



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.1268 & 1269/PUN/2025

निर्धारण वर्ष / Assessment Year: 2022-23

Vasavi Naga Rajeshwari Chalamcharla, F-203, Goodwill Garden CHS, Plot No.16/17, Sector 8, Kharghar, Maharashtra-410210 PAN: ATUPC8616P	V s.	The Income Tax Officer, Ward-2, Panvel.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Hari Krishan
Revenue by	Shri Aviyogi Ambadkar – Addl.CIT
Date of hearing	11/09/2025
Date of pronouncement	17/09/2025

**आदेश/ ORDER**

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

These two appeals filed by the Assessee against the separate orders of Id.Commissioner of Income Tax(Appeal)[NFAC] passed under section 250 of the Income Tax Act, 1961; respectively for A.Y.2022-23, both dated 21.03.2025 emanating from Assessment Order u/s.144 of the I.T.Act, dated 14.03.2024 and penalty appeal dated 13.09.2024 respectively. For the sake of convenience, these



two appeals were heard together and are being disposed of by this common order. We treat the appeal in ITA No.1268/PUN/2025 as lead case. The assessee has raised following grounds of appeal :

*“1) The impugned appellate order dated 21.03.2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre is invalid and unsustainable in law, as it has passed in violation of the Principles of natural Justice, without affording adequate and reasonable opportunity of being heard to the assessee.*

*2) The Commissioner of Income Tax(Appeals), NFAC has erred in law and on the facts & in the circumstances of case by upholding the addition made by the Assessing Officer to the income of the assessee of Rs.1,60,18,493/- by disallowing the 50% of Purchases shown in ITR. (Purchases shown in ITR - Rs.3,20,36,986/-)*

*3) The Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts and in the circumstances of the case by upholding the addition made by the Assessing Officer in the declared income of the assessee for the A.Y. 2022-23 of Rs.7,89,150,- by Rs.1,60,18,493/- (50% of Purchases) on the basis of theory of probability for failing to submit the list of sundry creditors. It is to be noted that failure was due to not receiving intimations on the mail id of the assessee rather it was delivered to the tax representative at the time and due to miss-communication the notices went unreplied.*

*4) The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in law and on facts and in the circumstances of the case by upholding the penalty proceedings u/s 270A of the Act for underreporting of Income in consequence of miss-reporting of income*



*in view of provisions of section 270A (2) (b) r.w.s.270A (9)(a) of the I.T. Act.1961.*

*5) The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in law and on facts in passing impugned order in violation of law or principal of natural justice by making assumption and presumption in his order as against concrete documentary evidence produced by assessee.*

*6) The appellant craves leave to delete or to modify, alter or amend any or all of the above grounds of appeal.”*

**Submission of Id.AR :**

2. Ld.AR for the Assessee submitted that Id.CIT(A) has not adjudicated the grounds of appeal on merits 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 is observed from the order of the Id.CIT(A) that the Id.CIT(A) did not



decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 The Id.CIT(A) in para 5 an 6 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 opted not to respond the above notices for the reason best known to him. No concrete 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.*

*6. In result, the assessment order is CONFIRMED.”*

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. 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.1269/PUN/2025**

8. Since we have set-aside the quantum appeal in ITA No.1268/PUN/2025 above, the same shall apply *mutatis-mutandis* to this penalty appeal in ITA No.1269/PUN/2025 also. Accordingly, grounds of appeal raised by the assessee in ITA No.1269/PUN/2025 are allowed for statistical purpose.



9. To sum up, both appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 17<sup>th</sup> September, 2025.

**Sd/-**  
**VINAY BHAMORE**  
**JUDICIAL MEMBER**

**Sd/-**  
**Dr.DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 17 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, "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.