

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 रakesh मिश्रा, लेखा सदस्य  
के समक्ष  
Before

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

**I.T.A. No.: 394/PAT/2024  
Assessment Year: 2017-18**

Jitendra Kumar (Appellant)	Vs.	ADDL/JCIT(A)-2 Delhi (Respondent)
<b>PAN: BKCPK5413N</b>		

**Appearances:**

**Assessee represented by** : None.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : January 28<sup>th</sup>, 2025

Date of pronouncing the order : February 24<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the ADDL/JCIT(A)-2 Delhi [hereinafter referred to as 'the Ld. Addl./Joint CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 28.02.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 27.12.2019.



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

*“1. For that in the facts and circumstances of the case, the Assessing Officer and CIT(A) have erred in making addition of Rs. 64,01,158 in the Sales Proceeds by taking the difference between sum of all the credit entries of Bank accounts and turnover disclosed in the ITR as concealed turnover.*

*2. For that in the facts and circumstances of case, the Assessing Officer and CIT(A) have erred in making addition in Total Income by Rs. 5,12,092.00 on account of alleged impugned income, by taking 8% of Added Turnover (Rs. 64,01,158.00).*

*3. For that in the facts and circumstances of the case, the charge of interest u/s 234B at Rs. 30,624 is arbitrary, unjust and bad in law. The interest may be quantified in view of jurisdictional High Court decisions. The interest as charged quantified is fit to be deleted/modified.”*

3. Brief facts of the case are that the assessee is an individual earning income from trading in foodgrains in the proprietorship of M/s. Ganpati Traders. The assessee had filed the return of income on 08.08.2017 declaring total income of Rs. 3,13,760/-. The case of the assessee was selected for limited scrutiny through CASS. Statutory notice u/s 143(2) of the Act was issued to the assessee, which was not complied with. The reason for selection of the case of the assessee was large cash deposits in bank account. Further, notice u/s 142(1) of the Act was issued which was replied by the assessee. In response to the letter to the Branch Manager, Canara Bank, Aurangabad the bank furnished information u/s 133(6) of the Act. The Ld. AO examined the ITS details, bank account statement and return of income of the assessee and found that most of the deposits were through electronic mode. The Ld. AO concluded that the assessee had concealed turnover of Rs. 64,01,158/- and 8% of the concealed income i.e. Rs. 5,12,092/- had been added to the total income of the assessee and he assessed the total income at Rs. 8,25,850/- u/s 143(3) of the Act. Accordingly,



demand notice was issued and interest were charged and penalty u/s 270A(2) of the Act was initiated. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A) who, after providing several opportunities to the assessee, dismissed the appeal ex-parte. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.

4. None appeared on behalf of the assessee and the appeal was heard with the assistance of Ld. Sr. DR. 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 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.”*

5. 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.”*

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 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 (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).*

*...*

*(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.*

...

*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.*

...

*(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."*

...

*(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. 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 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 24<sup>th</sup> February, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 24.02.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Jitendra Kumar, Usari Bazar, PO-Usari, Arwal, Bihar, 804408.**
2. **ADDL/JCIT(A)-2 Delhi.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata