

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.904/Ahd/2023
(Assessment Year: 2012-13)

Babubhai Ramanbhai Patel, 14, Darshak, Swastik Society, Punjabi Hall Lane, Navrangpura, Ahmedabad-380009	Vs.	Deputy Commissioner of Income Tax, Circle-1(1)(1), Present Jurisdiction Income Tax Officer, Ward-1(2)(1), Ahmedabad
[PAN No.ABYPP8048A]		
(Appellant)	..	(Respondent)

I.T.A. No. 905/Ahd/2023
(Assessment Year: 2015-16)

Babubhai Ramanbhai Patel, 14,Darshak, Swastik Society, Punjabi Hall Lane, Navrangpura, Ahmedabad-380009	Vs.	National Faceless Assessment Centre, Delhi Present Jurisdiction Income Tax Officer, Ward-1(2)(1), Ahmedabad
[PAN No.ABYPP8048A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hemanshu Shah, A.R.
Respondent by:	Shri Sanjay Jain, Sr. D.R.

Date of Hearing	08.02.2024
Date of Pronouncement	15.02.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

Both the appeals have been filed by the Assessee against the orders passed by the Ld. Commissioner of Income Tax (Appeals) (in short “Ld. CIT(A)”), national Faceless Appeal Centre (in short “NFAC”), Delhi vide orders dated 15.09.2023 passed for the Assessment Years 2012-13 & 2015-16.

2. The brief facts of the case are that the assessee filed return of income on 31.07.2012, declaring total income of Rs.1,20,000/-. Notice

under Section 148 of the act. Act was issued on 28.03.2019. Assessment Order under Section 144 r.w.s. 147 of the Act was passed on 17.09.2019, in which the Assessing Officer disallowed short-term capital losses of Rs.3,25,511/- on the ground that the assessee was engaged in accommodation entries / bogus capital gains / losses, and Assessing Officer was of the view that the assessee had traded in a script, namely, Prerna Infrabuild Limited, which was a bogus company and did not exist at its address. Accordingly, the Assessing Officer was of the view that the assessee had incurred bogus short-term capital losses amount amounting to Rs.3,25,511/- which were required to be disallowed.

3. In appeal before Ld. CIT(A), he observed that the assessee had sought adornment on two occasions and accordingly, he passed an ex-parte order, upholding the order of the Assessing Officer with the following observations:

“6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material available on record. Bare perusal of the facts shows that the appellant has not pursued the appeal effectively despite being granted several opportunities as elaborated supra. The appellant has jeopardized his case by not giving any tenable reply despite several opportunities that were provided. Thus, it is evident from the above discussion that the appellant is not interested in pursuing his appeal & is just using dilatory tactics. As he has not furnished any submissions during the appellate proceedings, his only contentions are the ones raised vide Grounds of Appeal & the Statement of Facts. Sufficient opportunities were provided to the appellant (vide the notices referred supra) to come up with the ground-wise written submissions alongwith documentary evidence in support of his contentions raised vide grounds of appeal & statement of facts. No tenable reply has been furnished in response to the Notices issued. Therefore, the contention raised in Grounds of Appeal & Statement of Facts cannot be taken on face value and are hereby rejected.

6.1 In nutshell, the A.O. has passed a reasoned and a speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are, therefore, dismissed.

7. Thus, in view of the facts and circumstances of the case and the material available on record, the order passed by the AO is upheld.

8. *In the result, the appeal of the Appellant is dismissed.”*

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the counsel for the assessee submitted that the Ld. CIT(A) had afforded three dates of hearing to the assessee, out of which two dates were falling in the Covid period and accordingly, the assessee could not cause appearance. Further, with respect to the third date of hearing, the assessee had sought adjournment, but the request of the assessee was denied by Ld. CIT(A), who proceeded to pass an ex-parte order, without giving a fair opportunity of hearing to the assessee. Further, it was submitted before us that on two dates of hearing given by CIT, the assessee had sought for adjournment, which was not considered by Ld. CIT(A). It was further submitted that while passing the order, Ld. CIT(A) did not consider the facts of the case, the issues under consideration and nor did he discuss the individual Grounds of Appeal raised by the assessee and nor the judicial precedents on the subject. The Ld. CIT(A) simply upheld the order passed by Assessing Officer, without any discussion of the case on merits. Accordingly, it was requested that in the interests of justice, the matter may be restored to the file of Ld. CIT(A) for de Novo consideration.

5. In response, DR placed reliance on the observations made by CIT in the appellate order. It was further pointed out that even the 148 proceedings were concluded ex-parte on account of non-appearance on part of the assessee and that the assessee is a habitual defaulter.

6. We have heard the rival contentions and perused the material on record. Since the facts and issues for consideration are common for both the years under consideration, both the assessment years are being taken

up together. In the instant facts, we observe that the first two dates of hearing before Ld. CIT(A) were falling in the Covid pandemic period. Further, on one of the dates of hearing, the assessee had also sought for adjournment before CIT. Also, on the third and final date of hearing before CIT, the assessee had again filed application for adjournment. Accordingly, we observe that since two dates of hearing were falling within the Covid period, it can be concluded that the assessee was precluded to cause appearance before CIT owing to genuine reasons. Further, it is observed that the CIT passed the appellate order without discussing the facts of the case and the issues under consideration and the individual grounds of appeal raised by the assessee and simply proceeded to uphold the assessment order, without any discussion on the issue under consideration before him.

7. At this stage, we would like to reproduce the Section 250(4) and 250(6) of the Act:

“(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 points for determination the decision thereon and the reason for the decision.**”*

8. A perusal of the language of the above provisions shows that it is incumbent on the Ld. CIT(A) to make necessary enquiry before passing the order. Further, Ld. CIT(A) is obliged to decide each of the points arising out of the appeal i.e. grounds on merits have to be discussed even in an ex parte order. In view of Section 250(4) and 250(6) of the Act, Ld. CIT(A) has no power to dismiss an appeal on account of non-prosecution, without discussing the merits of the case. In the case of CIT

v. Premkumar Arjunda (2107) 297 CTR 614 (Bombay), the Bombay High Court made the following observations:

“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.”

9. Again in the case of **Pawan Kumar Singhal v. ACIT [2019] 108 taxmann.com 548 (Delhi - Trib.)**, the Delhi ITAT held that Commissioner (Appeals) cannot dismiss assessee's appeal in limine for non-prosecution without deciding same on merits through an order in writing, stating points of determination in appeal, decision thereon and reason for decision.

10. In the case of **Ms. Swati Pawa v. DCIT [2019] 103 taxmann.com 300 (Delhi - Trib.)**, the Delhi ITAT held that in terms of

Section 250, Commissioner (Appeals) is not empowered to dismiss appeal for non-prosecution and is obliged to dispose of appeal on merits by passing a speaking order.

11. In the case of **HV Metal ARC (P.) Ltd. v. ACIT [2018] 100 taxmann.com 4 (Delhi - Trib.)**, the Delhi ITAT held that where Commissioner (Appeals) dismissed assessee's appeal on ground that assessee did not wish to pursue appeal, since revenue failed to bring any evidence to prove actual service of notice of hearing on assessee, requirements of procedure as mentioned in Section 250(1) and (2) could not be said to have been fulfilled and, thus, impugned order was to be set aside.

12. In the case of **Shri Nisarhusen Amdali Lakhani (ITA 532/Ahd/2018)**, ITAT Ahmedabad observed as under:

“We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points along with reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in ex pane order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of CIT vs. Premkumar Arjundas Luthra HUF (2017) 297 CTR 614 (Bom.). A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on the various points placed for its determination at all and dismissed the appeal of assessee for default in nonappearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

7. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without any demur, failing which, the CIT(A) shall at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

8. *In the result, appeal of the assessee is allowed for statistical purposes.”*

13. In view of the above facts and legal ratio laid by the Hon'ble Mumbai High Court and various Tribunals, we are of the considered view that the orders passed by Ld. CIT(A) is in contravention of provisions of Section 250(6) of the Act. We are of the considered view that the Ld. CIT(A) has erred in facts and in law in summarily dismissing the assessee's appeals for the assessment years under consideration, by passing a non-speaking order, without mentioning the various grounds of appeal raised by the assessee in his appellate order and without discussing the merits of the case. Therefore, in the interests of justice, we are setting aside the cases to the file of Ld. CIT(A) for fresh adjudication on merits, for both the assessment years, after giving due opportunity of hearing to the assessee to present his case on merits. It may be mentioned that since the assessee did not cause appearance either before Ld. Assessing Officer nor Ld. CIT(A), the assessee is directly to promptly comply with all notices of hearing and in case of any further default on part of the assessee to cause appearance, Ld. CIT(A) would be at liberty to pass orders on the basis of materials available on record, in accordance with law.

14. In the result, both the appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on	15/02/2024
-----------------------------------------------	-------------------

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 15/02/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT,