

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 167/Rjt/2021
Assessment Year 2014-15**

Saw Chhaganlal Arjanbhai Thacker Medical And Education Trust, Bhachau PAN: AAGTS6564F (Appellant)	Vs	The DCIT/ACIT, CPC, Bengaluru (Respondent)
--	----	---

**Assessee by: Ms. Devina Patel, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 19-10-2022
Date of pronouncement : 20-10-2022

आदेश/ORDER

PER :SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER :-

This assessee's appeal for A.Y. 2014-15, arises from order of the National Faceless Appeal Centre (NFAC), Delhi dated 29-10-2021, in DIN & Order No. ITBA/NFAC/S/250/2021-22/1036661990(1), proceedings under section 143(1) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

“1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in dismissing appeal of the Appellant in limine.

2. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in holding that the appellant has no reason for delay in filing of appeal.

3. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in holding that no reply was filed by the Appellant within timelines provided as adjournment applications were filed by the Appellant in response to notices u/s. 250 issued, which were not rejected by the CIT(A)

4. The learned commissioner (Appeals), National Faceless Appeal Centre, Delhi, on merits, erred in upholding action of the CPC in making adjustments to the returned income of the Appellant by denying benefit of sec. 11 of Rs. 4,01,053/- claimed in the return of income filed for the year.

5. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.

Total tax effect

1,23,925/-

3. The brief facts of the case are that the return of income was filed by the assessee on 12-03-2016 declaring total income of ₹ Nil in the status of AOP (Trust), after claiming deduction under section 11 of the Act. Intimation under section 143 (1) of the Act dated 12-03-2016 was issued by CPC, Bangalore computing income of ₹ 2,73,857/- by way of not granting deduction claimed under section 11 of the Act. By way of the aforesaid intimation, the DCIT made adjustments by not giving deduction of ₹ 4,01,053/- claimed by the assessee under section 11 of the Act.

4. The assessee filed appeal against the aforesaid additions, which were dismissed by Ld. CIT(Appeals) with the following observations:

*“3. In this case, the intimation order u/s 143(1) was issued on 12.03.2016, which is claimed to be received on 12.03.2016 as mentioned in Form no. 35. The appeal has been filed on 03.06.2020 from which it is apparently clear that there is delay of more than 4 years in filing of appeal. However, no explanation or reason has been given for delay in filing appeal. Even during the appellate proceedings various opportunities were provided by issue of notices on 29.12.2020, 05.10.2021, 14.10.2021 and 21.10.2021 but there was no reply filed by the appellant. The timelines provided in the statute are for strict adherence. In the absence of any compliance on the part of appellant, it is held that the appellant has no reason for delay in filing of appeal. In view of the above facts, appeal stands **dismissed in limine.**”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). The assessee produced before us copies of adjournment letters filed before Ld. CIT(Appeals) seeking time to present its case on merits. However, Ld. CIT(Appeals) dismissed the assessee's appeal *in limine*, without making any mention of the adjournment applications filed by the assessee and also without discussing the merits of the case. In response, DR relied upon the observations made by the Ld. CIT(Appeals) in the appellate order.

6. We have heard the rival contentions and perused the material on record. We note that in the instant facts, the Ld. CIT(Appeals) has not made any mention of the adjournment applications filed by the assessee seeking time to present its case on merits. Further, we observe that Ld. CIT(A) passed ex parte appellate order dismissing the assessee's appeal on account of delay in filing the appeal and without going either into the merits of the case or discussing the various grounds of appeal filed by the assessee in his order. 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. "

7. A perusal of the language of the above provisions shows that it is incumbent on the Ld. CIT(A) to make necessary enquiry either himself or through AO 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. PremkumarArjunda (2107) 297 CTR 614 (Bombay)**, the Bombay High Court made the following observations:

8.....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.

8. 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. 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. 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. In the case of **Shri NisarhusenAmdali 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.

9. 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 Ld. CIT(A) has erred in facts and in law in summarily dismissing the assessee's appeal, by passing a non-speaking order, without making any mention of 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 case to the file of Ld. CIT(A) for fresh adjudication on merits of the case, after giving due opportunity of hearing to the assessee to present its case on merits. During the course of hearing, the assessee may also explain the reasons for delay in filing of appeal.

10. In the result, the appeal of the assessee is upheld for statistical purposes.

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 20/10/2022

Sd/-

(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot