IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.1367/Del/2024, A.Y. 2015-16

Ajay Kumar, House No. 78, Prem Vihar, Jansath Road, New Mandi, Muzaffarnagar-251001 PAN: ATOPK2495C	Vs.	Income Tax Officer, Ward-1(2), Income Tax Office, Muzaffarnagar
(Appellant)		**(Respondent)**

Appellant by	Sh. Ankit Gupta, Advocate
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	07/01/2025
Date of Pronouncement	07/01/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal filed by the assessee is directed against the order dated 30.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [hereinafter, 'the CIT(A)'].

2. The assessee has raised following grounds: -

"1) That the notice issued u/s 148 and reassessment proceeding initiated U/s 147 are bad in law, without jurisdiction and barred by time limitation.

2) That, the re-assessment order passed U/s 147 r.w.s. 144B by the assessing officer is bad in law. The NFAC has erred in upholding the same.

3) *That, the NFAC has erred in not appreciating, that, the approval U/s 151 was wrongly and incorrectly taken, before issuing the notice U/s 148 beyond four (4) years, hence, the re-assessment proceedings-initiated U/s 147/148 is illegal, bad in law and without jurisdiction.*

4) *That, the assessing officer erred in not applying the independent application of mind and merely relied on the factually incorrect and vague information, therefore, the assumption of jurisdiction U/s 148 is illegal, bad in law and without jurisdiction.*

5) *That, the NFAC has erred, in confirming the action of AO, in assuming the jurisdiction to re-assess the issues, other than the issues, in respect of which proceedings were initiated, when the reasons are seas to survive, which is illegal, bad in law and without jurisdiction.*

6) *That, the assessing officer has erred in completing the assessment on Income at Rs.2,82,62,528.00 as against Return of Income declaring at Rs,8,33,750.00 alongwith Agriculture Income at Rs.36,500.00. The NFAC has confirming the same.*

7) *The assessing officer has erred in rejecting the books of account U/s 145(3) of the Income Tax Act, 1961 without pointing the defects, in the books maintained by the assessee Individual, therefore, the rejection of books U/s 145(3) of the Act is highly presumptive, arbitrary and unjust. The NFAC has confirming the same.*

8) *That, the assessing officer has erred in making the estimation of adhoc Gross Profit @3.5% as against declared Gross Profit @0.36% and made the addition of Rs.3.14%, which comes at Rs.1,44,59,193.00 of the total turnover of Rs.46,10,30,963.00 after rejecting the books of account U/s 145(3) of the Act, against the Net Profit declared by the assessee, which is highly unjust, excessive and arbitrary. The NFAC has confirming the same.*

9) *That, the assessing officer has erred in making the addition/disallowance of Rs.1,29,69,585.00 on account disallowance of Bogus Sundry Creditors, which is highly arbitrary, bad in law and unjust. The NFAC has confirming the same.*

10) That the impugned appellate Order passed by the NFAC are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

That, the NFAC has failed to appreciate the material and documentary evidences available on record, which is highly presumptive, arbitrary, excessive and unjust. The NFAC has confirming the same.

11) The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and also excessive.

12) The Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal."

3. The relevant facts giving rise to this appeal are that the assessee, trader of live-stock, supplied cattle to Mirha Export Pvt Ltd. for slaughtering, filed his original Income Tax Return (hereinafter, the 'ITR') on 29.06.2015 declaring income of Rs.8,33,750/-. Later on, the case was reopened under section 148 of the Income Tax Act, 1961 (hereinafter 'Act'). In compliance to notice under section 148 of the Act, the assessee filed his ITR on 16.08.2021 declaring income of Rs.8,33,750/- (as in the original ITR). During the course assessment proceedings, the Assessing Officer (hereinafter, the 'AO') show-caused the assessee to explain his bank transactions; i.e. credits of Rs.21,64,50,000/- followed by cash withdrawals with supporting evidences. In spite of various opportunities of being heard provided by the AO, the assessee failed to submit proof as bills/voucher of purchases of live-stock along with their complete postal

addresses particularly when the assessee has shown creditors of Rs.1,29,69,585/- and almost all purchases having done in cash. Therefore, the AO rejected the book result under section 145(3) of the Act and applied the gross profit @ 3.5% as against the gros profit @ 0.36% shown in the ITR keeping in view the gross profit rate of 3.5% for AY 2013-14 sustained by the Ld. CIT(A) in the assessee's own case. The AO further, held creditors of Rs.1,29,69,585/- bogus as the assessee not only failed to explain these transactions but also failed to provide their complete postal addresses. Consequentially, the AO computed income as under: -

Income as per the ITR	Rs. 8,33,750/-
Addition on account of gross profit	Rs. 1,44,59,193/-
Addition on account of bogus creditors	Rs. 1,29,69,585/-
Assessed income	Rs. 2,82,62,528/-

3.1 Aggrieved, the assessee filed appeal, which was dismissed, by the Ld. CIT(A), due to non-prosecution. The relevant part of the impugned order reads as under: -

> *"During the appeal proceedings, various notices u/s 250 were issued and as per office record, the following are the dates of notices/ communication with the status of their compliance or otherwise:*

Date of notice	*Deadline of hearing/submission fixed as per the notice*	*Outcome*

29/12/2023	*04/01/2024*	*No compliance nor any request for adjournment*
05/01/2024	*11/01/2024*	*No compliance nor any request for adjournment*

The conduct of the Appellant, as inferred from the last column of the aforesaid table/evidences that the Appellant is not interested in pursuing the Appeal: the law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

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"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

.....

In view of the above, it is clear that the Appellant is not aggrieved with the reassessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

The Last ground of appeal is always reserved for adding/altering/amending and/or substituting any or all grounds of appeal before the taking place of actual hearing or even in course of the hearing, if the situation so warrants. Since the appellant has nothing to say on this. This ground of appeal is dismissed as "not pressed".

In view of the appellant's total non-compliance during appeal In view of the appellant's total non-c proceedings, I find it extremely difficult to adjudicate on the appeal for want of adequate submission and clarification, counter-clarification.

In the result, the appeal is dismissed.

The order has been passed u/s 250 r.w.s. 251 of the Income Tax Act, 1961."

4. The Ld. Counsel drew our attention to the fact that neither the AO nor the Ld. CIT(A) has decided the case on merit. The Ld. CIT(A) has not decided the legal issue; i.e. reopening of the assessment. It was contended that the entire sale consideration received through banking cannel was from one party; namely, Mirha Export Pvt Ltd. Since the nature of trade was such that the assessee was bound to withdraw cash from his bank accounts to make payments for purchases. He prayed for restoring the matter back to the CIT(A).

5. On the other hand, the Ld. Sr. DR, drawing our attention to various paras of the assessment order and impugned appellate order, submitted that reasonable opportunities of being heard were provided to the appellant assessee by the AO and the Ld. CIT(A). However, the appellant assessee tactfully ensured noncompliance to avoid proper investigations. Hence, she prayed for upholding of orders of the lower authorities. On specific query by us, she admitted that the issue in dispute had not been decided on merit by the Ld. CIT(A).

6. We have heard both parties and have perused the material available on the record. We take note of the fact that the Ld. CIT(A) has dismissed the appeal ex parte due to non-prosecution and has not adjudicated the case on merits. Moreover, the Ld. CIT(A) has not decided each ground of appeal after discussing the issues in detail and his reasons for agreeing with the assessment order though he, as per provisions of section 250(6) of the Act, is obliged to dispose of the appeal in writing with well-reasoned order on each point of determination arisen for his consideration. It is evident from the perusal of section 251(1)(a), 251(1)(b) and Explanation of section 251(2) of the Act that the CIT(A) is required to apply his/her mind to all the issues which arise from the impugned order before him/her, whether or not these issues have been raised by the assessee before him/her.

7. Section 251(1)(a) of the Act provides that while disposing of an appeal against assessment order, the CIT(A) shall have the power to confirm, reduce, enhance or annul the assessment. Similarly, the section 251(1) (b) of the Act provides that in disposing of an appeal against an order imposing a penalty, the CIT(A) may confirm or cancel such orders or vary it so as to either to enhance or to reduce the penalty. On cumulative consideration of the provisions of section 250(6) of the Act read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) of the Act and Explanation of

section 251(2) of the Act, it is concluded that the CIT is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merits. In this regard, the finding of the Delhi Bench in the case of MARC Laboratories Ltd. in ITA No.2731, 2732, 2733, 2730, 2734 & 2735/DEL/ 2022 is worth extracting as under:

> *"5. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points along with reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in ex parte order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of CIT vs. Premkumar Arjundas Luthra HUF, (2017) 291 CTR 614 (Bom.). A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on various points placed for its determination at all and dismissed the appeal of assessee for default in non-appearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non- compliance without addressing the issue on merits.*
>
> *6. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. The assessee is cautioned to extend full co-operation to the CIT(A) without any demur, failing which, the CIT(A) shall be at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee."*

8. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned order and remit the matter back to the file of the CIT(A) for deciding the case afresh, in accordance with law, after providing adequate opportunity of being heard to the appellant assessee. The appellant assessee, no doubt, shall cooperate in remitted appellate proceedings.

9. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in open Court on 7th January, 2025.

Sd/-	**Sd/-**
(C. N. PRASAD) **JUDICIAL MEMBER**	**(AVDHESH KUMAR MISHRA)** **ACCOUNTANT MEMBER**

Dated: 07/01/2025
Binita, Sr. PS

Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI