, 2025

Date of pronouncing the order : January 28th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals) ADDL/JCIT(A)-1, Chandigarh [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2015-16 dated 29.02.2024, which has been passed against the assessment order u/s 144 of the Act, dated 30.12.2016.

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

“01. For that the Ld. CIT(A) has erred in affirming the order of the AO passed u/s 144 wherein the AO has assessed the appellant on a total income of Rs.6,31,790.00 as against return income of Rs.35,790.00.

02. For that the Ld. CIT(A) has erred in passing ex-parte order dismissing the appeal without giving proper opportunity of being heard to the appellant as the appeal (Form-35) was filed on 26.03.2018 against the order of ITO Ward 6(5) Patna dt. 30.12.2016 (Correctly it was 30.12.2017) and the appeal was taken up for hearing in the month of February 2024 after lapse of 6 years and was first fixed for hearing on 29.01.2024 & finally it was dismissed ex-parte on 29.02.2024 i.e. within month and had violated the principles of equity, natural justice and fair play which requires proper and adequate opportunity of being heard.

03. For that the Ld. CIT(A) has erred in holding that mere filling of form-35 cannot be considered in absence of supporting documentary evidence and submission and AO has passed reasoned & speaking order considering all the facts & circumstances of the case, therefore no reason to interfere, in the order of AO, accordingly the appeal has been dismissed.

04. For that the Ld. CIT(A) has erred in holding the order of AO, which suffered with inherent defects i.e. Application of S-43CA(2 & 3) if difference is less than Rs.1.00 lacs or 10 percent of Circle value, this section could not be invoked and missing of date of agreement/sales and the order was passed u/s-144 without serving of SCN with draft order and without understanding the provisions of section 145(3)has resorted the provisions of section 144 and passed the order by assuming jurisdiction u/s 144 is arbitrary and capriciously.

05. For that the whole order is bad in fact and law of the case and is fit to be annulled and may be set aside and restored back to CIT(A) for deciding the appeal afresh after allowing proper and adequate opportunity of being heard.

06. For that the other grounds, if any, shall be urged at the time of hearing of appeal.”

3. Brief facts of the case are that the assessee is a firm and is engaged in the business of construction of building and developing of properties. The assessee had filed its return of income for the AY 2015-16 on 15.12.2015 showing total income of Rs. 35,790/-. The case was



selected for limited scrutiny. Since no compliance was made to the notices issued, the assessment was made u/s 144 of the Act after making addition of Rs. 5,96,000/- u/s 43CA of the Act. However, there is no discussion in the assessment order as to why the addition has been made and the order is cryptic. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal by holding as under:

“7.3 Held:-During the course of appeal proceedings, no reply has been filed by the appellant. I have perused the order of the Assessing Officer and considered the facts of the case. The Assessing Officer has passed a speaking order with detailed discussion on the issue involved therein. The appellant has not pursued the appeal. No details, documents or submissions have been provided by the appellant substantiating its grounds of appeal. Moreover, mere facts mentioned in Form No. 35 cannot be considered in the absence of any supporting documentary evidence and submissions.

The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case. Also, the appellant has failed to bring anything on record to support its grounds of appeal and to counter the additions made by the AO. Therefore, there is no reason to interfere with the order passed by the AO. Accordingly, the grounds of appeal nos.1-2 are dismissed”

4. Even before us, none appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. Sr. DR who supported the order of the Ld. CIT(A). In ground no. 2, the assessee has mentioned that proper opportunity of being heard was not provided as Form No. 35 was filed on 26.03.2018 and the appeal was taken up for hearing in the month of February, 2024 after a lapse of 6 years and was first fixed for hearing on 29.01.2024 and finally it was dismissed ex-parte on 29.02.2024 i.e. within a month. Therefore, the principles of equity, natural justice and fair play had been violated. In ground no. 3 it is stated that the appeal has been dismissed by holding that mere filing of Form No. 35 cannot be considered in absence of supporting



documentary evidence and submission and the Ld. AO has passed a reasoned & speaking order. As is mentioned above, neither any reason nor any detail has been mentioned by the Ld. AO while making this addition in the order of 2 pages. In ground no. 4, the applicability of section 43CA of the Act has been questioned. In ground no. 5 the assessee has requested that the appeal order is bad in fact and law and is fit to be annulled and may be set aside and restored back to the Ld. CIT(A) for deciding the appeal afresh after allowing proper and adequate opportunity of being heard.

5. On perusal of the appellate order it is noticed 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 he has not adjudicated the appeal on merit. 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.”

6. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In the present case before us, 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 the 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.”

6.1 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 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.”

7. As regards the finding that the Ld. AO has passed a reasoned and speaking order, it is imperative to reproduce the assessment order which has been reproduced in para 7.1 of the appeal order and is as under:

7.1 I have gone through the assessment order wherein the AO has observed as under:-

The Assessee is a Partnership Firm who is engaged in the Business of Construction of Building and Developing of Property. The Assessee has filed its return of Income for the Assessment year 2015-16 On 15.12.2015. showing total Income of Rupees 35790/-. The case was selected for Limited scrutiny through CASS [Computer assisted scrutiny selection). Accordingly statutory notices of the department U/S 143(2) and 142(1) of the Income Tax Act 1961 was issued and served upon the assessee through Registered Post within time. Hence the questionnaire for submission of papers were asked.



In response to the above statutory notices. No compliance made by the assessee till the passing of the order and show cause has been furnished and assessment is made u/s 144 of the Income Tax Act. The addition was made, difference of sale value and circle rate.

<i>Return income</i>	<i>35,790/-</i>
<i>Addition</i>	<i>5,96,000/-</i>
<i>Total Income</i>	<i>6,31,790/-</i>

7.1 The assessment order is thus a non-speaking one. After examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. CIT(A) for disposal of the grounds taken by the assessee on merit, 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 its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 28th January, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 28.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Sri Ram Constructions, E-131, Jyotipuram Apartment, Baily Road, Near Haldi Ram, Patna, Patna, Bihar, 800014.**
2. **ITO, Ward-6 (5), Patna.**
3. ADDL/JCIT(A)-1, Chandigarh.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata