

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

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.909/Ahd/2024
(Assessment Year: 2017-18)

Shreenath Developers, E-101, Shreenathji Villa, Shreji Villa, Waghodia Road, Vadodara-390019	Vs.	Income Tax Officer, Ward-3(1)(5), Vadodara
[PAN No.ADAFS7387P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Prashant Upadhyay, A.R.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR

Date of Hearing	14.08.2024
Date of Pronouncement	23.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide order dated 09.01.2024, for Assessment Year 2017-18.

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

“1. The order of Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (hereinafter referred to as CIT (A)) is bad in law.

2. The learned CIT (Appeals) erred in fact and in confirming the addition amounting to Rs. 4,50,000/- made by Income Tax officer, Ward 3(1)(5), Vadodara (hereinafter referred to as the AO) being capital introduced by the partner the appellant firm without considering the fact of the case.

3. The learned CIT (Appeals) erred in fact and in confirming the addition amounting to Rs. 1,16,000/- without considering fact that the said amount received towards capital of partner of the appellant firm.

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4. *The learned CIT (Appeals) upheld the addition made amounting to Rs. 68,00,000/- as unexplained investment without considering the fact that the part of the amount paid towards the investment in subsequent year/s.*

5. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”*

3. At the outset the assessee filed application for condonation of delay of 52 days in filing of the present appeal. In the said application alongwith Affidavit, the assessee submitted that the order of the CIT(A) was received on 09.01.2024 via email and due to lack of education on part of the assessee, there was an inadvertent delay in forwarding the order to the concerned Chartered Accountant of the assessee, as a result of which there was a delay of 52 days in filing of the present appeal. The Counsel for the assessee submitted that there was no mala fide in delaying the filing of the appeal and hence the same may be kindly condoned.

4. Looking into the instant facts and the reasons cited by the assessee for the delay of 52 days in the filing of the present appeal, in the interest of justice, the delay in filing of the present appeal is hereby condoned.

5. The brief facts of the case are that the assessee is a builder / developer and for the impugned year under consideration, the assessee filed return of income showing “NIL” income. The case of the assessee was selected for complete scrutiny for the reason “introduction of large capital during the year of incorporation and large investment in property as compared to total income”. The Assessing Officer observed that from the ledger account of capital of partners, the partners had introduced capital in cash amounting to Rs. 13,55,000/-. The Assessing Officer observed that on examination of bank account of the assessee held with Shree Bharat Cooperative Bank Ltd., it was seen that out of a sum of Rs. 13,55,000/- only cash of Rs. 9,05,000/- was

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deposited in the said bank account and hence there was difference of Rs. 4,50,000/-. The Assessing Officer was of the view that the assessee had shown excess capital of Rs. 4,50,000/- which was treated as unexplained cash credit under Section 68 of the Act and the same was added to the total income of the assessee by the Assessing Officer. Secondly, the Assessing Officer observed that the assessee had deposited a sum of Rs. 1,16,000/- in it's bank account held with Shree Bharat Cooperative Bank Ltd. and the assessee was asked to submit details alongwith proof of source of cash deposits in the bank account. The Assessing Officer observed that the assessee did not furnish any response or explanation alongwith proof of cash deposits and accordingly, the Assessing Officer added a sum of Rs. 1,16,000/- as unexplained money from undisclosed sources under Section 69A of the Act. Thirdly, the Assessing Officer observed that during the year under consideration, the assessee had purchased land at Danteshwar, Vadodara on 19.10.2016 for a sum of Rs. 2,85,00,000/-. The Assessing Officer observed that on verification of purchase deed and bank statement, it was observed that the sum of Rs. 68,00,000/- shown as paid to the seller was not found in the bank statement. Accordingly, the Assessing Officer added a sum of Rs. 68,00,000/- as unexplained investment under Section 69 of the Act in the hands of the assessee on the ground that the payments were not paid by the assessee to the land owners from whom the land was purchased.

6. In appeal, the Ld. CIT(A) dismissed the appeal of the assessee on account of non-appearance and dismissed the appeal of the assessee with the following observations:-

“4. The hearing in this case was fixed on 29.12.2023. However, neither anybody attended nor was any request for adjournment made by the appellant till date. Before this several notices were issued fixing the case for hearing, but they were neither responded to nor any adjournment was sought. The details of opportunities offered are as under:-

Sl. No.	Date of Notice	Date of hearing	Remarks
1	24.12.2020	19.01.2021	No reply
2	12.10.2023	27.10.2023	No reply
3	14.12.2023	20.12.2023	No reply
4	21.12.2023	29.12.2023	No reply

5. All notices were sent by registered mail. Sufficient opportunity has been afforded to the appellant. It can be seen from the above table that first notice of hearing was dated 24.12.2020 and last notice is dated 21.12.2023, i.e. nearly three years of time was given to the appellant to file his submissions in support of grounds of appeal. It appears that, the appellant is not interested in pursuing the appeal. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known dictum, *VIGILANTIBUS ET NONDORMIENTIBUS JURA SUB VENIUNT*.

5.1 It is seen from the assessment order that the appellant failed to explain excess capital of Rs.4,50,000/- before the AO. The appellant also failed to explain sources for cash deposit of Rs.1,16,000/- in its bank account. The appellant further failed to submit proof of payments of Rs.68,00,000/- to the seller and also failed to submit ledger of land. In the absence of explanation for the source of cash deposits in his bank account, excess capital and proof of payments, the appeal cannot be allowed. The appellant failed to discharge his onus in proving the above amounts. In view of the above, the appeal is dismissed on merits also.

6. The provisions of Sec.250(6) provides that the appellate orders of CIT(A) are to state the points arising out of appellant's appeal. The order shall give out the reasons for such decisions. The underline rationale of the position is that such order is further appealed.

7. Speaking order obviously will enable any party to know positively the points decided in his favor or against. Absence of formulation of the point of decision for want of quality due to the lack of information inadvertently puts

6. **ESTATE OF LATE TUKOJIRAO HOLKAR vs. COMMISSIONER OF WEALTH TAX HIGH COURT OF MADHYA PRADESH**, Misc. Civil Case No. 302 of 1991.

7. **U-LIKE PROMOTERS (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'H' BENCH**, ITA Nos. 1569 to 1572/Del/2009 and 1377 to 1379/Del/2012; Asst. yrs. 1998-99 to 2004-05.

10. Following the above explained rationale, the appeal stands **dismissed.**”

7. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) dismissing the appeal of the assessee.

8. Before us, the Ld. Counsel for the assessee submitted that the assessee is a partnership firm engaged in the business of constructing commercial buildings, voluntarily filed its Return of Income for the Financial Year relevant to the Assessment Year 2017-18 on August 22, 2017. Along with the return, the appellant submitted the Statement of Total Income, Balance Sheet, and Profit and Loss Account with accompanying schedules, declaring Nil income. The return was subsequently selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS) system, primarily due to the introduction of a large capital during the year. In response, notices under sections 142(1) and 143(2) of the Income Tax Act were issued, and the assessee provided the relevant information and details as requested. On December 20, 2019, a show cause notice was issued to the appellant via email, scheduling a hearing for December 23, 2019. The appellant, however, was unable to respond to this notice due to the short timeframe of only three working days provided to file the necessary details. Further, the Ld. Counsel for the assessee submitted before us that the Ld. Assessing Officer erred both in law and on facts in making the addition of Rs. 4,50,000/- under section 68 of the Act as unexplained cash credit. The Ld. Counsel for the assessee submitted that the capital account clearly reflected the cash received from the partners, and sufficient time was not provided to the assessee to furnish a detailed breakup of this amount. Regarding the addition of Rs. 1,16,000/- under section 69A of the Act as unexplained money, the Ld. Counsel for the assessee submitted that this amount was also reflected in the capital account of the partners, and again, adequate time was not given to provide further details. Regarding the addition of Rs. 68,00,000/- under section 69 of the Act as unexplained investment, it was submitted before us that the payment was made in the next financial year by cheque and that the ITO erroneously based the addition solely on the bank

statement for Financial Year 2016-17 without considering the subsequent transaction. The appellant clarified that this balance payment of Rs. 68,00,000/- was actually made in the Financial Year 2017-18 and is duly reflected in the bank statement for that year. Accordingly, it was submitted that Ld. CIT(Appeals) confirmed the additions without discussing the facts of the case, the issues for consideration and summarily dismissed the appeal of the assessee on account of non-appearance, without giving adequate opportunity of hearing to the assessee.

9. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

10. We have heard the rival contentions and perused the material on record. We note that Ld. CIT(A) passed ex-parte appellate order, dismissing the assessee's appeal on account of non-appearance and without going either into the merits of the case or discussing the various grounds of appeal filed by the assessee in his order. We also note that three notices of hearing were issued to the assessee within a short span of time, after which appeal of the assessee in question, was dismissed summarily without discussing the individual grounds of appeal raised by the assessee / on merits and the order was passed without making any further enquiry. 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."

11. 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. 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.

12. 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 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 cooperation to the*

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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 Ld. CIT(A) has erred in facts and in law in summarily dismissing the assessee's appeals for the assessment year 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 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 it's case on merits.

14. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on

23/08/2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/08/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/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, Ahmedabad