

सआयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.137/RPR/2022

निर्धारण वर्ष / Assessment Year : 2017-18

Manoj Panigrahi,
House No. 380, Power House Road,
Shiv Mandir, Ward-3, Jagdalpur, Dist.
Bastar (C.G.)-494 001
PAN : AJLPP8663L

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Choudhury N. C Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.09.2022

घोषणा की तारीख / Date of Pronouncement : 10.11.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 21.12.2021, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 11.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

"1) That order of CIT(A) is bad-in-law, illegal and void-ab-initio.

2) That CIT(A) has passed order without giving proper opportunity of being heard as per demand of law as hearing notices stated in the appellate order were not sent in mail id "bst.bastar@gmail.com" stated in the Form No. 35 and in spite of request of assessee in Form No. 35 that to serve hearing notice physically no notices were served physically to the assessee during the course of appellate proceeding.

3) On the facts and in the circumstances of the case CIT(A) erred in confirming addition of Rs.5,84,000/- made by the Assessing Officer by invoking provision of section 69A in respect of cash deposited in bank account during demonetization period duly recorded in the books of account maintained by the assessee and duly shown in audited financial statement & ITR filed before the Assessing Officer for verification, because provisions of this section cannot be invoked in case where concerned money is already recorded in the books of account. The assessee prays that the addition of Rs. 5,84,000/- made u/s 69A be deleted.

4) On the facts and in the circumstances of the case CIT(A) erred in confirming addition of Rs.5,84,000/- made by the Assessing Officer only on presumption and surmises by treating cash deposited during demonetization period to the extent of Rs.5,84,000/- in bank account with "IDBI Bank", duly recorded in the books of account maintained by the assessee, as unexplained money u/s.69A and levied tax thereon as per

provisions of section 115BBE(1) of the Act @ 60% without considering written submission, audited financial, statement and other documents furnished before him to explain sources of cash deposited during demonetization period and by ignoring the fact that assessee is assessed to-tax since last so many years and substantial gross receipts from sale of goods was in the form of cash, which was regularly deposited by him in bank accounts in his normal course of business, and without having any evidences to show that assessee had deposited Specified Bank Notes more than cash balance as per day to day cash book as on 08.11.2016 and assessee had received/ collected cash in old currency during demonetization period for business transactions. The assessee prays that the addition of Rs. 5,84,000/- made u/s 69A be deleted.

5) Without prejudice to ground nos.1 to 4, on the facts and in the circumstances of the case CIT(A) erred confirming the action of the Assessing Officer in levying tax u/s. 115BBE(1) @ 60% instead of 30% on alleged unexplained money of Rs.5,84,000/- assessed u/s 69A since assessee had made said transactions prior to 15.12.2016, i.e. the date on which "The Taxation Law (Second Amendment) Bill, 2016" received ascent of the Hon'ble President of India, and amendment made by "The Taxation Law (Second Amendment) Bill, 2016" in section 115BBE(1), to charge tax @ 60% on deemed income instead of earlier rate of 30%, was substantive in nature, hence. either it would apply prospectively to the transactions made on or after 15.12.2016 and not retrospectively to the transactions made during the period from 01.04.2016 to 14.12.2016 or apply from A.Y. 2018/19 onwards. The assessee prays that the income-tax be charged on such transactions @ 30%.

6) The appellant reserves the right to add, amend or alter any ground or grounds of appeal at the time of hearing."

2. Succinctly stated, the assessee had e-filed his return of income for the assessment year 2017-18 on 08.03.2018 declaring an income of Rs.7,02,870/-. Subsequently, the case of the assessee was selected for scrutiny assessment through CASS under limited scrutiny for the reason, viz. "Large cash deposits in the bank account during the year".

3. During the course of the assessment proceeding, it was observed by the A.O that the assessee had made total cash deposits of Rs.25,91,900/- in his bank account with IDBI Bank, out of which an amount of Rs.6,92,500/- was deposited in old SBN. On the basis of information gathered from the bank, it was noticed by the A.O that the assessee had made a cash deposit of Rs.1,08,500/- in old SBN on 10.11.2016, which was considered by him as the sale proceeds received by the assessee from his business. As regards the balance amount of Rs.5,84,000/- [Rs.6,92,500/- (-) Rs.1,08,500/-] deposited in old SBN, the A.O not finding favour with the explanation of the assessee held the said amount as his unexplained income u/s.69A of the Act. On the basis of his aforesaid observation, the A.O vide his order passed u/s.143(3) dated 11.12.2019 after, inter alia, making the aforesaid addition determined the income of the assessee at Rs.12,86,870/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) observing that the assessee despite having been put to notice had neither participated in the appellate proceedings nor placed on record any written submissions, thus, dismissed the appeal for non-prosecution on the part of the assessee.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal. As observed hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issue which did arise from the impugned order and was assailed by the assessee before him. I am unable to persuade myself to accept the manner in which the appeal of the assessee has been disposed off by the CIT(Appeals). In my considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case the Hon'ble jurisdictional High Court had observed as under:

"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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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-s. (2) of s. 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 s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 s. 251(1)(a) and (b) and Explanation to Sec. 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.”

6. I, thus, not being persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. Needless to say the CIT(Appeals) shall afford a reasonable opportunity of being heard to the assessee in the course of the de novo appellate

proceedings. The grounds of appeal raised by the assessee are disposed off in terms of the aforesaid observations.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 10th day of November, 2022.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 10th November, 2022

SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur