



आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2717 & 2718/PUN/2024

निर्धारण वर्ष / Assessment Year: 2013-14

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| Saurabh Jayant Bhagat, A-806, Balaji Aangan, Nr. S T Depot, Panvel Raigad-410206. Maharashtra. | V s. | The Income Tax Officer, Panvel. |
| PAN: AKLPB9996P | | |
| Appellant/ Assessee | | Respondent / Revenue |

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| Assessee by | Shri Gaurang Khakhkhar – AR(Virtual) |
| Revenue by | Shri Abhinay Kumbhar and Shri Vinod Pawar – DR |
| Date of hearing | 05/05/2025 |
| Date of pronouncement | 07/05/2025 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of
ld.Commissioner of Income Tax(Appeal)[NFAC] passed under
section 250 of the Act, date 31.05.2024 for the A.Y.2013-14. The
Assessee has raised the following grounds of appeal :

“1) The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding the reassessment proceedings without communicating the reason for reopening of assessment.



2) *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition of Rs. 53,14,000/- u/s 69 on account of alleged unexplained investment made in flat.*

3) *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition of Rs. 5,15,000/- being cash deposit by the father of the appellant u/s 69A of the Income Tax Act, 1961.*

4) *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition of Rs. 2,87,000/- being credit card payment u/s 69C of the Income Tax Act, 1961.*

5) *The Honorable Commissioner of Income tax (A) has erred has erred in law as well as on facts in upholding the reassessment order with the above referred addition after issuing draft assessment order wherein null addition is proposed by Ld' Assessing officer.*

6) *That the order passed by the Ld.CIT u/s.250 of the I.T.Act, 1961 was arbitrary, bad in law and unjust.*

7) *That the assessee craves leave to urge such other ground or grounds before or at the time of hearing of appeal.”*

ITA No.2717/PUN/2024

Submission of ld.AR :

2. Ld.AR for the Assessee submitted that ld.CIT(A) has not issued any notice to the Assessee and passed the order. Ld.CIT(A) has not discussed each and every ground of the appeal. Ld.AR invited our attention to page no.7 of the Paper book which is Screenshot of the Income Tax E-Filing Portal to substantiate his claim. Ld.AR requested that one more opportunity may be provided.



Submission of ld.DR :

3. Ld.DR for the revenue relied on the order of the Assessing Officer and ld.CIT(A).

Findings & Analysis :

4. We have heard both the parties and perused the records. The ld.CIT(A) has dismissed the appeal without adjudicating each and every ground. The relevant paragraph of the ld.CIT(A) is as under :

“In the light of above facts and discussion at point no.-(i) to (xiv) and the by placing reliance on the Judgments of Hon. Supreme Court and High court, it is clear that the appellant assessee is not willing to co-operate with this Appellate authority and same behaviour of the appellant assessee was seen at the time of Assessment proceedings. Consequently, the decision of the AO for making the following additions ie: (a) Rs.53,14,000/- worth of investment in immovable property is found unexplained investment u/s. 69 of the Income-tax Act; (b) Addition of Rs.5,15,000/- on account of unexplained money u/s 69A of the Income-tax Act and (c) Addition of Rs.2,87,000/- on account of unexplained money u/s 69C of the Income-tax Act, is UPHOLD. The grounds of the appellant no.- 1 to 5 are rejected.”

4.1 Thus, it can be noted that Assessee had raised five grounds of appeal, but ld.CIT(A) has not adjudicated these grounds. We have perused the page no.7 of the paper book and noted that ld.CIT(A) has not provided proper opportunity to the assessee.



4.2 The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) as under :

Quote, "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 coterminous 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.” Unquote.

5. Thus, the Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of the above, in the interest of justice, we set-aside the order of the ld.CIT(A) to ld.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the ld.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.



ITA No.2718/PUN/2024 (Penalty Appeal) :

8. This is an appeal filed by the Assessee against the penalty order of Id.Commissioner of Income Tax(Appeal)[NFAC] passed under section 250 of the Act, date 31.05.2024 for the A.Y.2013-14.

9. Since we have set-aside the appeal of the Assessee filed against the quantum addition in ITA No.2717/PUN/2024 for denovo adjudication to Id.CIT(A), the current penalty appeal is also set-aside to the Id.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the Id.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

9. In the result, appeal of the assessee is allowed for statistical purpose.

10. To sum up, both appeals of the assessee in ITA Nos.2717/PUN/2024 and ITA No.2718/PUN/2024 are allowed for statistical purpose.

Order pronounced in the open Court on 07 May, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07 May, 2025/ SGR



आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.