

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

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 अपील सं./I.T.A.No.160/Hyd/2025  
(निर्धारण वर्ष/ Assessment Year: 2014-15)

Vahan Motors Private Limited, Hyderabad. PAN : AACCV6775E		The Deputy Commissioner of Income Tax, Circle – 8(1), Hyderabad.
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri K.A. Sai Prasad, C.A., Appeared for Shri A. Srinivas, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Ms. M. Narmada, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	23.04.2025
घोषणा की तारीख/Date of Pronouncement	:	28.04.2025

**ORDER**

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

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated

30.07.2024, which in turn arises from the order passed by the Assessing Officer (for short "A.O.") u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (for short "the Act") dated 12.05.2023 for A.Y. 2014-15. The assessee company has assailed the impugned order on the following grounds of appeal before us :

- “1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.
2. The Appellate Commissioner erred in dismissing the appeal on the premise that no one appeared on the dates of hearing.
3. The Appellate Commissioner erred in dismissing the appeal, without go into merits of the case insofar it related to non-issue of the notice u/s.143(2) by the Income Tax act, and hence the Assessment should have liable been quashed.
4. Without prejudice to the above grounds, the Appellate Commissioner erred in confirming the addition of an amount of Rs.39,73,930/- u/s.68 of the Income Tax act.
5. The Appellate Commissioner, while passing the appellate order should have considered the loss claimed in the return of income.
6. Any other grounds which the Assessee may urge either before or at the time of the hearing.”

2. Succinctly stated, the assessee company, which is engaged in the business of multi-brand car servicing had filed its return of income for A.Y 2016-17 on 17-10-2016, admitting a loss of Rs. 4,13,63,037/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s 143(2) of the Act. Original assessment was framed by the AO u/s 143(3) of the Act,

dated 24-09-2018, accepting the loss returned by the assessee company as such.

3. Subsequently, the Pr. CIT, after culmination of the assessment proceedings, called for the assessment records of the assessee company. On a perusal of the record, the Pr. CIT observed that the A.O. while framing the assessment, had accepted four unsecured loan creditors disclosed by the assessee company without carrying out verification of their creditworthiness as under:

Name of the creditor	PAN	Loan given during the year	Loan as per 3CD audit report at Col No 31(a)	Documents available on file
Venu Bhushan Donepudi	AKJP8953E	120,00,000/-	1,31,03,930/-	Loan confirmation letter, ledger of loan account and bank statement of the assessee company reflecting the transaction.
Vijay Kumar Gummadi	ALGPG1362G	650000	20,20,000/-	Loan confirmation letter, ledger of loan account, return of income of Sri Vijay Kumar Gummadi and bank statement of the assessee company reflecting the transaction.
Sinchu Raghavendra		1000000	Nil	No evidence available on record.
Subba Rao Potluri	ABLPP9579K	500000	Nil	No evidence available on record.

4. Accordingly, the Pr. CIT vide his order passed u/s 263 of the Act, dated 24-09-2018, set aside the order of assessment passed by the A.O. u/s 143(3) of the Act dated 24.09.2018 with a direction to frame fresh assessment as per law.

5. Thereafter, the A.O. giving effect to the directions of the Pr. CIT u/s 263 of the Act, vide his order passed u/s 143(3) r.w.s. 263 r.w.s. 144B of the Act, dated 26.03.2022 partly held the amounts received by the assessee company from the aforementioned 4 parties as undisclosed credits u/s 68 of the Act and determined its income at Rs.39,73,930/-, as under :

Sr. No.	Particulars	Amount Rs.
1	Sh. Venu Bhushan Donepudi	11,03,930/-
2	Vijay Kumar Gummadi	1370000/-
3	Sh. Sindhu Raghavendra	1000000/-
4	Sh. Subba Rao Potluri	500000/-
	<b>Total Rs.</b>	<b>3973930/-</b>

6. The assessee company, being aggrieved with the order passed by the A.O. u/s 143(3) r.w.s. 263 r.w.s. 144B of the Act, dated 26.03.2022 carried the matter in appeal before the CIT(A). As the assessee company despite having afforded 5 opportunities i.e. vide notices dt.02.12.2024, 11.12.2024, 18.12.2024, 09.01.2025, failed to participate in the proceedings before the CIT(A), therefore, the latter holding a conviction that it was not interested in pursuing the appeal, dismissed the same for want of prosecution. For the sake of clarity, the observations of the CIT(A) are culled out as under :

#### **“5. FINDINGS & DECISION**

5.1 The assessee is on appeal before this office against the order passed under section 143(3) rws 263 rws 144B of the Income Tax Act.

5.2 The assessee was provided multiple opportunities by this office to submit documents and make submissions in response to the appeal filed. However, the assessee has not exercised this option despite multiple reminders. The table below indicates the dates and the compliance status of the various notices issued

Sl. No.	Date of Notice	Compliance Date	Remarks
1	2 <sup>nd</sup> December, 2024	---	No details furnished nor any petition for adjournment was received.
2	11 <sup>th</sup> December, 2024	---	No details furnished nor any petition for adjournment was received.

3	18 <sup>th</sup> December, 2024	17 <sup>th</sup> December, 2024	No details furnished nor any petition for adjournment was received.
4		30 <sup>th</sup> December, 2024	No details furnished nor any petition for adjournment was received.
5	9 <sup>th</sup> January, 2024	--	No details furnished nor any petition for adjournment was received.

The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant is not interest in pursuing the appeal.

5.3. 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 persuading those appeals.

5.3.1 The **Hon'ble Income Tax Appellate Tribunal Kolkata in the case of Pradeep Kumar Jhawar Kolkata vs. DCIT-CC-XXI** (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asst Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

5.3.2 The **Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT** (223 ITR 480) held as under:

"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."

5.3.3 Similarly, the **Hon'ble Punjab & Haryana High Court** in the case of **New Diwan Oil Mills vs. CIT [(2008) 296 ITR 495]** returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in persuading the same.

Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly, given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly, the appeal of the assessee stands dismissed.

6. Accordingly, the appeal of the Appellant is dismissed.”

7. The assessee company, being aggrieved with the order of CIT(A), has carried the matter in appeal before us.

8. Shri K. Sai Prasad, C.A. the learned Authorized Representative (for short the “ld.AR”) for the assessee company, at the threshold of the hearing of the appeal, submitted that the CIT(A) had grossly erred in law and on facts of the case in dismissing the appeal vide a non-speaking order. Elaborating on his contention, the ld.AR submitted that the CIT(A) without giving any cogent reason, and dispensing with the obligation that was cast upon him to dispose of the grounds of appeal based on which the impugned order was assailed before him, had merely upheld the order of the AO. The

ld.AR submitted that as the assessee company had suffered the dismissal of its appeal based on a non-speaking order, therefore, the same in all fairness be restored to the file of the CIT(A) with a direction to re-adjudicate the same.

9. Per contra, the Ld. D.R. relied upon the orders of the lower authorities.

10. 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 were assailed by the assessee company before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee company 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 merits and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. Rather, 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 arise from the impugned order before him. As per the mandate of the 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.”

11. 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 company which shall remain at liberty to substantiate its claim on the basis of documentary evidence, if any. Thus, the grounds of appeal raised by the assessee company are allowed for statistical purposes in terms of the aforesaid observations.

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

Order pronounced in the Open Court on 28<sup>th</sup> April, 2025.

Sd/- (श्री मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
---	---

Hyderabad, dated 28.04.2025.

####TYNM/sps

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

1.	निर्धारिती/The Assessee	:	Vahan Motors Private Limited, Plot No.23, Carz Vahan Motors Pvt. Ltd., 100 Feet Road, Madhapur – 500081, Telangana.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle – 8(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलिय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad