

CIT(A) can't dismiss an appeal merely on ground of non-appearance

Summary – The High Court of Bombay in a recent case of Premkumar Arjundas Luthra (HUF), (the Assessee) held that Commissioner (Appeals) cannot dismiss appeal on account of non-prosecution of appeal by assessee

Facts

- The Assessing Officer imposed a penalty upon the assessee under section 271(1)(c).
- The assessee challenged the order before the Commissioner (Appeals).
- However, as none appeared for hearing in support, the Commissioner (Appeals) dismissed the appeal for non-prosecution.
- On further appeal, the Tribunal quashed the order of the Commissioner (Appeals) holding that in view of section 250(6) the Commissioner (Appeals) had no power to dismiss an appeal on account of non-prosecution; and that the order of the Commissioner (Appeals) should be in writing and should state the points for determination and render a decision thereon. The appeal was restored to the Commissioner (Appeals) for fresh disposal.
- On revenue's appeal:

Held

- From reading of sections 250 and 251, it is very clear that once an appeal is preferred before the Commissioner (Appeals), 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). Further, section 250(6) obliges the Commissioner (Appeals) 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) provides that while disposing of appeal the Commissioner (Appeals) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of section 251 also makes it clear that while considering the appeal, the Commissioner (Appeals) 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 Commissioner (Appeals). Thus, once an assessee files an appeal under section 246A, it is not open to him as of right to withdraw or not press the appeal. In fact, the Commissioner (Appeals) is obliged to dispose of the appeal on merits. In fact, with effect from 1-6-2001 the power of the Commissioner (Appeals) 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 power of the Commissioner (Appeals) 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 Commissioner (Appeals) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from section 251(1)(a) and (b) and Explanation to section 251(2) which requires the Commissioner (Appeals) to apply his mind to all the issues which arise from the impugned order before him whether or not the same had been raised by the appellant before him. Accordingly, the law does not empower the Commissioner (Appeals) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.