

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.205/RPR/2022

निर्धारण वर्ष / Assessment Year : 2015-16

Narbarda Prasad Gupta,  
S/o. Hari Prasad Gupta,  
Vill. Darripara, P.O-Bhaiyathan,  
Surajpur-497 231 (C.G.)  
PAN : AUJPG0494R

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-2, Ambikapur,  
Dist. Sarguja.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.03.2023

घोषणा की तारीख / Date of Pronouncement : 27.03.2023

**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 30.06.2022, which in turn arises from the order passed by the A.O under Sec. 144/147 of the Income-tax Act, 1961 (in short 'the Act') dated 22.11.2019 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before me:

"1) In the facts and circumstances of the case, the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming addition of Rs.5,35,000/- being 50% of addition made by Id. Assessing Officer.

2) In the facts and circumstances of the case Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming 50% addition made by Id. Assessing Officer without considering the fact that impugned amount of cash deposits was from business receipts and income from business was unconditionally accepted u/s.44AD of the Act.

3) The initiation of re-assessment proceedings without fulfilling all necessary conditions is bad in law and on facts.

4) The impugned order is bad in law and on facts.

5) The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice."

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

“In the facts and circumstances of the case and in law, the initiation of proceedings u/s.147 of the Income Tax Act, 1961 is bad in law, illegal and without jurisdiction.”

2. At the very outset I find that the present appeal is time barred by 63 days. The Ld. Authorized Representative (for short 'AR') for the assessee took me through 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 Shri Shankar Lal Agarwal, Ld. Counsel of the assessee was during the relevant period taken medically unwell and had after recovering from his illness reportedly lost track of the matter, therefore, the present appeal could not be filed within the prescribed time period. It is further stated by the assessee that though he had remained under a bonafide impression that his counsel, viz. Shri Shankar Lal Agarwal had filed the appeal within the stipulated time, but it was only thereafter that when he had contacted him that he had learnt about his failure to file the same. 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 any lackadaisical

conduct or malafide intention on the part of the assessee appellant, therefore, the same in all fairness be condoned.

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

4. 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. Although the assessee appellant ought to have been more vigilant about filing of the present appeal within the stipulated time period, but considering the totality of the facts leading to the delay of 63 days in filing of the same, I am of the considered view that the same merits to be condoned.

5. Succinctly stated, the A.O. on the basis of information received by him that the assessee during the year had though made a cash deposit of Rs.10,70,000/- in his savings bank account with State Bank of India, Branch Bhaiyathan but had not filed his return of income, thus, initiated proceedings u/s.147 of the Act. Notice u/s.148 of the Act was issued by the A.O on 28.03.2019. In compliance, the assessee filed his return of income declaring an income of Rs.2,38,220/-.

6. During the course of assessment proceedings, on being queried about the source of the cash deposits of Rs.10.70 lac in his bank account, it was submitted by

the assessee that the same were sourced out of sale proceeds of his business of trading of various food items, wheat, agricultural fertilizers etc. It was submitted by the assessee that he during the year had a turnover of Rs.18,23,140/-, the corresponding income of which was disclosed by him u/s.44AD of the Act i.e. @8% of the amount of gross receipts. It was the claim of the assessee that the amount of Rs.2,78,832/- credited in his bank account was sourced out of the receipts generated in the course of his business transactions. As the assessee had failed to substantiate his claim on the basis of supporting documentary evidence, the A.O held the entire cash deposits of Rs.10.70 lac (supra) as the unexplained income of the assessee and brought the same to tax within the meaning of Section 115BBE of the Act. Accordingly, the A.O vide his order passed u/ss.144/147 of the Act dated 22.11.2019 determined the income of the assessee at Rs.13,08,220/-.

7. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). It was observed by the CIT(Appeals) that the A.O had not made any efforts to demolish the claim of the assessee that he was indeed engaged in small time business of trading of wheat, agricultural fertilizers and other agro-products and had summarily dubbed the cash deposits in his bank account as his unexplained income for the reason that he had failed to substantiate the same on the basis of supporting documentary evidence. At the same time, it was observed by CIT(Appeals) that the assessee had also failed to fortify his claim of being engaged in retail trade. Considering the fact that there were credit entries in the bank account probably indicating some trading/business activity, the CIT(Appeals) was of

the view that there appeared to be some substance in the assessee's claim that he during the year was carrying out business activities. At the same time, the CIT(Appeals) taking cognizance of the fact that the assessee had failed to fully and conclusively establish that the entire cash deposits in his bank account represented turnover of his business, therefore, held 50% of the said amount as the turnover of the assessee company. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations scaled down the addition of Rs.10.70 lac made by the A.O to an amount of Rs.5.35 lac.

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

9. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the validity of the "reasons to believe" recorded by the A.O for initiating proceedings u/s.147 of the Act. My attention was drawn by the Ld. AR to the copy of the "reasons to believe", Page 1 of APB. It was submitted by the Ld. AR that the "reasons to believe" recorded by the A.O dated 18.02.2019 were not as per the standard procedure that was prescribed by the CBDT for recording of satisfaction u/s.147 of the Act vide its internal guideline that was circulated amongst the PCIT, CIT (Central), DGIT (Inv.), CIT-International Taxation and CCIT Exemption. My attention was drawn to the standard procedure laid down by the CBDT vide its internal guideline dated 10.01.2018 (supra), Page 19 to 29 of APB. On the basis of his aforesaid contention, it was submitted by the Ld. AR that as the "reasons to believe" were not in conformity with the aforesaid standard procedure

that was prescribed by the CBDT for recording of satisfaction for initiating proceedings u/s.147 of the Act, therefore, the impugned proceedings initiated on the basis of the same could not be sustained and were liable to be struck down on the said count itself.

10. On merits, it was the claim of the Ld. AR that as the assessee had admittedly during the year generated a turnover of Rs.18,23,140/- from his business of trading in various food items, wheat, agricultural fertilizers etc. and had disclosed his income from the said business as per the deeming provisions of Section 44AD of the Act, i.e, @8% of the amount of the gross turnover, therefore, as per the conditions provided in the aforesaid statutory provision he remained under no obligation to maintain any books of accounts for the said stream of business. Carrying further his aforesaid contention, it was submitted by the Ld. AR that as the cash deposits of Rs.10.70 lac (supra) in his bank account were sourced out of the aforesaid turnover of Rs.18.23 lac, therefore, the A.O was not justified in holding any part of the same as an unexplained income of the assessee. To sum up, it was the claim of the Ld. AR that now when the A.O while framing of the assessment had admitted the turnover of the assessee from his aforesaid small time trading business, therefore, he was not justified in drawing adverse inferences as regards the cash deposits of Rs.10.70 lac which in turn were sourced out of the aforesaid amount of turnover. On the basis of his aforesaid contention it was submitted by the Ld. AR that the impugned addition of Rs.10.70 lac made by the A.O could not be sustained and was liable to be struck down.

11. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee had failed to substantiate his claim that the cash deposits of Rs.10.70 lac were sourced out of his turnover, therefore, the A.O had rightly held the entire amount of Rs.10.70 lac as his unexplained income. Elaborating further, it was submitted by the Ld. DR that the CIT(Appeals) had in all fairness after considering the totality of the facts involved in the case scaled down the addition to 50%, i.e. to Rs.5.35 lac. It was, thus the claim of the Ld. DR that now when the CIT(Appeals) had already allowed substantial relief to the assessee, therefore, the present appeal filed by him being devoid and bereft of any merit was liable to be dismissed.

12. I have heard the Id. 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.

13. As the Ld. AR has assailed the validity of the jurisdiction assumed by the A.O for initiating proceedings u/s.147 of the Act, therefore, I shall first deal with the same.

14. As observed by me hereinabove, it is the claim of the Ld. AR that as the "reasons to believe" recorded by the A.O for initiating proceedings u/s.147 of the Act dated 28.02.2019 are not in conformity with the standard procedure for recording satisfaction u/s.147 of the Act as had been laid down by the CBDT vide its internal guideline dated 10.01.2018, therefore, the very basis for initiating

proceedings in the case of the assessee could not be sustained and was liable to be quashed.

15. I have given a thoughtful consideration and am unable to persuade myself to subscribe to the aforesaid claim of the Ld. AR. I, say so, for the reason that though the CBDT circular or instruction is binding on the department, but the same to my understanding cannot be stretched and applied to an internal guideline issued to the departmental officers. As the aforesaid standard procedure dated 10.01.2018 is only in the nature of an internal guideline for the purpose of streamlining the work of the A.O's, therefore, I am of the considered view that the same can by no means be pressed into service for drawing of adverse inferences as regards the "reasons to believe" recorded by the A.O for initiating proceedings in the hands of the assessee u/s.147 of the Act.

16. At this stage, I may herein observe that it is a settled position of law that the quality of the "reasons to believe" cannot be assailed by an assessee. As the "reasons to believe" recorded by the A.O for initiating proceedings u/s.147 of the Act dated 18.02.2019 clearly reveals a bonafide belief that was arrived at by him on the basis of the material available before him that the income of the assessee chargeable to tax of Rs.10.70 lac had escaped assessment, therefore, the claim of the Ld. AR therein alleging that the "reasons to believe" are not as per the mandate of law do not merit acceptance. Thus, the **additional ground of appeal** and **Ground of appeal No.3** raised by the assessee are dismissed in terms of my aforesaid observations.

17. We shall now deal with the claim of the Ld. AR that both the lower authorities had erred in making/partly sustaining the addition qua the cash deposits made by the assessee in his bank account.

18. As observed by me hereinabove, the assessee had made cash deposits of Rs.10.70 lac in his bank account. As the assessee had failed to substantiate the nature and source of the cash deposits of Rs.10.70 lac (supra), therefore, the A.O had held the aforesaid entire amount of cash deposits as the unexplained income of the assessee for the year under consideration. Although it was the claim of the assessee before the A.O that the aforesaid cash deposits of Rs.10.70 lac were in turn sourced out of his turnover of Rs.18.23 lac (supra) from his small time business of trading in various foods items, wheat, agricultural fertilizers and other agro-products which was disclosed by him in his return of income under the deeming provisions of Section 44AD of the Act, the A.O had declined to accept the same.

19. As observed by me hereinabove, the CIT(Appeals) was of the view that as the A.O had failed to demolish the claim of the assessee that he was engaged in small time trading business, therefore, in the totality of the facts after partly accepting the assessee's claim he had scaled down the addition to 50% of the entire amount of cash deposits i.e. to Rs.5.35 lac.

20. After having given a thoughtful consideration to the facts involved in the present case, I am of the considered view that as observed by the CIT(Appeals) and, rightly so, the A.O had failed to conclusively establish that the assessee was not engaged in any small time business of trading of wheat, agricultural fertilizers

and agro-products. Also, I concur with the CIT(Appeals) that it is a matter of an admitted fact borne from record that the assessee could not substantiate his claim of being engaged in any retail trade by placing on record any clinching evidence. At the same time, I find some substance in the claim of the Ld. AR that now when the A.O while framing the assessment had accepted the assessee's returned income under the deeming provisions of Section 44AD of the Act, i.e. @8% to his trading turnover of Rs.18,23,140/-, therefore, he had impliedly accepted his trade receipts to the said extent. Although, it is the claim of the Ld. AR that the cash deposits of Rs.10.70 lac were sourced out of the aforesaid amount of trading turnover of Rs.18,23,140/-, which at the first blush appears to be convincing, but the same cannot be summarily accepted on the very face of it. On the basis of the aforesaid facts, I am of the considered view that as the aforesaid claim of the Ld. AR that the amount of cash deposits of Rs.10.70 lac (supra) were sourced out of the assessee's trading turnover of Rs.18,23,140/-, the income corresponding to which had been disclosed u/s.44AD of the Act, would require necessary verification, therefore, the matter requires to be revisited by the A.O. I, thus, in terms of my aforesaid observations, restore the matter to the file of the A.O who shall verify the maintainability of the aforesaid claim of the assessee by calling for the supporting documentary evidences, i.e., purchase/sales bills which would substantiate the assessee's claim that the cash deposits in question were sourced out of the turnover of his aforesaid trade. Also, the A.O in the course of the set-aside proceedings would remain at a liberty to carry out any other verifications as he deems fit. In case, the assessee is able to substantiate on the basis of supporting documentary

evidence that the cash deposits of Rs.10.70 lac were, in fact, sourced out of his trading turnover of Rs.18,23,140/- (approx.) for the year under consideration, then, the addition made by the A.O as the unexplained income of the assessee shall stand vacated. Accordingly, I set-aside the order of the CIT(Appeals) and restore the matter to the file of the A.O for fresh adjudication in terms of my aforesaid observations. Thus, the **Grounds of appeal Nos. 1 & 2** are allowed for statistical purposes in terms of my aforesaid observations.

21. **Ground of appeal Nos. 4 & 5** being general in nature are dismissed as not pressed.

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

Order pronounced in open court on 27<sup>th</sup> day of March, 2023

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27<sup>th</sup> 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