

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.276/RPR/2016**

(निर्धारण वर्ष / Assessment Year :2006-2007)

Rajendra Kumar Agrawal, Dist : Janjgir-Champa (C.G.)	Vs	ITO, Ward-2(2), Bilaspur
PAN No. : <b>ACGPA 6942 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Shri G.N.Singh, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	25/07/2022
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	21/09/2022

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

This appeal is filed by the assessee against the order passed by the CIT(A), Bilaspur, dated 18.03.2016 for the assessment year 2006-2007,

2. None appeared on behalf of the assessee even the case was called for hearing and adjourned several times on 09.02.2022, 09.03.2022, 15.03.2022, 07.04.2022, 19.07.2022 in order to extend reasonable opportunity to the assessee. However none appeared on 25.07.2022 also. Therefore, the Bench proceeded to dispose off the appeal after considering the submissions of the Id. Sr. DR and the material evidence available on the record.

3. The assessee has raised the following grounds: -

1. *That under the facts and the law, the proceedings u/s 147 is not according to law, and therefore, the assessment order be annulled.*

2. *That under the facts and the law the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs 2,03,600/- made Id. AO/or so called unrecorded sales of 5090 Quintals of husk.*

*Prayed that addition of Rs 2, 03,600/- be deleted.*

*3. That under the facts and the law the learned CIT(Appeals) further erred in confirming disallowance of Rs. 2,50,000/-, U/S 40(a)(ia) for non-deduction of Tax at Source on rent, rejecting the explanation.*

*Prayed to delete the disallowance.*

4. Brief facts of the case are that the assessee is carrying on the business of custom milling and fertilizer trading. The assessee has filed its return of income on 31.10.2006 declaring total income at Rs. 2,52,280/-. The case of the assessee was selected for scrutiny through CASS and on issuance of statutory notices by the AO, the assessee appeared and the AO completed the assessment proceedings assessing total income of the assessee at Rs.3,42,280/-. Thereafter, the AO issued notice u/s.148 of the Act and completed the assessment assessing the total income of the assessee at Rs.4,53,213/- after having discussed with the representative of the assessee, wherein the AO made addition of Rs.2,03,600/- on account of unrecorded sales of 5090 quintals of husk and Rs.2,50,000/- u/s 40(a)(ia) of the Act for non-deduction of Tax at source on rent.

Against the said order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee. Now, the assessee is in further appeal before the Tribunal.

5. In absence of any representation from the side of assessee, Ld. Sr. DR was advised to appraise the facts of the case and Ld DR as the outset has submitted that the dispute regarding production of Husk and its sell was limited to the rate of husk which was taken at Rs.40/- per quintal by the AO as against Assessee's contention that they have sell it at Rs. 20 per quintal. These facts are explicitly explained by the Ld AO in its order

u/s 143(3)/147 dated 28.01.2003. Further, Ld CIT(A) has also dealt with this issue and observe that the AO has rightly rejected the contention of the assessee to apply a rate of Rs. 20/- per quintal since the assessee was unable to substantiate the same by providing any cogent evidence to that effect. Ld CIT(A) also observed that the AO has taken a rate of Rs. 40/- per quintal based on information he possess about one dealer who had purchased large quantities of husk during the relevant period from various rice mills in and around Billaspur & Raipur. Ld DR after submitting all these facts had requested to dismiss the appeal of the assessee and upheld the orders of the revenue authorities on this ground.

6. We have heard the contentions of the Ld DR and perused the material available on records. Findings of both Ld AO and Ld CIT(A) in the present case are on merits of the facts.

7. Regarding Ground no. 1 since no submission, material or arguments were advanced by the assessee against the order u/s 143(3)/147 of the Act substantiating the assessment was bad in law either before the Ld CIT(A) or before us, this ground of appeal of the assessee is dismissed.

8. Ground No. 2 : Assessee's contention was found to be misplaced since the assessee has changed its stand during the assessment proceedings, first before the AO, the assessee contented that there was no power plant in the near by areas hence no demand of paddy husk, subsequently assessee accepted the qty of husk produced and sold but disputed the rate of sale of husk without any proper basis nor supported

by evidence. Now the assessee has again disputed entire demand including the amount of Rs. 1,01,800/- which was accepted during the assessment proceedings before the AO. In view of such facts, we do not find merit in the contentions of assessee. We approve the findings of the Ld AO, who have made an opinion which was accepted by the Ld CIT(A) based on information available with them. In such circumstances, when no cogent evidence substantiating the contention of the assessee were brought before us, we are of the considered opinion that Ld CIT(A) has taken a just and proper view on the issue, as such we do not have any reason to interfere with the same. Consequently, this ground of appeal of the assessee is dismissed.

9. Apropos, Ground no 3, Ld DR have brought to our attention that the assessee had raised this issue before the CIT(A) also wherein Ld CIT(A) has considered the submissions of the assessee, discussed the provisions of section 40(a)(ia) of the Income Tax Act, various case laws and finally given a finding which is rational and consistent and fortified by various hon'ble upper courts, hence this ground of the assessee is liable to be dismissed and order of the lower authorities deserves to be upheld. Ld CIT(A) in his final finding on this issue has dismissed this ground of the assessee observing as under:-

*“(v) the Ld. AR has submitted that the assessee was under bonafide belief not to make TDS as an excuse. For this the non-obstante clause mandates that the ignorance of the law cannot be termed as an excuse. However, the non obstante clause has taken care of such assesseees who have bonafide belief by inserting the first proviso for unending period for payment of tax subject to the decision at source by the deductor from the amount which is due to the deductee. Hence, the plea is hereby rejected.*

*In view of intendment of the legislature to plug the leakage of revenue and making the TDS provisions enforceable by the deductors and clear language of the provision supported with various rulings and the view of Hon'ble CBDT and in the view of sub-section (i) of Section 190 of I.T. Act, I hold that AO has rightly disallowed the finance charges for failure of deduction of tax at source u/s.194A of I.T. Act and added to the income of the assessee. The ground of appeal raised by the assessee is hereby dismissed and addition made by the AO is confirmed."*

10. We have heard the pleadings of the Ld DR and perused the material available before us. We have observed the Ld CIT(A) has rightly and judiciously decided this issue against the assessee. Since the assessee was unable to provide any decision / information / argument against the finding of the Ld AO confirmed by Ld CIT(A) with a elaborate discussion on the same, we do not see any reason to have any different view on the issue and therefore we decide this ground against the assessee by dismissing the same.

11. In the result, the appeal of assessee is dismissed.

Order pronounced in pursuance to Rule 34(4) of ITAT Rules, 1963 on 21/09/2022.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 21/09/2022

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण,  
रायपुर/ITAT, Raipur