



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.475/PUN/2024

निर्धारण वर्ष / Assessment Year: 2016-17

Pravin Prakashchand Mehta, B 10, Pati Regency, Erandwane, Pune – 411004.	V s	The Income Tax Officer, Ward-8(3), Pune.
PAN: AAVPM4448H		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Ms Sampada Ingale (Virtual) on behalf of Shri Suhas P. Bora – AR
Revenue by	Shri Sandeep P Sathe – JCIT
Date of hearing	06/10/2025
Date of pronouncement	31/10/2025

**आदेश/ ORDER**

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

This appeal filed by the assessee against the order of  
ld.Commissioner of Income Tax Appeal(NFAC) passed under  
section 250 of the Income Tax Act, 1961 for A.Y.2016-17 dated  
11.01.2024 emanating from the Assessment Order under section  
143(1) of the Income Tax Act, 1961 dated 08.03.2017. The  
Grounds of appeal raised by the Assessee are as under :



*“1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in passing an exparte order without considering the application to keep the proceedings in abeyance till the appellant receives response from RTI, thereby failing to grant sufficient opportunity to the appellant*

*2. On the facts and in the circumstances of the case and in law the appellant has made an application u/s 119(2) for condonation of delay in filing the return of income for A.Y. 2016-17 on 04/05/2017. However the same has not been decided by the PCCIT, Pune till date and therefore the appellate proceedings ought to be kept in abeyance till the order u/s 119(2) is received by the appellant.*

*3. On the facts and in the circumstances of the case and in law the disallowance of carry forward of business losses is not sustainable in as much as the appellant has duly filed an application for condonation of delay u/s 119(2) on 04/05/2017 and the same remains undecided till date*

*4. On the facts and in the circumstances of the case the disallowance of set off of loss is bad in law in the light of the fact that the appellant has made application u/s 119(2) to the Pr. CCIT, to extend the due date for filing of return of income for A.Y. 2016-17 due to genuine hardships preventing the appellant from filing the return of income in time.*

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

### **Findings and Analysis :**

2. We have heard both the parties and perused the records. In this case, the Ld.CIT(A) had issued seven notices. The assessee had submitted a request for adjournment stating that his application is pending with CCIT. However, Ld.CIT(A) dismissed the appeal of the Assessee.



2.1 It is observed from the order of the Id.CIT(A) that the Id.CIT(A) did not decide the grounds of appeal raised by Assessee 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.

3. 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.*

3.1 Thus, Hon’ble Bombay High Court has categorically held that Id.CIT(A) has to decide the appeal on merit and Id.CIT(A) does not have any power to dismiss appeal for non-prosecution.

4. In this case the Ld.CIT(A) has not decided the grounds raised on merits. Hence, respectfully following Hon’ble Bombay High Court, (supra) the order of the Id.CIT(A) is set aside to Id.CIT(A) for de-novo adjudication. The Ld.CIT(A) shall grant opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 31 October, 2025.

**Sd/-**

**MS.ASTHA CHANDRA  
JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 31 Oct, 2025/ SGR

**Sd/-**

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



**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.