



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.1322/PUN/2025

निर्धारण वर्ष / Assessment Year: 2012-13

Yugal Madhukar Khairnar, Dongrej Virgaon, Satana, Dist-Nashik, Nashik – 423301.	V s	The Income Tax Officer, Ward-1, Malegaon.
PAN: ANMPK4805E		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Pramod S. Shingte – AR
Revenue by	Shri Ambarnath Khule - JCIT(DR)
Date of hearing	04/09/2025
Date of pronouncement	09/09/2025

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the assessee against the order of Id.Commissioner of Income Tax Appeal(NFAC) passed under section 250 of the Income Tax Act, 1961 for A.Y.2012-13 dated 24.03.2025 emanating from the Assessment Order under section 143(3) r.w.s 147 of the Income Tax Act, 1961. The Grounds of appeal raised by the Assessee are as under :

*"1. On the basis of the facts and in the circumstances of the case, the Assessing Officer is not justified in making addition of Rs. 22,94,000/-*



*on account of cash deposited in bank account during the assessment year under review.*

*2. On the basis of the facts and in the circumstances of the case and as per law, the assessment order passed u/s. 143(3) r.w.s. 147 without issuing notice u/s. 143(2) please be quashed.*

*3. On the basis of the facts, in the circumstances of the case and as per law, the assessment order passed u/s. 143(3) r.w.s. 147 may please be quashed being invalid as the said order was passed without obtaining Document Identification Number (DIN) and also without following the mandatory directions given in Circular issued by CBDT No. 19/2019 dated 14/08/2019.*

*4. On the basis of facts and as per law, the notice issued u/s. 148 for the reason that the appellant has deposited cash in the bank account may please be quashed being issued with prejudiced and suspicious mind.*

*5. The appellant craves leave to furnish additional evidences in support of her claim in the course of the appellate proceedings.*

*6. The appellant craves for the addition to, deletion, alternation, modification of above or any other ground/s of appeal.”*

**Submission of Id.AR :**

2. At the outset of hearing, Id.AR for the Assessee submitted that no notice u/s.143(2) was issued, hence, assessment order is bad in law. Ld.AR submitted that legal grounds were raised before

ld.CIT(A), but ld.CIT(A) has not adjudicated the legal grounds raised.

**Submission of ld.DR :**

3. Ld.Departmental Representative(ld.DR) for the Revenue relied on the Assessment Order.

**Findings & Analysis :**

4. We have heard both the parties and perused the records. As per the assessment order, Assessee had not filed Return of Income for A.Y.2012-13 under section 139(1) of the Act. The Assessing Officer based on the information issued notice u/s.148 of the Act on 22.01.2019 after recording reasons for reopening. The Assessing Officer assessed the income at Rs.22,94,000/-.

4.1 Aggrieved by the assessment order, assessee filed appeal before the ld.CIT(A). The grounds of appeal raised before the ld.CIT(A) are as under :

*“1. On the basis of facts and in the circumstances of the case, the AO is not justified in making addition of Rs.22,94,000/- on account of the cash deposited in bank account during the assessment year under review.*



2. *On the basis of facts in the circumstances of the case and as per law, the assessment order passed U/s.147/143(3) without issuing notice U/s.143(2) please be quashed.*

3. *On the basis of facts and in the circumstances of the case, the demand raised by AO please be stayed until the disposal of the appeal.*

4. *The appellant craves for the addition to, deletion, alteration, modification of the above ground of appeal.”*

4.2 The ld.CIT(A) during the appellate proceedings issued three notices. Assessee failed to comply these notices. Therefore, ld.CIT(A) dismissed the appeal of the assessee and confirmed the assessment order.

4.3. It is observed that ld.CIT(A) has not adjudicated the grounds of appeal raised by the assessee. The non-issuance of notice u/s.143(2) is a legal ground and it was duty of the ld.CIT(A) to adjudicate the said ground. Ld.CIT(A) was duty bound to obtain the information from the Assessing Officer regarding issue of notice u/s.143(2) of the Act. In this case, ld.CIT(A) has not done anything. There is utter lack of application of mind by ld.CIT(A).

4.4 It is also observed from the assessment order that reasons recorded were not provided to the Assessee. The Hon'ble Bombay



High court in the case of Tata Capital Financial Services Ltd., Vs.

ACIT 443 ITR 127(Bom) has held as under :

“4.....

*It will be apposite to quote the following from the judgment of the Delhi High Court in case of SABH Infrastructure Ltd. v. Asstt.CIT [2018] 99 taxmann.com 409/[2017] 398 ITR 198 which reads as under :*

*"Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the Assessing Officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the Assessing Officer to the assessee is to be avoided;(ii) the reasons to believe ought to spell out all the reasons and grounds available with the Assessing Officer for re-opening the assessment - especially in those cases where the first proviso to section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the Assessing Officer on the same and if so, the conclusions thereof;(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons;(iv) the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the*



*objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed."*

*5. Therefore, the order dated 17th December, 2021 impugned in this petition is quashed and set aside. The matter is remanded for denovo consideration. The concerned officer shall keep in mind that the exercise of considering the assessee's objections to the re-opening of assessment is not a mechanical ritual but a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. He shall also grant a personal hearing to petitioner and the notice of personal hearing shall be communicated atleast seven working days in advance. If the said officer is relying on any judgment or order of any Court or Tribunal, a list thereof shall be provided to petitioner alongwith notice of personal hearing so that petitioner will be able to deal with or distinguish these judgments/orders in the personal hearing. The Assessing Officer shall deal with all previous submissions while considering the assessee's objections, deal with each objections and give proper reasons for its conclusion."*

4.5. Thus, Hon'ble Jurisdictional High Court has held that it is mandatory for the Assessing Officer to provide reasons recorded for reopening to the Assessee.

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.*

5.1 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. The ld.CIT(A) shall also provide a copy of the reasons recorded for reopening by the Assessing Officer 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.

Order pronounced in the open Court on 09 September, 2025.

**Sd/-**

**MS.ASTHA CHANDRA  
JUDICIAL MEMBER**

**Sd/-**

**Dr.DIPAK P. RIPOTE  
ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 09 Sep, 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. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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