

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.258/RPR/2022

निर्धारण वर्ष / Assessment Year : 2014-15

Rahul Shukla
C/o. Rakesh Enterprises,
G.E. Road, Kumhari,
Durg-491 001
PAN : DKIPS6951K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Appeal)
NFAC, Delhi

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rahul Jain, Advocate
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.03.2023

घोषणा की तारीख / Date of Pronouncement : 22.03.2023

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 20.09.2022, which in turn arises from the order passed by the A.O under Sec. 144 r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 04.12.2018 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before me:

- "1. That the learned I.T.O. has erred in passing ex-parte assessment order without providing adequate opportunity of responding to notice u/s.142(1), which is bad in law and violation of principles of natural justice and the learned CIT (A) has erred in maintaining the same.
2. That the entire proceedings are ab initio void as notice u/s. 148 has not been served and also barred by limitation.
3. That the learned A.O. has erred in invoking Section 147 of the I.T. Act,1961 for verification of cash deposited in bank, without making any enquiry and the learned CIT(A) has erred in not deciding the ground of appeal.
4. That the learned A.O. has erred in assessing the entire cash deposit of Rs.25,81,600/- as the escaped income of the assessee and the learned CIT(A) has erred in maintaining the same, which is most arbitrary unjustified and bad in law & facts.
5. That the learned CIT(A) has erred in law in not taking cognizance of the case laws relied by the assessee, which is bad in law and the appeal order is not sustainable on that account.

6. That the learned CIT(A) has erred on facts in writing that the assessee has not even informed about the total sales during the relevant year in the written submission filed before the A.O. on 05/12 and before the CIT(A) on 07/09/2022 it is clearly mentioned that Rs.20,95,700/- represent the sale proceeds of wood and Rs.4,85,900/- represents his own capital from past savings.

7. That the learned CIT(A) has erred in stating that the bank statement submitted is in the nature of additional evidence whereas the original assessment has been done ex-parte.

8. That the appellant reserves the right to add, amend or alter the grounds of appeal at the time of hearing.

2. At the very outset I find that the present appeal is time barred by 26 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 Ld. AR that as the assessee was during the relevant period taken medically unwell, 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 copy of medical certificate/report dated 15.11.2022. It was submitted by the Ld. AR that the fact the assessee during the relevant period was taken unwell could safely be gathered on a perusal of the aforesaid report. 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 his control. On the basis of the aforesaid facts I am of the view that delay of 26 days involved in filing of the present appeal merits to be condoned.

3. On the basis of information that the assessee had made cash deposits of Rs.25,81,600/- in his savings bank account but had not filed his return of income for the year under consideration, the A.O reopened his case u/s.147 of the Act. Notice u/s.148 of the Act was issued to the assessee on 11.12.2017. As the assessee failed to comply with the aforesaid notice, therefore, the A.O framed the assessment vide his order passed u/s.144 r.w.s. 147 of the Act dated 04.12.2018, wherein the income of the assessee was determined at Rs.26,06,850/- after making following two additions :

Sr. No.	Particulars	Amount
1.	Addition u/s.69A of the Act of cash deposit made in his	Rs.25,81,600/-

	bank account	
2.	Addition of the bank interest on the savings bank account	Rs.25,252/-

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

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

6. I have heard the Id. authorized representatives of both the parties and perused the orders of the lower authorities as well as considered the material available on record.

7. The assessee has filed an application u/Rule 29 of the Appellate Tribunal Rules, 1962, therein seeking permission to place on record certain additional documentary evidences, viz. copies of ledger accounts of the parties from whom purchases in the course of his business of trading in wood were claimed to have been made during the year under consideration. As the aforesaid documents filed by the assessee will have a strong bearing on adjudicating the issue before us, i.e., maintainability of the assessee's explanation as regards the source of cash deposits in his bank account, therefore, considering the fact that the assessee had no occasion to file the

same in the course of the assessment that was framed u/s.144 r.w.s. 147, dated 04.12.2018, thus, in all fairness admit the same.

8. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that as the impugned assessment had been framed by the A.O without carrying out any service of notice u/s.148 of the Act, therefore, the same cannot be sustained and is liable to be quashed. On a specific query by the Bench as to whether or not the assessee in the course of the assessment proceedings had appeared before the A.O, it was submitted by the Ld. AR that pursuant to a notice issued u/s.142(1) of the Act dated 30.10.2018, the assessee's counsel on 02.12.2018 had appeared before the A.O and sought for time upto 05.12.2008 i.e. two days time for filing of the return of income and submitting the requisite replies/documents. It was averred by the Ld. AR that though the A.O had acceded to his request and allowed time upto 05.12.2018, but thereafter, he had most arbitrarily framed the assessment vide his order passed u/s.144 r.w.s. 147 of the Act dated 04.12.2018. It was the claim of the Ld. AR that as the impugned assessment had been framed by the A.O *de-hors* any service of notice u/s.148 of the Act, therefore, the assessment on the said count itself was liable to be struck down.

9. Apropos the merits of the addition made by the A.O, it was submitted by the Ld. AR that the cash deposits made over the year in the assessee's

savings bank account i.e. S/B account No.10759402034 with State Bank of India, Branch : Kumhari, Dist. Durg were primarily sourced out of the sale proceeds of his business of trading in timber. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the cash deposits in his bank account of Rs.25,81,600/- were comprised of, viz. (i) cash sale proceeds generated from the business of trading in wood: Rs.20,95,700/-; and (ii) balance amount was out of the assessee's past savings : Rs.4,85,900/-. It was submitted by the Ld. AR that a bare perusal of the said bank account revealed that the assessee had from the same account made payments vide cheques/RTGS to various parties for purchase of wood in the normal course of his business. On the basis of his aforesaid contentions as regards the merits of the addition made in the hands of the assessee, it was the claim of the Ld. AR that the same could have only been restricted to the extent of the profit which the assessee would have made from his said business activities.

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

11. As the assessee has assailed the validity of the assessment framed by the A.O vide his order passed u/s.144 r.w.s. 147 dated 04.12.2018, for the reason that the same had been framed in absence of a valid service of notice u/s.148 of the Act, therefore, I shall first deal with the same.

12. As observed by me hereinabove, it is a matter of fact borne from record that the assessee on 02.12.2018 had participated in the assessment proceedings. As per Section 292BB of the Act where the assessee had, inter alia, appeared in any proceedings relating to assessment or reassessment, it shall be deemed that any notice under any provision of this Act which is required to be served upon him had been duly served upon him in accordance with the provisions of the Act and he shall, thereafter, for the said reason be precluded from raising any objection in any proceedings as regards the validity of the service of notice upon him.

13. I, thus, in terms of the aforesaid factual position, i.e., participation of the assessee in the course of the assessment proceedings, is, thus, unable to concur with the claim of the Ld. AR that there was no service of notice u/s.148 of the Act upon the assessee. Accordingly, the claim of the assessee that the A.O had framed the assessment u/s.144 r.w.s. 147, dated 04.12.2018 without any valid service of notice is rejected.

14. Apropos the merits of the addition made by the A.O, it is the claim of the assessee that the cash deposits of Rs.25,81,600/- comprises of two parts, viz. (i) cash sale proceeds generated from the business of trading in wood : Rs.20,95,700/-; and (ii) balance amount out of past savings : Rs.4,85,900/-, I have given a thoughtful consideration and am of the considered view that there is some substance in the claim of the Ld. AR that

the cash deposits in the assessee's bank account were mainly sourced out of the sale proceeds of his business of trading in wood. I, say so, for the reason, that as stated by the Ld. AR, payments aggregating to Rs.17,85,095/- were made through cheques/transfers to various parties towards purchase of wood from the same bank account of the assessee. Also, the complete details of the suppliers/parties from whom the assessee had claimed to have purchased wood during the year under consideration, as had been filed before us, instill some confidence as regards the authenticity of the aforesaid claim. Also, the fact that the assessee who is about 28 years of age would at the relevant point of time have with him some past savings/accumulation of funds, can also not be ruled out.

15. Be that as it may, the authenticity of the aforesaid claim of the assessee that the cash deposits in his bank account were sourced out of the cash sale proceeds generated in the course of his business of trading in wood requires to be verified by the A.O in the backdrop of complete details of the parties/suppliers from whom he had claimed to have made the purchases during the year under consideration, Page 29 of APB. I, thus, in terms of my aforesaid observations set-aside the matter to the file of the A.O who shall re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee.

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

Order pronounced in open court on 22nd day of March, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 22nd 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