

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 448/KOL/2025
Assessment Year: 2013-14**

Satbichar Distributors Private Limited	Vs.	ITO, Ward-3(1), Kolkata
(Appellant)		(Respondent)
PAN: AALCS6662G		

Appearances:

Assessee represented by : None.

Department represented by : S.B. Chakraborty, Sr. DR.

Date of concluding the hearing : 16-July-2025

Date of pronouncing the order : 24-July-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2013-14 dated 06.01.2025, which has been passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 24.09.2021. None appeared on behalf



of the assessee and the appeal was heard with the assistance of the Ld. DR.

2. The assessee is in appeal before the Bench raising the following grounds of appeal:

“1.1) That the Ld. CIT(A) has passed the First Appeal order u/s 250 in an ex-parte manner, without adjudicating on the grounds raised by the appellant on merits, thereby rendering the order unsustainable in law and liable to be set aside.

1.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC has erred in law and on the facts of the case by making addition of Rs. 80,00,000/- under the head income from other sources.

2.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the ITO, Ward 3(1), Kolkata has erred in law and on the facts in initiating the proceedings u/s 147 of the Act, the ease of the appellant for the year under consideration despite the fact he had no jurisdiction over the Appellant.

2.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC have erred in law and on the facts of the case by not supplying the reasons to believe recorded for escapement of income of the year under consideration and also there exist no tangible material having live nexus with the reasons so recorded.

3.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC have erred in law and on the facts of the case by precluding the appellant from recording its objection to the very reopening of the concluded assessment by not supplying Reasons to Believe to it.

3.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC have erred in law and on the facts of the case by not supplying the communication containing the approval of the authority concerned for reopening the ease of the appellant.

4.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O. has erred in law and on the facts of the case by initiating the proceedings u/s 147 of the Act in the ease of the appellant without application of mind, in the absence



of any tangible material and in the absence of live nexus of any tangible material with the reasons so recorded.

4.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O. has erred in law and on the facts of the ease by initiating the proceedings u/s 147 of the Act in the ease of the appellant on ground of suspicion because he was not aware of the nature of underlying transaction amounting to Rs. 80 Lakhs.

5.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O. has erred in law and on the facts of the ease by initiating the proceedings u/s 147 of the Act in the ease of the appellant on suspicion by treating the amount of Rs. 80 Lakhs as Unsecured Loans / Share Premium whereas the same arose on account of sale of investments.

5.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC have erred in law and on the facts of the ease in assuming jurisdiction and by making assessment of escaped income in gross violation of the principles laid down by the Hon'ble Supreme Court in the ease of GKN Driveshafts (India) Limited Vs. Income Tax Officer and other reported in 259 ITR page 19.

6.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC has erred in law and on the facts of the ease by passing an Assessment Order u/s 147 r.w.s. 144 r.w.s. 144B of the Act Dated 24.09.2021, after precluding the appellant from making compliances and submissions during assessment proceedings, by communicating through the sender ID donotreplyfajjncomctax.gov.in in the absence of a properly functioning Income Tax Portal.

6.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment unit, NFAC has erred in law and on the facts of the ease by passing an Assessment Order u/s 147 r.w.s. 144 r.w.s. 144B of the Act Dated 24.09.2021 without complying with the provisions laid down therein and by misrepresenting that show cause notice and draft assessment order were issued to the appellant.

7.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that Ld. A.O./Assessment Unit, NFAC has erred in law and on the facts of the ease by levying interest u/s 234A of the Act despite the return being filed within the stipulated time as per order in Re: Cognizance For Extension of Limitation, Suo Motu Writ



Petition (Civil) No(S) 3/2020 Dated 23.03.2020 by Hon'ble Supreme Court and vide The Taxation And Other Laws (Relaxation Of Certain Provisions) Ordinance, 2020 Dated 31.03.2020.

7.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the Ld. A.O./Assessment Unit, NFAC has erred in initiating the penalty proceedings against the appellant.

8.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that on the facts and circumstances of the ease, the submissions made by the appellant before Ld. A.O./Assessment unit, NFAC and statement of facts may kindly be considered as part of these grounds of appeal.

8.2) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the order passed by the Ld. A.O./Assessment Unit, NFAC is devoid of facts, arbitrary is based on assumptions, presumptions, surmises and conjectures.

9.1) That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the order passed by the Ld. A.O./Assessment Unit, NFAC is bad in Law and against natural justice.

9.2) That the Ld. CIT(A) has....(this Ground of appeal is incomplete).”

3. Brief facts of the case are that the assessee is a company and had e-filed its return of income for the AY 2013-14 on 27.09.2013 showing 'NIL' income and a current year loss at ₹6,124/-. The case was reopened by issue of notice u/s 148 of the Act to verify the issue of share premium/unsecured loan. Information had been received from the DDIT(Inv.), Unit-2(1), Kolkata in the case of M/s. Real Vyapaar Pvt. Ltd. and high value transactions in the form of RTGS/NEFT had been observed and the same did not appear to be the result of any genuine business activity and the bank account was used merely for layering of transactions. Enquiries were made by the Investigation Wing and the assessee company was found to be in receipt of ₹80 Lakh during the financial year and had no documentary evidence nor any valid explanation with respect to the amount received was filed, therefore, the



same was treated as income from other sources and added to the income of the assessee. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who vide order dated 06.01.2025 dismissed the appeal as despite providing many opportunities of being heard, the assessee remained non-compliant and no documentary evidence was filed in support of the grounds of appeal filed by the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

4. Before us, the assessee has raised as many as 9 grounds of appeal with sub grounds. The assessee has challenged the jurisdiction of the Ld. AO and has stated that the appeal order is passed in an *ex parte* manner without adjudicating on the grounds raised by the assessee on merits, thereby rendering the order unsustainable in law and liable to be set aside.

5. We have considered the submission made by the Ld. DR and have noted that the Ld. CIT(A) has reproduced the assessment order, the details of notices issued and has thereby dismissed the appeal of the assessee on account of non-prosecution. On perusal of the appellate order it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent by e-mail were not complied with but he has not adjudicated the appeal on merit. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:

“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

6. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination

and the decision as well as the reason for arriving at such decision. In the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”

6.1 It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A)



to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

"7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—

'Procedure in appeal

250 (4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

...

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

...

Powers of the Commissioner (Appeals)

"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

...

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."

...

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'

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 co-terminus 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.”

7. In this case, both before the Ld. AO as well as before the Ld. CIT(A), proper representation could not be made and the Ld. CIT(A) dismissed the appeal on account of non-prosecution. The Bench was of the view that in the interest of justice and fairplay, another opportunity needs to be provided to the assessee. Thus, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. CIT(A) for disposal of the grounds taken by the assessee on merit, by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being



heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24th July, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 24.07.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Satbichar Distributors Private Limited, Flat No. 401, H.No. 122/735, Anand Laxmi, Shastri Nagar, Kanpur, Uttar Pradesh, 208005.**
2. **ITO, Ward-3(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata