

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

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.: 2550/KOL/2024
Assessment Year: 2013-14**

Oplus Steel and Power Pvt. Ltd. (Formerly known as Swati Concast and Power Pvt. Ltd.) (Appellant)	Vs.	D.C.I.T., Circle - 5(1), Kolkata (Respondent)
PAN: AABCC4730B		

Appearances:

Assessee represented by : Miraj D Shah, AR.
Department represented by : Sailen Samadder, Add. CIT, Sr. DR.
Date of concluding the hearing : February 27th, 2025
Date of pronouncing the order : February 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)-NFAC, Delhi [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 2013-14 dated 18.10.2024, which has been passed against the assessment order u/s 147/144 of the Act, dated 19.05.2023.



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

“1. That the Order passed u/s 250 is bad in law as well as on facts of the case.

2. That the Hon'ble Commissioner of Income Tax (A) erred in law as well as on facts of the case by confirming the addition made by the Ld. Assessing Officer without providing any reliable documents or evidences.

3. That the Hon'ble Commissioner of Income Tax (A) erred in law as well as on facts of the case by confirming the addition made by the Ld. Assessing Officer of treating the amount received from M/s Turf Marketing and Advertising Co Pvt. Ltd. Amounting to Rs.2,42,00,000/- and added back the same as unexplained credit u/s 68 of The Income Tax Act.

4. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”

3. Brief facts of the case are that the assessee is a company engaged in the business of manufacture of pig iron and had e-filed the return of income on 31.03.2014 declaring loss of Rs. 21,70,921/-. The Ld. AO received information that M/s. Swati Concast and Power Ltd. (the former name of the assessee) had received funds amounting to Rs. 2,42,00,000/- from M/s. Turf Advertising and Marketing Pvt. Ltd. during the FY 2013-14. Therefore, the assessment was reopened by issuing notice u/s 148 of the Act and the assessee filed the return of income on 08.08.2022 declaring loss at Rs. 21,70,921/-. During the course of reassessment proceedings, notices u/s 143(2) & 142(1) of the Act were issued and the assessee filed partial details but did not file details relating to the source of money of M/s. Turf Advertising and Marketing Pvt. Ltd. to provide loan to the assessee and the income tax return of M/s. Turf Advertising and Marketing Pvt. Ltd. was showing meagre income of Rs. 51,540/- only. A show cause notice was issued informing various layers involved and since the assessee failed to



provide any explanation, a sum of Rs. 2,42,00,000/- was added u/s 68 of the Act while a sum of Rs. 4,84,000/- being 2% of the accommodation entry was added u/s 69C of the Act and the total income was assessed at Rs. 2,25,13,079/- u/s 147 r.w.s. 144B of the Act. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 18.09.2024 dismissed the appeal as the assessee failed to file any reply/documentary evidences in respect of the grounds of appeal as well as statement of facts and the additions were confirmed. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the record and the submissions made have been examined. The Ld. AR who appeared on behalf of the assessee submitted that the assessee has filed an affidavit in support of the claim that the notices received for hearing could not be complied with as Shri Umesh Shaw, who was entrusted with the responsibility of ensuring the accurate preparation and timely submission of the income tax returns and compliances to all related requirements was negligent, which led to non-compliance during both the reassessment as well as the appellate proceedings. He requested that the matter may be set aside to the Ld. AO for the reassessment to be done de novo as the assessee has sufficient evidence which could not be filed at the time of the reassessment proceedings. The contents of the affidavit are reproduced as under:

“I, Ajay Kumar Kejriwal S/o, Krishna Kejriwal, Director of M/s Oplus Steel and Power Private Limited (Formerly Known as Swati Concast and Power Private Limited) residing at Rosedale Garden, Tower-2, Flat-12A, Near Uniworld City, New Town, North 24 Paragans -700156 West Bengal, having PAN: AHOPK8976A, do hereby solemnly affirm and state an oath as under:



1. We engaged the services of Sri Umesh Shaw, an accountant, for handling income tax matters for M/s Oplus Steel and Power Private Limited (Formerly Known as Swati Concast and Power Private Limited).
2. Sri Umesh Shaw was entrusted with the responsibility of ensuring the accurate preparation and timely submission of income tax returns and compliances with all related requirements.
3. I relied on Sri Umesh Shaw to fulfill all obligations related to the assessment proceeding under Section 147 and the appellate proceeding under Section 250 of the Income Tax Act, 1961 for AY 2013-14.
4. I granted Sri Umesh Shaw, he was in full control of income tax login id and password and all compliance related matters.
5. That it has come to my knowledge that negligence on the part of Sri Umesh Shaw, which led to non-compliance during both the assessment proceedings u/s 147 and also during appellate proceedings u/s 250 of the Income Tax Act, 1961.
6. As a result of the aforementioned negligence, there was complete non-compliance in the aforementioned assessment and appeal proceeding. I plea that we should not be a sufferer for the fault of my accountant and we have also taken action against the said employee by removing him from the job.
7. That the above non-compliance during assessment proceeding u/s 147 and appellate proceeding u/s 250 was due to reasons beyond my control.
8. I affirm that the statements made in this affidavit are true and correct to the best of my knowledge and belief.”

5. We have heard the Ld. AR. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the order of the Ld. CIT(A) may be confirmed and the appeal may be dismissed. 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.”

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 of 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 (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.”*

7. Since there was no proper compliance before both the Ld. AO as well as before the Ld. CIT(A), therefore, in the interest of justice and fair play it was considered that the request of the assessee to set aside the case before the Ld. AO may be allowed so that a proper opportunity of



being heard may be provided. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the order of the Ld. AO and remit the matter back to the Ld. AO for making the reassessment de novo. 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. Accordingly, the grounds taken by the assessee in his 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 February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 28.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Oplus Steel and Power Pvt. Ltd. (Formerly known as Swati Concast and Power Pvt. Ltd.), 3rd Floor, Room No. 307, Tobacco House, 1, Old Court House Corner, Kolkata, West Bengal, 700001.**
2. **D.C.I.T., Circle - 5(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata