

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.5306/Del/2024, A.Y. 2012-13

Jet Tech Systems E 24 Sector 55, Noida Uttar Pradesh PAN: AAHFJ3702F	Vs.	Income Tax Officer, Ward 5(1)(3), Noida
(Appellant)		(Respondent)

Appellant by	Sh. Anil Kumar Jain, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of Hearing	22/04/2025
Date of Pronouncement	22/04/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal is preferred by the assessee against the order dated 28.06.2024 passed by the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter 'CIT(A)'].

2. The assessee has raised following grounds of appeal: -

- “1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has failed to appreciate the facts that the assessment order passed by the Ld. AO under Section 143 (3) of the Income Tax Act is illegal bad in law and against the facts of the case.*
- 2. That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) erred in passing the order in violation of the principle of natural justice and thus, the assessment order passed is illegal and bad in law and thus liable to be quashed.*

3. *That on the facts and circumstances of the case and the provision of law, the dismissal of appeal for statistical purposes is illegal and bad in law and thus liable to be quashed.*
4. *That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has also erred in dismissing the appeal of the assessee without passing a speaking order which is in violation of section 250(6) of the IT Act.*
5. *That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has erred in passing the order without providing by him or directing the Ld. AO for providing the documents required by the appellant which were collected by the Ld. AO in pursuance of direction given u/s 250(4) by the Ld. CIT(A) and were also part of the report submitted by the Ld. AO to the Ld. CIT (A).*
6. *That on the facts and circumstances of the case and the provision of the law, the Ld. CIT(A) has erred in not adjudicating the issue of the addition of Rs. 41,36,20,293/- on account of denial of exemption u/s 10AA despite the fact that the appellant has fulfilled all the conditions as required under the act to claim exemption u/s 10AA.*
7. *That on the facts and circumstances of the case and the provision of the law, the Ld. CIT(A) has erred in not adjudicating the issue of addition of Rs. 53,001/- u/s 14A read with rule 8D of the Act.*
8. *That on the facts and the circumstances of the case the Ld. CIT(A) has failed to appreciate that the initiation of the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is illegal and bad in law.*
9. *That on the facts and the circumstances of the case the Ld. CIT(A) has failed to appreciate that interest charged by the Ld. AO u/s 234A and 234B is illegal and without prejudice it is excessive.*
10. *That the appellant craves leave to reserve to itself the right to add, alter, amend, vary, modify and/or withdraw any ground(s) of appeal at or before the time of hearing.”*

3. The relevant facts giving rise to this appeal are that the appellant assessee, engaged in the business of export of IT/IT enabled services (including back office, software development & maintenance), filed its Income Tax Return (hereinafter, the 'ITR') on 25.09.2012 declaring NIL income. The case was picked up for scrutiny and consequential assessment was completed at income of Rs. 41,36,73,294/-. This income is mainly due to disallowance of the claim of exemption under section 10AA of the Income Tax Act, 1961 (hereinafter, the 'Act').

4. Aggrieved, the assessee filed appeal before the CIT(A), who dismissed the appeal in *limine* after affording 10 opportunities of being heard which were not availed by the assessee and the Ld. CIT(A) had no option except to decide the appeal. The relevant part of finding of the Ld. CIT(A) is reproduced as under: -

*"2. During the appellant proceedings, notices u/s 250 of the Act was issued to the appellant 10 occasions, calling for the required details, such as, Form No.35, grounds of appeal, statement of facts, copy of assessment order and demand notice. These details are essential to decide the appeal. But the appellant has not furnished the required details so as to enable to adjudicate the appeal inspite of giving sufficient opportunities (10 opportunities). In the absence of required details, I am constrained to dismiss the appeal for want of prosecution.
3. In view of the above, the appeal is treated to have been dismissed for statistical purpose."*

5. The Ld. Authorized Representative (hereinafter, the 'AR') drew our attention to the fact that the Ld. CIT(A) has decided the case on merit. The Ld. AR prayed for remitting the matter back to the CIT(A) for deciding the case on merit.

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

7. 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.

8. 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.”

9. In view the above, 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. Ordered accordingly. The appellant assessee, no doubt, shall cooperate in remitted appellate proceedings.

10. In the result, the assessee’s appeal is allowed for statistical purposes.

Order pronounced in open Court on 22nd April, 2025

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 30/04/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI