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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2336 OF 2013

The Commissioner of Income Tax
(Central) Nagpur ..Appellant
Versus
Premkumar Arjundas Luthra (HUF) ..Respondent

....
Mr. Suresh Kumar i/v. Vipul Bajpayee for the Appellant.
None for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 25TH APRIL, 2016

P.C.:

1. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 9th May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. This appeal raises the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the CIT(A) does not have the power under the Income Tax Act, 1961 to*

dismiss the appeal of the assessee for non-prosecution of the appeal?"

3. For the Assessment year 2006-07, the Assessing Officer by order dated 8th March, 2010 imposed a penalty upon the respondent-assessee under Section 271(1)(c) of the Act.

4. Being aggrieved, the respondent-assessee challenged the order dated 8th March, 2010 before the Commissioner of Income Tax (Appeals) (CIT(A)). At the hearing before the CIT(A), as none appeared for hearing in support the CIT(A) dismissed the respondent-assessee's appeal for non -prosecution.

5. On further appeal, the Tribunal by the impugned order dated 9th May, 2013 held that in view of Section 250(6) of the Act the CIT(A) has no power to dismiss an appeal on account of non-prosecution. The section mandates that the order of the CIT(A) shall be in writing and shall state the points for determination and render a decision thereon. The impugned order records that this exercise has not been carried out by the CIT(A) and therefore the order dated 8th March, 2010 of the CIT(A) is unsustainable. Thus the impugned order dated 9th May, 2013 was

quashed and set aside and appeal restored to CIT(A) for fresh disposal.

6. Mr. Suresh Kumar, the learned counsel for the Revenue in support reiterates the findings of CIT(A) in support of his submissions.

7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:-

> *"Procedure in appeal*
>
> *250 (1) …….*
>
> *(2) ……*
>
> *(3) …….*
>
> *(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)."*
>
> *(5) …….*
>
> *(6) The order of the Commissioner(Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*
>
> *(6A) ……..*

(7) ……..

"Powers of the Commissioner (Appeals)

"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers –

(a) – in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(aa) …….

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."

(c) ……..

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. – In disposing of an appeal, the Commissioner(Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner(Appeals) by the appellant."

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. In the above view, the question as raised does not give rise to any substantial question of law. Thus, not entertained.

10. Accordingly, Appeal dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa