

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद “ए” बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad “A” 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.1272/Hyd/2024
(निर्धारण वर्ष/ Assessment Year: 2016-17)

Designer Stone Impex, S.R.Nagar, Hyderabad. PAN : AAIFD0295L		The Income Tax Officer, Ward-6(1), Hyderabad.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri A. Srinivas, C.A.,
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Gurpreet Singh, Sr.D.R.
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	03.06.2025
घोषणा की तारीख/Date of Pronouncement	:	03.06.2025

ORDER

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

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 22.11.2024, 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 30.01.2024 for A.Y. 2016-17. The assessee firm 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 for non-appearance.
3. The Appellate Commissioner ought to have considered the case on merits before dismissing the case.
4. The Appellate Commissioner erred in not deciding on the additions made by the A.O, being unexplained money in bank accounts, added u/s.69A amounting to Rs. 1,16,70,577/-.
5. Any other grounds which the Assessee may urge either before or at the time of the hearing.”

2. Succinctly stated, the A.O. based on information that the assessee firm during the subject year had made a time deposit of Rs.61,18,231/- with Bank of Baroda, but had not filed its return of income for the said year, initiated proceedings under Section 147 of the Act. Notice under Section 148 of the Act was issued to the assessee firm, which however remained un-complied. Also, the notices issued by the A.O. under Section 142(1) of the Act were also not complied with.

3. The A.O. considering the fact that the requisite details were not forthcoming, issued notice under Section 133(6) of the Act to Bank of Baroda, wherein it was called upon to furnish the bank account details/statement of the assessee firm for the subject year. On perusal of the bank account statement made available by the bank, the A.O. observed that there were credits aggregating to Rs.1,51,70,577/- in bank account no. 05110200001296 of the assessee firm. Also, it was observed by him that the assessee firm had during the subject year made two time deposits viz. Rs. 35 lacs (debited on 24-11-2014) and Rs. 25 lacs (debited on 06-06-2015) from its aforesaid bank account, which thereafter had matured to the tune of Rs. 36,21,977/- (matured on 06-06-2015) and Rs.25,35,600/- (matured on 11-09-2015), respectively, and were credited back in the same bank account of the assessee. As the assessee had failed to come forth with any explanation regarding the credits in its aforementioned bank account, therefore, the A.O. held the "Net credits" of Rs. 1,16,70,577/- in the said bank account as having been sourced out of the unexplained money of the assessee firm under Section 69A of the Act. Accordingly, the A.O. vide his order under Section 147 r.w.s.

144B of the Act, dated 30-01-2024, determined the income of the assessee firm at Rs. 1,16,70,577/-.

4. Aggrieved, the assessee has carried the matter in appeal before the CIT(A). As the assessee firm, despite having been afforded sufficient opportunities, had failed to participate in the proceedings before the CIT(A), therefore the latter dismissed the appeal on the said count itself. For the sake of clarity, the observations of the CIT(A) are culled out as under :

“4. Decision: I have carefully considered the facts on record, the reassessment order. 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 ie. rmgrantile@rediffmail.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.”

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

6. Shri A. Srinivas, C.A. the learned Authorized Representative (for short the “ld.AR”) for the assessee firm, 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 based on a non-speaking order upheld the assessment order. The ld.AR submitted that as the assessee firm 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.

7. Per contra, Shri Gurupreet Singh, the learned Senior Departmental Representative (for short "Ld. D.R.") relied upon the orders of the lower authorities.

8. 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 firm before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee firm 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."

9. We, thus, not being able to persuade ourselves to subscribe to the summary dismissal of the appeal by the CIT(A) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(A) shall in the course of the de-novo appellate proceedings afford a reasonable opportunity of being heard to the assessee firm 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 firm are allowed for statistical purposes in terms of the aforesaid observations.

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

Order pronounced in the Open Court on 3rd June, 2025.

<p>Sd/- (श्री मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad, dated 03.06.2025.

**TYNM/sps*

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

1.	निर्धारिती/The Assessee	:	Designer Stone Impex, 79-B, 7-1-397/121, S.R. Nagar, Hyderabad – 500038, Telangana.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward -6(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad