

आयकर 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.115/RPR/2019**

**निर्धारण वर्ष / Assessment Year : 2009-10**

Shreyansh Bothra  
H. No.75, Hospital Ward,  
Pachperi Naka,  
Durg (C.G.)-491 001  
PAN : BTDPB2233D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-2(1),  
Bhilai (C.G).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.09.2022

घोषणा की तारीख / Date of Pronouncement : 16.12.2022

**आदेश / ORDER****PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur dated 07.02.2019, which in turn arises from the order passed by the A.O U/ss. 147/144 of the Income-tax Act, 1961 (in short 'the Act') dated 30.12.2016 for the assessment year 2009-10. The assessee has assailed the impugned order on the following grounds of appeal before me:

“1) That learned CIT(A) erred in confirming action of the Assessing Officer in initiating reassessment proceeding only on the basis of statement of "Rajnish Jain", which is not backed by any evidence, as to income earned by the assessee from him, without confronting the assessee with this statement or confirming contents of this statement with independent inquiry prior to issue of notice u/s. 148.

2) That learned CIT(A) erred in confirming the addition of Rs. 2,90,000/- made by the Assessing Officer for alleged income in form of penal amount received on cancellation of dealing of impugned agriculture land with "Shri Rajnish Jain" without properly appreciating the written submission and evidences furnished by the appellant during the course of appellate proceeding and without considering the facts and circumstances of the case properly and judicially

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

2. On the basis of information received by the A.O that the undisclosed income of the assessee chargeable to tax had escaped

assessment, the A.O issued notice to the assessee u/s.148 of the Act dated 31.03.2016. As the assessee failed to file his return of income in compliance to the notice issued u/s.148 dated 31.03.2016, therefore, the A.O was constrained to proceed with and frame best judgment assessment vide his order passed u/ss.147/144 of the Act.

3. Ostensibly, the A.O while framing assessment in the case of the assessee for A.Y. 2008-09 had on 18.03.2016 recorded statement u/s.131 of the Act of Shri Rajnish Jain, a land broker with whom the assessee had entered into an agreement to purchase certain agricultural land situated at Village : Ajmora (admeasuring 2.61 acre) for a consideration of Rs.19.61 lac. It was stated by Shri Rajnish Jain that as the aforesaid sale transaction could not materialize, therefore, the amount of Rs.19.61 lac that was received from the assessee was refunded to him a/w. an amount of Rs.2.90 lac as penalty towards cancellation of the agreement. On being confronted with the aforesaid statement of Shri Rajnish Jain (supra) wherein he had claimed to have paid to the assessee an amount of Rs.2.90 lac over and above the principal amount that was refunded on cancellation of the agreement, the assessee declined of having received any such amount. Observing, that Shri Rajnish Jain had in his return of income for the year under consideration i.e. A.Y.2009-10 claimed expenditure of Rs.2.90 lac (supra) that was stated by him to have

been paid as penalty on account of cancellation of agreement, the A.O rejected the claim of the assessee wherein he had declined of having received any such amount on cancellation of the agreement to sell dated 29.03.2008. Accordingly, the A.O holding a conviction that the assessee was in receipt of undisclosed income of Rs.2.90 lacs, thus brought the same to tax in his hands as income u/s.56 of the Act.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

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

6. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset of hearing of the appeal submitted that the A.O had grossly erred in making an addition of Rs.2.90 lac in the hands of the assessee on the basis of a third party statement which was never confronted to the assessee. It was averred by Ld. AR that the assessee had categorically in the course of the assessment proceedings declined of having received the aforesaid amount of Rs.2.90 lac as was claimed by Shri Rajnish Jain. Our attention was drawn by the Ld. AR to Page 13 of APB, wherein such claim was made by the assessee before the A.O. It was further submitted by the Ld. AR that the assessee had filed before the District Magistrate,

Rajnandgaon a criminal case for fraud qua the transaction in question against Shri Rajnish Jain, Page 16 to 23 of APB. Our attention was drawn by the Ld. AR towards a letter dated 30.06.2009 that was filed by the assessee with the Superintendent of Police, Durg, against the aforementioned person viz. Shri Rajnish Jain. On the basis of the aforesaid facts, it was claim of the Ld. AR that the A.O had grossly erred in relying on the statement of Shri Rajnish Jain (supra) that was recorded at his back. It was the claim of the Ld. AR that now when the assessee was not in good terms with the aforementioned person viz. Shri Rajnish Jain, therefore, it was all the more obligatory on the part of the A.O to have confronted his statement before drawing any adverse inferences in the hands of the assessee by acting upon the same. In support of his aforesaid contention the Ld. AR had relied on the judgment of the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 241 (SC). It was submitted by the Ld. AR that the Hon'ble Apex Court had held that not allowing the assessee to cross-examine a witness by the adjudicating authority would tantamount a serious flaw which would render the impugned order as nullity and void.

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

8. I 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 the Ld. AR to drive home his contentions.

9. I have given a thoughtful consideration to the issue in hand in the backdrop of the contentions advanced by the ld. authorized representatives of both the parties. In my considered view the A.O before using the statement of Shri Rajnish Jain (supra) for drawing adverse inferences in the hands of the assessee ought to have facilitated a cross-examination of the said person so that the true state of affairs would have surfaced. Considering the fact that the assessee was not on good terms with the aforementioned person viz. Shri Rajnish Jain (supra) and had carried the matter before the police authority and Courts, therefore, the contents of the statement of the said person could not have been acted upon by the A.O without facilitating his cross-examination to the assessee. My aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (supra), wherein it has been observed by the Hon'ble Apex Court that where the adjudicating authority does not allow the assessee to cross

-examine the witness whose statement had been made the basis for passing the impugned orders, then the same would tantamount to be a serious flaw which would be in gross violation of the principles of natural justice. Considering the facts involved in the case before me, I am of the considered view that the matter in all fairness requires to be revisited by the A.O who shall re-adjudicate the aforesaid issue after affording a reasonable opportunity to the assessee to cross-examine Shri Rajnish Jain (supra). I, thus, in terms of my aforesaid observations set-aside the order of the CIT(Appeals) and restore the matter to the file of the A.O for re-adjudicating the issue in hand. Thus, the **Grounds of appeal No.(s) 1 & 2** raised by the assessee are allowed for statistical purposes in terms of the aforesaid observations.

10. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

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

Order pronounced in open court on 16<sup>th</sup> day of December, 2022.

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 16<sup>th</sup> December, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-II, Raipur (C.G.)
4. The Pr. CIT-II, 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