

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. 55/RPR/2023

निर्धारण वर्ष / Assessment Year : 2010-11

Late Omprakash Khandelwal (Through
Legal Heir:Smt.Prabha Khandelwal)
B-107, Surya Residency, Opposite M.J. College
Kohka Road, Bhilai(C.G.)-490023
PAN: ANSPK3247N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Aaykar Bhawan, New Civic Centre
Bhilai (C.G.)-490006

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 18.04.2023

घोषणा की तारीख / Date of Pronouncement : 26.05.2023

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 30.03.2022, which in turn arises from the order passed by the A.O. under Sec.143(3) r.w.s 147 of the Income-tax Act, 1961 (in short 'the Act') dated 30.12.2017 for the assessment year 2010-11. 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, the Ld. Commissioner of Income-tax (Appeals), NFAC has erred in upholding the re-assessment proceeding initiated u/s. 147 of the Income-tax Act, 1961.
- 2) In the facts and circumstances of the case the Id. Commissioner of Income-tax (Appeals), NFAC has erred in upholding the assessment order passed u/s. 147 r.w.s. 143(3) of the Income-tax Act, 1961 in so far it was passed contrary to mandatory provisions of Act on the basis of notice issued u/s. 143(2) of the Act without return and in vacuum.
- 3) In the facts and circumstances of the case the Id. Commissioner of Income-tax (Appeals), NFAC has erred in confirming the total turnover at Rs.1,02,80,685/- as against Rs.71,96,553/- as per bank statements and estimating net profit at 8% thereon at Rs.7,70,454/- as against Rs.5,75,724/-.
- 4) In the facts and circumstances of the case the Id. Commissioner of Income-tax (Appeals), NFAC has erred in confirming separate addition of Rs.6,50,000/- as commission income without any basis, which in fact was part of turnover.
- 5) The impugned order is bad in law and on facts.
- 6) The appellant reserves the right to addition, alter or omit all or any of the grounds of appeal in the interest of justice.

2. Ostensibly, on a perusal of the records it transpires that the appeal filed by the assessee is barred by limitation by 268 days. As per the application filed by the legal heir of the assessee (since deceased) the impugned delay had occasioned because the assessee, viz. Shri Omprakash Khandelwal (since deceased), a septuagenarian, during the relevant period was suffering from a cardiovascular disease and thus, due to his serious health issue and old age had failed to keep track of the order that was passed in his case by the CIT(Appeals). It is further stated that after the demise of the assessee, his wife Smt. Prabha Khandelwal had started looking into his ongoing matters. It is stated that Smt. Prabha Khandelwal (supra) had contacted the assessee's tax consultant, i.e Smt. Smita Jaina, chartered accountant, wherein the latter on checking the account of the assessee from the income-tax department, was informed about the appellate order that was passed in his case. It is further stated that Smt. Prabha Khandelwal (supra) had immediately thereafter as advised by her C.A filed the present appeal, which though by the time involved a delay. It was submitted by the ld. A.R that as the delay involved in filing of the present appeal was for bonafide reasons and not on account of any lackadaisical conduct or malafide intention of the assessee/assessee's legal representative, therefore, the same in all fairness be condoned.

3. The Ld. DR did not raise any objection to the seeking of condonation of delay by the assessee appellant. After hearing the parties, I am of the considered view that as the delay involved in filing of the present appeal had occasioned for bonafide reasons and circumstances which were beyond the control of the legal heir of the assessee (since deceased), therefore, the same in all fairness merits to be condoned.

4. On the basis of AIR information that the assessee who had though made cash deposits of Rs. 1,02,80,685/- in his saving bank account, but had not filed his return of income for the year under consideration, i.e A.Y 2010-11, the AO reopened his case u/s. 147 of the Act.

5. During the course of the assessment proceedings, the assessee on being queried about the nature and source of the cash deposits of Rs. 1,02,80,685/- (supra) in his bank account, filed with the A.O a copy of his bank account no. 1654000100212217 with Punjab National Bank. On a perusal of the aforesaid bank account, it was observed that the AO that the assessee was in receipt of commission aggregating to Rs. 6.50 lac from two concerns, viz. (i). M/s Ganesh Steels : Rs. 2.5 lac; and (ii). M/s Classic Steels : Rs. 4 lac. Apart from that, it was observed by the A.O that the assessee as a proprietor of a concern, viz. Trade

links, Bhilai was in receipt of various cheque payments in his bank account. As the assessee had failed to come forth with any plausible explanation as regards the balance cash deposits in his bank accounts, i.e Rs. 96,30,665/- [Rs. 1,02,80,685/- (-) Rs.6,50,000/-], therefore, the AO held it as his undisclosed turnover and worked out the income on the same @8% i.e Rs.7,70,454/-. Accordingly, the A.O vide his order passed under Sec. 147 r.w.s 143(3), dated 30.12.2017 determined the income of the assessee at Rs.18,33,164/-.

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

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

8. I have heard the ld. Authorized Representative (for short "AR") 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.

9. At the very outset of the hearing of the appeal, the ld.AR had assailed the validity of the jurisdiction that was assumed by the AO u/s. 147 of the Act. It was the claim of the ld.AR that the AO had on

the basis of misconceived facts initiated the impugned proceedings u/s. 147 of the Act. Elaborating on his aforesaid contention, it was submitted by the Id. AR that though the AO had initiated the impugned proceedings u/s. 147 of the Act, for the reason that the assessee had made cash deposits of Rs. 1,02,80,685/- in his saving bank account but had not filed his return of income, however, the said observations were factually incorrect. It was submitted by the Id. DR that the total cash deposits in the assessee's bank accounts, viz. (i) SB account No.1654000100212217 with Punjab National Bank; and (ii) Current Bank account No.039902100075336 with Punjab National Bank during the year under consideration aggregated to an amount of Rs.3,36,800/-. Apart from that, it was submitted by the Id.AR that it was a matter of fact discernible from record that the total cash/credit entries in his aforementioned bank accounts aggregated to an amount of Rs.72.32 lakhs. Our attention was drawn by the Id. DR towards a "chart" revealing the deposits in his aforesaid bank accounts. On the basis of the aforesaid facts, it was submitted by the Id. DR that now when the very basis for initiating the impugned proceedings u/s 147 of the Act was found to be factually incorrect, therefore, the jurisdiction assumed and the consequential assessment framed by the AO on the basis of the same could not be sustained and was liable to be quashed on the said count itself. Alternatively, it was submitted by the Id. A.R that

as the A.O had assumed jurisdiction and initiated proceedings u/s 147 of the Act in absence of the mandatory approval of the appropriate authority u/s 151 of the Act at the time of issuance of said notice, therefore, the proceedings were also liable to be vitiated on the said count. Elaborating on his aforesaid contention, it was submitted by the ld. A.R that the A.O had though issued notice u/s 148 of the Act on 31.03.2017, but was in receipt of the approval u/s 151 from the Pr. CIT-2, Raipur only as on 07.04.2017, Page 22 of APB. In sum and substance, it was submitted by the ld. A.R that the A.O had wrongly assumed jurisdiction and issued notice u/s 148 of the Act, dated 31.03.2017 as the mandatory approval of the Pr. CIT-2, Raipur u/s 151 of the Act was received by him only as on 07.04.2017.

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

11. We have given a thoughtful consideration to the aforesaid contentions of the ld. AR, on the basis of which he has assailed the validity of the jurisdiction that was assumed by the AO for initiating proceedings u/s. 147 of the Act. Before proceeding any further, I deem it fit to cull out the “reasons to believe” on the basis of which proceedings u/s 147 of the Act were initiated in the case of the assessee, which reads as under (Page 51 of APB): -

“No return has been filed for AY 2010-11, however as per AIR information, the assessee deposited cash Rs.10280685/- in his saving a/c and which is chargeable to tax. Since, the assessee from his part did not show/disclose the income to the department, I have reason to believe that the income of Rs.10280685/- (deposit in saving bank a/c) is left for assessment for AY 2010-11. Issue notice u/s. 148 for reassessment u/s. 147”.

12. Ostensibly, the proceedings u/s. 147 of the Act had been initiated by the AO, for the reason that though the assessee who had not filed his return of income for A.Y 2010-11, but had made substantial amount of cash deposits of Rs.1,02,80,685/- (supra) in his saving bank account, which were not disclosed to the department.

13. Apropos the claim of the ld. A.R that the observation of the A.O in the “reasons to believe” that the assessee had not filed his return of income for the year under consideration i.e A.Y 2010-11, was factually incorrect, I am unable to concur with the same. Admittedly, the A.O while framing the assessment vide his order passed under Sec. 147 r.w.s 143(3), dated 30.12.2017, had observed that the assessee had originally returned an income of Rs. 4,12,710/-. However, a very careful perusal of the assessment order reveals that the assessee was holding multiple PAN Nos., viz. (i). PAN No. ANSPK3247N (which is stated to have been used by the assessee for filing his income-tax returns upto A.Y 2009-10, and the same was thereafter stated by him to have been surrendered on 26.12.2016; (ii). PAN BNMPK7492N

(which is stated to have been used by the assessee for filing his income-tax returns subsequent to A.Y 2009-10 after surrendering the earlier PAN); and (iii). PAN No. AAWPL6579R (which is mentioned in the body of the assessment order passed by the A.O under Sec. 147 r.w.s 143(3), dated 30.12.2017. It was the claim of the assessee vide his letter dated 14.11.2018 before the A.O, Page 11 of APB that he had manually filed his return of income for A.Y 2011-12 on 07.12.2011 using his PAN No. BNMPK7492N. Also, it was stated by him that his bank transactions in question were duly considered in his return of income that was filed using PAN No. BNMPK7492N. Ostensibly, as the PAN No. ANSPK3247K of the assessee was available in the bank records, and no return of income was filed by him by using the said PAN No., therefore, in my considered view no infirmity arises from the observation of the A.O that the assessee despite having made substantial cash deposits in his bank accounts had not filed his return of income for the year under consideration.

14. Apropos the contention of the Ld. AR, that the A.O in the “reasons to believe” had wrongly observed that the assessee as per AIR information had made cash deposits of Rs. 1,02,80,685/- in his bank account, which is factually incorrect, and thus, the assumption of jurisdiction by the A.O on the basis of such wrong facts cannot be sustained, I am unable to concur with the ld. A.R. I, say so, for the

reason that as the aforesaid belief had been arrived at by the A.O on the basis of AIR information, therefore, it can safely be inferred that there was some material before him to form a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. The aforesaid view is supported by the judgment of the Hon'ble Supreme Court in the case of Raymond Woolen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (SC). The Hon'ble Apex Court in the said case, had observed, that what is required at the stage of reopening of a case under Sec. 147 of the Act, is that there should be some prima facie material before the A.O to arrive at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. It was further observed that the sufficiency or correctness of the material was not a thing to be considered at the stage of reopening of a case. Considering the facts involved in the present case, wherein the A.O had before him AIR information, as per which the assessee had made cash deposits of Rs. 1,02,80,685/- in his bank account, I am of the considered view that the same was sufficient for him to arrive at a *bonafide* belief that the income of the assessee chargeable to tax had escaped assessment. Accordingly, on the basis of my aforesaid observations, I am unable to concur with the ld. A.R that the A.O had wrongly assumed jurisdiction u/s 147 of the Act.

