

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.54 and 55/Viz/2025
(निर्धारण वर्ष/ Assessment Years : 2015-16 and 2016-17)

Ravi Prasad Boyapati, Krishna District. Andhra Pradesh. PAN : AXFPB8820K. (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward -2(3), Vijayawada. (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	27.03.2025
घोषणा की तारीख/ Date of Pronouncement	:	15.04.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC),

Delhi, dated 21.11.2024, which in turn arises from the respective orders passed by the Assessing Officer under Section 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 (for short "the Act") dated 01.02.2024 for A.Y. 2015-16 and A.Y. 2016-17. As common issues are involved in the captioned appeals, therefore, the same are taken up and disposed of by this consolidated order.

2. We shall first take up the appeal filed by the assessee for A.Y. 2015-16 in ITA No.54/Viz/2024 wherein the impugned order has been assailed on the following grounds of appeal before us:

"1. That, on the facts and circumstances of the case and in law, the order u/s 147 r.w.s. 144B of the IT Act, 1961, dt. 01.02.2024, as upheld by the Learned Commissioner of Income Tax (Appeals) ["CIT(A)"], National Faceless Appeal Centre ["NFAC"], vide order passed u/s 250, dt. 21.11.2024, is contrary to the facts of the case and the provisions of law.

2. The Ld. CIT(A) disposed of the appeal, ex-parte, without granting a reasonable opportunity to the assessee, thereby violating the principles of natural justice.

3. The disposal of the appeal ex-parte by the Ld. CIT(A) is against the provisions of Section 250(6) of the Income Tax Act which obligates the CIT(A) to dispose of the appeal on merits.

4. The Ld. Assessing officer NFAC who completed the assessment is not the jurisdictional officer, since assessee is an NRI, therefore, the Ld. CIT(A) ought to have held that the assessment completed by AO NFAC is without jurisdiction, therefore, the impugned order passed u/s 147 r.w.s. 144 ought to have been dismissed.

5. The Ld. CIT(A) ought to have held that AO NFAC is not correct in bring into tax the amount of Rs.38,70,700/- under the guise of unexplained cash deposits in bank accounts ignoring the factual aspects of the subject issue.

6. For these and other reasons that may be urged at the time of hearing, the appellant prays that the orders passed u/s 250 of the Income Tax Act be set aside and the additions made by the Assessing Officer be deleted.”

3. Succinctly Stated, the AO based on information that the assessee during the subject year had carried out certain financial transactions, viz., (i) Cash deposits/Time deposits in his bank account aggregating to Rs.1,28,45,700/-; and (ii) Receipt of interest income Rs.47,031/- but had not filed his return of income, thereby issued a Show-Cause Notice (for short “SCN”), under Section 148A(b) of the Act. As the assessee failed to come forth with any explanation, therefore, the AO issued notice under Section 148 of the Act, dated 08-04-2022.

4. During the course of the assessment proceedings, the AO called upon the assessee to put forth an explanation as regards the cash deposits made during the subject year in his bank accounts. As the assessee failed to come forth with any explanation to the satisfaction of the AO regarding the cash deposits of Rs. 38,70,700/- viz., (i) Cash deposits in S.B Account No.0892103020488 with Canara Bank: Rs.17,45,700/-; and (ii) Cash deposits in S.B. Account No.146210100038143 with Andhra

Bank : Rs.21,50,000/-, therefore, the AO held the same as having been sourced out of unexplained money under Section 69A of the Act. Also, the AO, in the absence of any explanation forthcoming as regards the interest income of Rs.47,031/-, made an addition of the same in the hands of the assessee. Accordingly, the AO, by order under Section 147 r.w.s. 144 r.w.s. 144B of the Act, dated 01.02.2024, determined the income of the assessee at Rs.39,17,731/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success. As discernible from the record, the CIT(A), having taken cognizance of the fact that the assessee despite having been put to notice about the fixation of the appeal, had failed to participate in the proceedings before him had dismissed the appeal for want of prosecution. For the sake of clarity, the observations of the CIT(A) is culled out as under :

“4. Decision: I have carefully considered the reassessment order, son record grounds of appeal and statement of facts furnished by the appellant with the appeal memo.

