

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.150/RPR/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Vijay Kumar Agrawal,
Prop. M/s. V.K Steels,
Darri Road, Korba (C.G.)

PAN : AAYPA1957A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri Y.K Mishra, Advocate
Revenue by :Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 22.07.2022
घोषणा की तारीख / Date of Pronouncement : 23.09.2022

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals), Bilaspur dated 02.04.2018, which in turns arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 20.03.2015 for assessment year 2012-13. Before us the assessee has assailed the impugned order on the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is bad in law because proper opportunity of hearing not provided to the assessee. The CIT(Appeals) has passed order without property service of notice for hearing of appeal.
2. That Ld. CIT(A) erred in law as well as facts while confirming addition of Rs.26,00,000/- u/s.68 on account of unsecured loans, without hearing the part of the assessee.
3. The CIT(A) has erred in law as well as facts while confirming the addition of Rs.36,000/- on account of low withdrawals without providing proper time to the assessee for hearing.
4. That the Assessee craves leave to add, alter and amend modify, substitute delete and /or rescind all or any of the grounds of appeal on or before the final hearing.”

2. Succinctly stated, the assessee who is a trader in GPGC, Iron & Steel items on wholesale and retail basis had e-filed his return of income for the assessment year 2012-13 on 26.09.2012, declaring an income of Rs.5,89,770/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had, inter alia, claimed to have raised unsecured loans from the following five parties during the year under consideration:-

Sr. No.	Name of the party	Amount (in Rs.)
1.	Nidhi Agrawal	7,00,000/-
2.	Pankaj Agrawal (HUF)	10,00,000/-
3.	Pravesh Agrawal	2,00,000/-
4.	Sheetal Agrawal	1,00,000/-
5.	Smt. Rashi Agrawal	6,00,000/-
Total		26,00,000/-

As the assessee failed to substantiate the nature and source of the aforesaid unsecured loans to the satisfaction of the A.O, therefore, he

held the same as unexplained cash credits u/s.68 of the Act. Also, the A.O considering the fact that the household withdrawals of the assessee were on the lower side, thus, he made an addition of Rs. 36,000/- on the said count. Accordingly, the A.O after inter alia making the aforesaid addition vide his order passed u/s.143(3), dated 20.03.2015 determined the income of the assessee at Rs.32,65,110/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success in so far the aforesaid issues were concerned.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. At the very outset of hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that for certain justifiable reasons the assessee had failed to put up an appearance in the course of the proceedings before the CIT(Appeals), Bilaspur, as a result whereof his appeal was disposed off by him by way of an ex-parte order. Elaborating on his aforesaid contention, it was submitted by the various dates on which the

appeal was stated to have been fixed for hearing i.e. 13.07.2016, 19.08.2016, 21.09.2016, 29.11.2016, 29.12.2016 and 23.03.2018, no notice was received by the assessee. It was stated by the Ld. AR that the only notice received by the assessee was the one that was issued on 18.08.2017, as per which the hearing of the appeal was scheduled for 28.08.2017. It was stated by the assessee that he had in compliance to the aforesaid notice filed an application for adjournment. As regards the notice dated 08.09.2016, it was stated by the assessee that as per the same the hearing of appeal was fixed on 21.09.2016 before the CIT(Appeals), Bilaspur, however, it was returned unserved. On the basis of the aforesaid facts, it was stated by the Ld. AR that the appeal of the assessee had been disposed off by the CIT(Appeals) without affording a reasonable opportunity of being heard to the assessee. The aforesaid facts had been substantiated by the assessee by placing on record his "affidavit", dated 22.06.2022. It was, thus, the claim of the Ld. AR that as the assessee had for the aforesaid bonafide reason failed to appear on the various dates on which his appeal was fixed for hearing before the CIT(Appeals).

6.1 Adverting to the merits of the case, the Ld. AR has placed his contentions to impress upon us that the addition of Rs. 26 lacs made by the AO, which thereafter had been sustained by the CIT(Appeals) was uncalled for and could not be sustained. It was further submitted by the Ld. AR that as the assessee had duly substantiated the identity and creditworthiness of the lenders as well as genuineness of the transaction in question, therefore, there was no justification on the part of the A.O in dubbing the same as unexplained cash credits u/s.68 of the Act. As regards the addition towards low household withdrawals of Rs.36,000/- that was made by the AO, it was submitted by the Ld. AR that the same has been made in a whimsical manner without giving any cogent reason. Accordingly, the Ld. AR on the basis of his aforesaid contentions, submitted, that the aforesaid impugned addition sustained by the CIT(Appeals) may be vacated.

7. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

8. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

9. Having given thoughtful consideration to the facts involved in the present case before us, we are of the considered view that there were justifiable reasons for the assessee in not participating in the proceedings before the CIT(Appeals). As had been deposed by the assessee on the basis of an "affidavit", dated 22.06.2022 that as he had not received the notices as regards the fixation of the hearing of the appeal on various dates, viz. 13.07.2016, 19.08.2016, 21.09.2016, 29.11.2016, 29.12.2016 and 23.03.2018, therefore, for the said reason he had failed to participate in the proceedings before the CIT(Appeals). Qua the aforesaid claim of the assessee nothing has been stated by the Ld. Departmental Representative to rebut the same. In fact, as regards the notices fixing the hearing of the appeal before the CIT(Appeals) on 21.09.2016, it is the claim of the assessee that a perusal of the records of the said appellate authority revealed that the same was returned unserved by the postal department. As stated by the assessee in his "affidavit", he was in receipt of only one notice i.e. the one that was dated 18.08.2017 as per which the

hearing of the appeal was fixed for 28.08.2017. Although, it is stated by the assessee that in compliance to the said notice dated 18.08.2017 he had filed an application requesting for an adjournment, but we find that there is no mention of the same in the body of the order passed by the CIT(Appeals).

10. Be that as it may, we are of the considered view that in the backdrop of the aforesaid facts the matter in all fairness requires to be restored to the file of the CIT(Appeals), with a direction to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee. Needless to say, the CIT(Appeals) in the course of the de-novo proceedings shall afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim qua the issue in question on the basis of fresh documentary evidences, if any.

11. As we have restored the matter to the file of the CIT(Appeals) in terms of our aforesaid observations, therefore, we refrain from adverting to and therein adjudicating the merits of the case as had been averred by the Ld. AR before us.

12. Resultantly, the appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd September, 2022

**SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The Pr. CIT-2, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.