

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. 260/RPR/2022

निर्धारण वर्ष / Assessment Year : 2016-17

Bajrang Lal Agrawal
Aman Cold Storage,
Bhaiyathan Road, Surajpur
C.G-497 229
PAN : ADYPA3583F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2, Ambikapur (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 10.03.2023

घोषणा की तारीख / Date of Pronouncement : 14.03.2023

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 16.03.2022, 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 26.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming addition/disallowance of Rs.4,22,463/- made by the A.O on account of excess depreciation on alleged bogus purchase invoking section 68, treating it to be unexplained income of appellant. The addition/disallowance made by the A.O and sustained by the Ld. CIT(A) is arbitrary, baseless and not justified.

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

2. At the very outset I find that the present appeal is time barred by 219 days. The Ld. Authorized Representative (for short 'AR') for the assessee took me though an “affidavit” of the assessee explaining the reasons leading to the aforesaid delay. Elaborating on the facts which had resulted to the delay in filing of the appeal, it was submitted by Shri R.B Doshi, Ld. AR that as the assessee's earlier counsel Shri

Vijay Jaiswal who was looking after the case was during the relevant period taken unwell with a cardiac problem, therefore, the present appeal could not be filed within the prescribed time period. The Ld. AR in order to buttress his aforesaid claim had placed on record medical certificates/reports of Shri Vijay Jaiswal (supra) issued by Narayana Institute of Cardiac Sciences dated 26.02.2021 and 22.07.2022. It was submitted by the Ld. AR that the fact Shri Vijay Jaiswal (supra) during the relevant period was taken unwell could safely be gathered on a perusal of the aforesaid reports. It was further submitted by him that Shri Vijay Jaiswal (supra) had finally undergone a cardiac surgery on 22.07.2022. It was, thus, submitted by the Ld. AR that the present appeal which was required to be filed by the assessee latest by 15.05.2022 could not be filed within the stipulated time period for the reason of the ill-health of the assessee's earlier counsel, viz. Shri Vijay Jaiswal (supra). On the basis of the aforesaid facts, it was submitted by the Ld. AR that as the delay in filing of the present appeal had occasioned for bonafide reasons and not on account of lackadaisical conduct or malafide intention on the part of the assessee appellant, therefore, the same in all fairness may be condoned.

2.1 The Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of condonation of delay by the assessee appellant.

2.2. I have given a thoughtful consideration and find substance in the claim of the Ld. AR that the delay in filing of the present appeal had occasioned not on account of any malafide conduct or lackadaisical approach on the part of the assessee but for reasons which were beyond the latter's control. On the basis of the aforesaid facts I am of the view that delay of 219 days involved in filing of the present appeal merits to be condoned.

3. Succinctly stated, the assessee had filed his return of income for A.Y. 2016-17 on 11.09.2016 declaring an income of Rs. 4,29,460/-. Subsequently, the case of the assessee was selected for limited scrutiny for verifying as to whether his claim for deduction of depreciation was admissible.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee had failed to substantiate that his claim of depreciation qua the expenses incurred was valid and wholly and exclusively for the purpose of his business. The A.O holding a conviction that the transactions were sham transactions which were aimed only to bring unaccounted money in the garb of

bogus purchases disallowed the assessee's claim for deduction of depreciation of Rs.4,22,463/- and brought the same to tax as his unexplained income u/s.68 of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded sufficient opportunity had failed to put up an appearance in the course of the appellate proceedings, therefore, his appeal was dismissed by CIT(Appeals) by observing as under:

“Decision: I have gone through the submissions of the appellant in the form of statement of facts along with grounds of appeal. I have gone through the order passed u/s.143(3). During the course of appellate proceedings, the assessee did not furnish any documentary evidence in respect of grounds of appeal filed by the appellant. On perusal of assessment order, I find that the Assessing Officer had given detailed analysis of the facts and circumstances in respect of the appellant leading to addition of Rs.4,22,463/- as unexplained credit u/s.68. Hence, I am in agreement of the assessment order. Accordingly, the grounds of appeal is dismissed.”

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

7. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

8. I have given a thoughtful consideration and is unable to persuade myself to subscribe to the manner in which the CIT(Appeals) had disposed off the appeal, i.e., by way of a non-speaking order. As is discernible from the order of the CIT(A), it transpires that he had merely endorsed the observations of the A.O without giving any cogent reason. Although it is a matter of fact borne from record that that the assessee appellant had failed to put up an appearance in the course of the proceedings before the first appellate authority, but despite that it was obligatory on the part of the CIT(Appeals) to have deliberated upon the issues which were raised by the assessee appellant before him and dispose off the appeal by way of a speaking order. As the Ld. CIT(Appeals) had merely endorsed the observations of the A.O, therefore, in my considered view he had failed to discharge the statutory obligation that was cast upon him as regards disposing off the appeal by a reasoned order. My aforesaid view that a CIT(Appeals) is obligated to dispose off an appeal by way of a speaking order is fortified by the judgment of Hon'ble High Court of Bombay in the case of **CIT Vs. Premkumar Arjundas (HUF) (2017) 297 CTR 614 (Bom)**. 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(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises

from the impugned order before him. 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.”

9. I am, thus, on the basis of my aforesaid deliberations of the considered view that the matter requires to be revisited by the CIT(Appeals). Accordingly the matter is restored to the file of the CIT(Appeals) for fresh adjudication. 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.

10. 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 14th day of March, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 14th March, 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