4.1 As stated supra, this office has issued various notices for hearing/filing written submission but neither any adjournment letter was filed nor any written submission was furnished by the appellant. The notices/letters were issued on emails available in the ITBA Module

of the Income Tax Department as well as in Appeal Memo i.e. rpboyapati@gmail.com and duly served upon him.

From the above conduct of the appellant, it is evident that the appellant is no more interested in pursuing its appeal. **The Hon'ble Supreme Court in the case of CIT VS B. N. Bhattacharjee & Others [1979] 10 CTR 354 (SC)** observed that preferring an appeal, means effectively pursuing it. The Hon'ble M.P. High Court in the case of **Estate of Late Tukojirao Holkar Vs CWT [1979] 223 ITR 480 (MP)** dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the assessee in the present circumstance, I am of the view that the appellant is not interested in pursuing the appeal. This view has been affirmed by the ITAT Delhi Bench in the case of **CIT VS Multiplan India Pvt. Ltd. [1991] 38 ITD 320 (Del)** wherein the ITAT had dismissed the appeal filed by the assessee for want of persuasion. Under these circumstances, the present appeal of the appellant is hereby **dismissed**.

5. In the result, the appeal of the appellant is dismissed.”

6. Assessee, being aggrieved with the order of CIT(A), carried the matter in appeal before us.

7. Shri C. Subrahmanyam, C.A. the learned Authorized Representative (for short “the ld.AR”) for the assessee, at the threshold of hearing of the appeal, submitted that the present appeal involves delay of 8 days. Elaborating on the reasons leading to the appeal, ld.AR submitted that the same had occasioned for the reason that the assessee during the relevant period i.e., 18-01-2024, was taken unwell, which thus had resulted to the delay in filing of the appeal.

8. Per contra, the learned Departmental Representative (for short “the Ld.DR”) did not object to the seeking of the condonation of the delay by the assessee.

9. We have thoughtfully considered the reasons leading to the delay in filing of the present appeal. Based on the fact that the delay involved therein is not inordinate and supported by justifiable reasons, we have no hesitation to condone the same.

10. Apropos to the merits of the case, the Id.AR submitted that the CIT(A) had grossly erred in law and facts of the case in disposing of the appeal by a non-speaking order. Elaborating on his contention, the Id.AR submitted that the CIT(A) had without giving any cogent reason, merely upheld the order of the AO dispensing with the obligation that was cast upon him to dispose the grounds of appeal, based on which the impugned order was assailed before him. The Id.AR submitted that the assessee had suffered the dismissal of the appeal based on a non-speaking order, therefore, the same in all fairness, we restore the file with a direction to re-adjudicate the same.

11. Per contra, the Ld.DR relied upon the orders of the lower authorities.

12. As observed by us hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issues which did arise from the impugned order and was assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee had been disposed off by the CIT(Appeals). In our considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs.**

Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom).

In the aforementioned case the Hon'ble High Court had observed as under:

"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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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-s. (2) of [s. 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 [s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 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."

13. We, thus, not being able to persuade ourselves to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(Appeals) shall in the course of the de-novo appellate proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of documentary evidence, if any. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes in terms of the aforesaid observations.

14. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

ITA No.55/Viz/2025 for A.Y. 2016-17

15. As the facts and the issue involved in the present appeal remain the same as were there before us in the assessee's appeal for A.Y. 2015-16 in ITA No.54/Viz/2025, therefore, the order therein passed shall apply *mutatis mutandis* for disposing of the present appeal i.e ITA No.55/Viz/2025 for A.Y. 2016-17.

16. In the result, both the captioned appeals are allowed for statistical purposes.

15th अप्रैल, 2025 को खुली अदालत में सुनाया गया आदेश।

Order pronounced in the Open Court on 15th April, 2025.

Sd/- (मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
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Hyderabad, dated 15.04.2025.

****#TYNM/sps**

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Ravi Prasad Boyapati, 3-253, Kanuru, Uppaluri Vari Street, Penamaluru Mandal, Krishna – 520007, Andhra Pradesh, India.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward –2(3), Vijayawada.
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam