



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER
AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.799/PUN/2025

निर्धारण वर्ष / Assessment Year: 2017-18

Payal Sanjay Soni, Flat No.B12, Satyam Co-op Hsg Soc, Opp Gavkosh Maruti Mandir, 1452 Kasba Peth, Pune – 411002. Maharashtra.	V s	The Income Tax Officer, Ward-6(3), Pune.
PAN: BNCPS5773C		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Pratik Sandbhor – AR (Virtual Hearing)
Revenue by	Shri Madhan Thirmanpalli – Add.CIT(DR)
Date of hearing	14/05/2025
Date of pronouncement	15/05/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee is against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC], passed under
section 250 of the Income Tax Act, 1961; dated 13.01.2025 for
Assessment Year 2017-18. The assessee has raised the following
grounds of appeal :



“1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in dismissing the appeal of the appellant without considering the submission of the appellant and the merits of the case

2. On the facts and in the circumstances of the case and in law the Assessing Officer erred in assessing the total income of the appellant at Rs 32,93,480/- by making addition of Rs 29,03,000/- u/s 69A of the Income Tax Act, 1961

3. On the facts and in the circumstances of the case and in law the Assessing Officer erred in not appreciating the fact that the cash deposits are duly explained out of the earlier cash withdrawals of the appellant

4. On the facts and in the circumstances of the case and in law the Assessing Officer erred in making the addition in respect of cash deposits on the basis of presumption

5. On the facts and in the circumstances of the case and in law the Assessing Officer erred in making addition in respect of cash deposits on basis of wrong presumption that the cash withdrawals must be used for expenses without considering the fact that the substantial expenses are incurred by the appellant through bank

6. On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal the Assessing Officer erred in not appreciating the fact that the cash withdrawals and cash deposits are duly accounted for in cash book furnished before the Assessing Officer and therefore no separate addition is called for u/s 69A of the Income Tax Act, 1961

7. On the facts and in the circumstances of the case and in law the Assessing Officer erred in invoking the provisions of section 69A of the Income Tax Act, 1961

8. On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal addition if any in respect of cash deposits could be made as business income of the appellant



9. The above grounds may be allowed to be altered, amended, modified, deleted etc in the interest of natural justice.”

2. The Id.Authorised Representative(Id.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Hence, Id.AR requested for one more opportunity of being heard to the assessee.

Submission of Id.Departmental Representative(Id.DR) :

3. The Id.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. It was observed from the order of the Id.CIT(A) that Ld.CIT(A) issued notices dated 20.01.2021, 15.10.2024, 07.11.2024 and 24.12.2024 to the Assessee. Ld.CIT(A) held that there were no supporting documents to rebut the assessment order.

4.1 It is observed from the order of the Id.CIT(A)[NFAC] that the Id.CIT(A)[NFAC] did not decide the grounds of appeal on merit, but merely dismissed the appeal of the assessee. The Id.CIT(A) held as under :



“5 *Decision*

I have carefully gone through the facts of the case. Moreover, all notices were duly served upon the appellant through email. The appellant filed written submission without any supporting documents. No documents were produced before me in support of his GOA or to rebut the assessment order. In view of the above facts, it is clear that the appellant is not interested in prosecuting the present appeal on merits and therefore in absence of any evidence to rebut the assessment order, the assessment order is CONFIRMED and accordingly the appeal is dismissed. Hence all Ground of appeal raised by the appellant are dismissed.”

5. 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.

6. 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.

7. 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.

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

Order pronounced in the open Court on 15th May, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15 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, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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