



आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER
AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.2288/PUN/2025

निर्धारण वर्ष / Assessment Year: 2016-17

Sachin Shantilal Khiwansara, Main Road, Shirur Kasar, Shirur SO., Beed, Beed – 413249.	V s.	The Income Tax Officer, Ward-1(5), Aurangabad.
PAN: BYTPK1339N		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Saurabh D.Khivansara
Revenue by	Smt Saumya Pandey Jain-Addl.CIT
Date of hearing	20/11/2025
Date of pronouncement	20/11/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

In this case, appeal has been 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 the A.Y.2016-17 dated 17.07.2025. The Assessee has raised the following grounds of appeal :

"1. That on facts and in law, the ex-parte order of Ld. CIT APPEALS, NFAC is opposed to law and against the principles of natural justice and accordingly the impugned appellate order is liable to be set aside.



2. That on facts and in law, the Ld. CIT APPEALS erred in dismissing the appeal ex-parte without adjudicating the grounds of appeal on merits, despite the appellant having filed a Statement of Facts and Grounds of Appeal along with Form 35. This is in clear violation of section 250(6) of the Income Tax Act, which mandates that the CIT APPEALS shall state the points for determination, the decision thereon, and the reasons for the decision. Accordingly, the impugned order is unsustainable and liable to be set aside

3. That the Ld CIT APPEALS has proceeded in undue haste, issuing notices and disposing of the appeal within a short span of time, thereby depriving the appellant of adequate opportunity to present the case effectively which is against the settled principles of natural justice

4. That in making an addition of Rs. 1,03,86,725/- us 69A without considering withdrawals and the nature of business transactions, the procedure followed under section 144 of the Income Tax Act, and the addition as made by the assessing authority as sustained by the CIT APPEALS is unjustified, arbitrary, and deserves to be deleted.

5. That in view of the Citation in the case of Girdhar Gopal Dalmia v. Union of India, the Hon'ble Court has mandated the service of Notice and its procedure, which has not been followed by the Ld. Assessing Officer and grossly neglected by the CIT APPEALS, and accordingly, the impugned appellate order is liable to be set aside.

6. That on facts and in law, the reassessment notice issued under section 148 of the Income Tax Act without complying with the provisions and due procedure of law, the reopening of assessment



under Section 147 of the Income tax Act is bad in law, which has to be set aside.

7. That on facts and in law, the order under section 144 r.w.s.147 is unjust, arbitrary, and passed without granting adequate opportunity to the assessee

8. That the reopening of assessment under section 147 based on borrowed satisfaction without proper application of mind and thus the reopening of assessment under section 147 is bad in law and liable to set aside

9. That on the facts and in the circumstances of the case the Ld. Assessing authority has erred in following due procedure of law in service of notice and order passed without giving an opportunity of being heard against the principles of natural justice, the order as sustained by the CIT APPEALS is in violation of law and liable to be set aside

10. That on the facts, the impugned estimate of addition made by the assessing authority as sustainable by the Ld. CIT APPEALS is excessive, arbitrary, and unreasonable and liable to be deleted.

11. That for these and such other grounds that may be urged to add alter, or modify any grounds at the time of hearing, the Appellant prays that the appeal may be allowed.”

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A)



without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Ld.AR also submitted that legal grounds were raised before ld.CIT(A), but ld.CIT(A) has not adjudicated the legal grounds raised. Hence, ld.AR requested for one more opportunity of being heard to the assessee.

Submission of ld.Departmental Representative(ld.DR) :

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and ld.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records.

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 :

Quote“1. That on the facts and in the circumstances of the case reopening of assessment u/s 147 of IT Act is bad in law and illegal.

2. That the reopening has been done on borrowed satisfaction and without proper application of mind hence the notice issued u/s 148 of IT Act is bad in law.

3. That on the facts and in the circumstances of the case the assessment order passed u/s 147 r.w.s. 144 of IT Act is bad in law and illegal.



4. *That on the facts and in the circumstances of the case the order passed is in violation of natural justice as no proper opportunity has been given to the assessee.*

5. *That on the facts and in the circumstance the learned A.O. has erred in making addition of Rs. 1,03,86,725/- as Unexplained Investments u/s 69 of the Act. The addition is unjustified, arbitrary and deserves to be deleted.*

6. *That any other grounds may be raised during the course of hearing of this appeal.*”Unquote.

4.2 It is observed from the order of the Id.CIT(A) that the Id.CIT(A) during the appellate proceedings issued notices. Assessee failed to comply these notices. Assessee has challenged validity of Reopening. This is a Legal Ground. It has not been adjudicated giving reasons. 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.

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 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.



6. In view of the above, in the interest of justice, we set-aside the order of the Id.CIT(A) to Id.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the Id.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 20 November, 2025.

Sd/-
MS.ASTHA CHANDRA
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20 Nov, 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. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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