

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.104/RPR/2020

निर्धारण वर्ष / Assessment Year : 2015-16

Raipur Securities & Investment Ltd.
MIG 21, Indravati Colony,
Raipur (C.G.)-492 001
PAN : AACCR4419F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(1),
Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.01.2023

घोषणा की तारीख / Date of Pronouncement : 24.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-I, Raipur, dated 04.02.2019, 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 23.10.2017 for assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs.50,11,781/- made by the A.O on account of long term capital gain. Ld. CIT(A) erred in not allowing proper opportunity of hearing. The addition made by the A.O and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating the ground no.2 of appeal raised regarding allowance of indexed cost of acquisition and indexed cost of development resulting into addition of Rs.7,97,401/-. The addition made by the A.O and not adjudicated by CIT(A) is contrary to law and not justified.

3. The appellant reserves the right to add, amend or alter any ground or ground/s of appeal.”

Also the assessee has raised an additional ground of appeal before us, which reads as under:

“The assessment proceedings and the assessment order passed by the A.O are illegal ab initio void inasmuch as no notice u/s.143(2) was issued by the A.O within the time prescribed under the first proviso to Sec.143(2). The assessment order is liable to be quashed.”

2. I shall first deal with the admissibility of the additional ground of appeal that has been raised by the assessee-appellant before me. As the assessee by raising the aforesaid additional ground of appeal has assailed the validity of jurisdiction that was assumed by the A.O on the basis of notice issued u/s.143(2) of the Act dated 16.08.2017 by the ITO-3(1), Raipur, which involves purely a question of law that would require looking no further beyond the facts available on record, therefore, I have no hesitation in admitting the same. My aforesaid view that where an assessee had raised, though for the first time, an additional ground of appeal before the Tribunal, which involves purely a question of law and requires no further verification of facts, then, the same merits admission finds support from the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC).

3. Succinctly stated, the assessee company had e-filed its return of income for A.Y.2015-16 on 24.09.2015, declaring a loss of (-) Rs.75,654/-. The case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act. Subsequently, the assessee was in receipt of notice u/s.143(2) dated 16.08.2017 from the ITO, Ward-3(1), Raipur.

4. During the course of the assessment proceedings, the assessee on being queried about the sale of a property came up with a voluntary disclosure of Long-Term Capital Gain (LTCG) of Rs.42,14,470/-. On being queried as to why the same was not earlier disclosed in its return of income, it was submitted by the assessee, that the same was for the reason that the requisite papers were not available at the time of filing of the return of income.

5. On a perusal of the computation of LTCG of Rs.42,14,470/- (supra), it was observed by the A.O that the same was worked out by the assessee, as under:

Particulars	Amount
Net sale consideration	Rs.2,11,36,662/-
Less indexed cost of purchases	Rs.98,02,095/-
Less indexed cost of development	Rs.71,20,097/-
LTCG	Rs.42,14,470/-

However, the A.O on the basis of purchase/sale documents and other bills/vouchers pertaining to the development expenses reworked out the LTCG at Rs.50,11,871/-. As the assessee had not disclosed the LTCG on the sale of the aforesaid property in its return of income,

therefore, the A.O made an addition of Rs.50,11,871/- to the returned income.

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

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

8. At the very outset of the hearing of the appeal, it was averred by the Ld. Authorized Representative (for short 'AR') for the assessee that the A.O in the present case had traversed beyond his jurisdiction and framed the impugned assessment u/s.143(3) of the Act dated 23.10.2017. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that as the assessee company had filed its return of income for A.Y.2015-16 declaring a loss of Rs.(-) 75,654/-, therefore, the pecuniary jurisdiction over its case as per the CBDT Instruction No.1/2011 dated 31.01.2011 r.w. Instruction No.6 of 2011 dated 08.04.2011 was vested with the ITO-3(1), Raipur, who had framed the assessment vide his order u/s.143(3) of the Act dated 23.10.2017. Coming to his grievance, it was submitted by the Ld. AR that as the jurisdictional A.O i.e. ITO-3(1), Raipur had framed the assessment vide his order u/s.143(3) dated 23.10.2017 without issuing any notice u/s.143(2) of the Act, therefore, the assessment so

framed could not be sustained and was liable to be struck down on the said count itself.

8.1 On being confronted with the fact that as per the assessment order notice u/s.143(2) dated 11.04.2016 was issued to the assessee within the prescribed time, it was submitted by the Ld. AR that as the same was issued by the DCIT-1(1), Raipur i.e. a non-jurisdictional officer, therefore, no cognizance of the same could be drawn. It was submitted by the Ld. AR that as the jurisdictional officer i.e. ITO-3(1), Raipur had only issued notice u/s.143(2) dated 16.08.2017, which, being beyond the prescribed time limit of 6 months from the end of the financial year in which the return of income was furnished by the assessee company, therefore, the same was *non-est* in the eyes of law and no assessment could not have validly been framed on the basis of the same. Also, it was submitted by the Ld. AR that issuance of a valid notice u/s.143(2) of the Act was a *sine-qua-non* for framing of an assessment u/s.143(3) of the Act and the said statutory requirement could by no means be dispensed with. In support of his aforesaid contention the Ld. AR had relied on the judgments of the Hon'ble Supreme Court in the case of ACIT & Anr. Vs. Hotel Blue Moon [2010] 321 ITR 362 (SC) and CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC).

8.2 Also, it was submitted by the Ld. AR that the A.O who had issued notice u/s.143(2) dated 11.04.2016, i.e., DCIT-1(1), Raipur had no territorial jurisdiction over the case of the assessee. Elaborating on his aforesaid contention, it was the claim of the Ld. AR that the jurisdiction over its case was vested with ITO/ACIT/DCIT, Range-3, Raipur. In order to fortify his aforesaid contention the Ld. AR had taken me to the Notification No.1 of 2014/15, dated 15.11.2014 issued by the Jt. Commissioner of Income Tax, Range-2, Raipur, Page 2-3 of APB. My attention was also drawn by the Ld. AR to the territorial jurisdiction that at the relevant point of time was vested with the ITO-3(1), Raipur, which, inter alia, at Sr. No.1(i) referred to the area where the registered office of the assessee company was situated. On the basis of his aforesaid contention, it was the claim of the Ld. AR that the DCIT-1(1), Raipur who had issued notice u/s.143(2) dated 11.04.2016 was neither vested with territorial jurisdiction nor pecuniary jurisdiction in the case of the assessee.

8.3 The Ld. AR in order to buttress his claim that the assessment framed *de-hors* a valid assumption of jurisdiction as provided in the CBDT Instruction No.1 of 2011, dated 31.01.2011 r.w. Instruction No.6 of 2011, dated 08.04.2011 could not be sustained in the eyes of law had relied on the judgment of the Hon'ble High Court of Bombay

in the case of Ashok Devichand Jain Vs. UOI in W.P. No.3489 of 2019 dated 08.03.2022 and that of the Hon'ble High Court of Gujarat in the case of Pankajbhai Jay Sukhlal Shah Vs. ACIT, Circle-2 (2019) 110 taxmann.com 51 (Guj.). Also support was drawn by the Ld. AR from the orders of ITAT, Raipur Bench in the case of M/s. Durga Manikanta Traders Vs. Income Tax Officer, Ward-1(1), ITA No.59/RPR/2019 dated 12.12.2022 and in the case of Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai in ITA No.158/RPR/2017, dated 17.10.2022. In sum and substance, it was the claim of the Ld. AR that as the impugned assessment u/s.143(3) of the Act dated 23.10.2017 was framed *de-hors* issuance of any valid notice u/s.143(2) by the jurisdictional A.O, therefore, the assessment order so passed being devoid and bereft of any force of law was liable to be quashed.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. AR that as the assessment u/s. 143(3) dated 23.10.2017 had been framed on the basis of notice u/s.143(2) dated 11.04.2016, which was issued within the prescribed time limit, therefore, no infirmity did emerge as regards assumption of jurisdiction by the A.O.

10. 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 them to drive home their respective contentions.

11. Ostensibly, a perusal of the order of the CIT(Appeals) reveals that as the assessee had failed to put up an appearance in the course of hearing of the appeal, therefore, the same was disposed off on an ex-parte basis. However, I find that the CIT(Appeals) had disposed off the appeal on the basis of a non-speaking order. I, say so, for the reason that though the assessee had by way of a specific ground of appeal No.2 assailed the reworking of the LTCG on sale of the property by the A.O, but the CIT(Appeals) in spite of dealing with the said issue had disposed off the appeal by merely referring to the facts, and upheld the view taken by the A.O, observing as under:

“The only issue in appeal is non inclusion of capital gain income from sale of land by the appellant in its return of income. As per the appellant company the director of the company did not provide sale documents to the AR for including the same in the return of income. What so ever may be the reason the income has escaped assessment. As per the assessment order the sale consideration of Rs.48.53 acres of land was Rs.2,27,16,000/- and after deducting cost of land, cost of development indexing the same to the A.Y.2015-16 the gain has ben worked out at Rs.50,11,871/-. The same is hereby sustained.”

I am unable to fathom the manner in which the appeal had been disposed off by the CIT(Appeals). On a perusal of the order of the CIT(A), I find that he had summarily dismissed the appeal of the assessee for non-prosecution and had failed to apply his mind to the issues which arose from the impugned order and were assailed by the assessee before him. I am unable to persuade myself to accept the manner in which the appeal of the assessee had been disposed off by the CIT(A). In my considered view once an appeal is preferred before the CIT(A), it is obligatory on his part to dispose off the appeal on merits. I am of a strong conviction that it is not open for the CIT(A) to summarily dismiss appeal on account of non-prosecution of the same by the assessee. Rather a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec. 251(2) 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 the mandate of law the CIT(A) is not vested with any power to summarily dismiss an appeal for non-prosecution. My aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case the Hon'ble 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."

I, thus, not being able to persuade myself to subscribe to the dismissal of the appeal by the CIT(A) for non-prosecution, therefore, "set-aside" the same to his file with a direction to dispose off the same on merits. Needless to say, the CIT(A) shall afford a reasonable opportunity of being heard to the assessee in the course of the de-

novo appellate proceedings. As the assessee by way of an additional ground of appeal has assailed before me the validity of jurisdiction that was assumed by the A.O for framing of the assessment vide his order u/s.143(3) dated 23.10.2017, which, had been admitted by me, therefore, the CIT(Appeals) is directed to also deal with the said grievance of the assessee in the course of the set-aside proceedings. Thus, the **Ground of appeal No.1 a/w. additional ground of appeal** raised by the assessee are allowed for statistical purpose in terms of my aforesaid observations.

12. As I have restored the matter to the file of the CIT(Appeals) for fresh adjudication, therefore, I refrain from dealing with the ground of appeal No.2 raised by the assessee before me, which is on the same terms restored to the file of the first appellate authority. Thus, the **Ground of appeal No.2** raised by the assessee is allowed for statistical purpose in terms of my aforesaid observations.

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

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

Order pronounced in open court on 24th day of January, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 24th January, 2023

*****SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, 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