15. Apropos the claim of the ld. A.R that the A.O had wrongly initiated proceedings u/s 147 of the Act without having received the statutory approval u/s 151 of the Act from the Pr. CIT-2, Raipur, I do not find any substance in the same. As is discernible from the records, Page 22 & 51 of APB, the Pr. CIT-2, Raipur had given his approval u/s 151 of the Act on 31.03.2017. Although the said approval was physically received by the A.O, i.e ITO-2(1), Raipur on 07.04.2017, Page 22 of APB, but the same would have no bearing on the validity of the assumption of jurisdiction by the A.O for initiating proceedings u/s 147 of the Act. I, say so, for the reason that Sec. 151 of the Act (as was applicable during the year under consideration) places an embargo on the issuance of notice u/s 148 by the A.O unless the appropriate authority is satisfied, on the reasons recorded by the A.O, that it is a fit case for the issue of such notice. For the sake of clarity, Section 151 as was available during the year under consideration) is culled out as under (relevant extract) :

“151. Sanction for issue of notice:- (1). No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.....”

Thus, what is required under Sec. 151(1) of the Act is that an A.O shall not after expiry of a period of four years from the end of the relevant assessment year, issue any notice u/s 148 of the Act, unless the appropriate authority is satisfied, on the reasons recorded by the A.O, that it is a fit case for issue of such notice. There is no pre-condition as had been canvassed before us by the ld. A.R, that no notice u/s 148 can be issued by the A.O unless the approval of the appropriate authority u/s 151 of the Act is received by him. As observed by me hereinabove, what is required is that the approval of the appropriate authority u/s 151 of the Act should precede the issuance of notice u/s 148 of the Act by the A.O. Neither it is the case of the assessee, nor anything has been placed on our record which would establish that the notice u/s.148 was issued prior to the grant of approval/sanction for issuance of the said notice u/s.151 of the Act by the Pr. CIT-2, Raipur. As in the case of the assessee before me, the A.O had issued notice u/s 148, dated 31.03.2017 after the approval of the Pr. CIT-2, Raipur, dated 31.03.2017, therefore, no infirmity could be related to the assumption of jurisdiction by the A.O us 147 of the Act on the said count. The **Grounds of appeal No.(s) 1 & 2** are dismissed.

16. Adverting to the merits of the case, I find that it is the claim of the ld. A.R that the A.O had wrongly observed that there are cash deposits of Rs. 1,02,80,685/- in the bank accounts of the assessee.

Carrying his contention further, it was submitted by the ld. AR that the total cash deposits in his bank accounts, viz. (i) SB account No.1654000100212217 with Punjab National Bank; and (ii) Current Bank account No.039902100075336 with Punjab National Bank during the year under consideration aggregated to an amount of Rs.3,36,800/- (supra). Apart from that, it was submitted by the ld.AR, that it is a matter of fact discernible from record that the total cash/credit entries in his aforementioned bank accounts aggregated to an amount of Rs.72.32 lakhs. Our attention was drawn by the ld. DR towards a “chart” revealing the deposits in his aforesaid bank accounts. It was, thus, submitted by the ld. AR that the very basis adopted by the A.O for framing the assessment and quantifying his income was factually incorrect. Apart from that, it was submitted by the ld. AR that the A.O had without any basis or justification held the credit entries aggregating to Rs. 6.50 lac in the bank account of the assessee as commission receipts, viz. (i). amount received from M/s Ganesh Steels : Rs. 2.50 lac; and (ii). amount received from M/s Classic Steels : Rs. 4 lac.

17. I have given thoughtful consideration to the averments of the Ld. AR as regards the merits of the additions made by the A.O. Apropos the claim of the Ld. AR that the total cash/credit entries in the bank account of the assessee aggregated to an amount of Rs.72.32

lac(supra) and not Rs.1,02,80,685/- as had been adopted by the A.O for quantifying the income of the assessee, the same is purely a factual aspect that would require requisite verification. Accordingly, I set-aside the matter to the file of the A.O with a direction to verify the gross amounts of deposits in the bank account of the assessee, and rework out his income adopting the same methodology, i.e. @ 8% of the correct figure. Also, I find substance in the claim of the Ld. AR that as certain amounts of cash withdrawals were redeposited in the bank account, therefore, the source of the cash deposits to the said extent, in case if there were made within a short span would stand explained. Apart from that, I concur with the Ld. AR that the A.O had summarily held an amount aggregating to Rs.6.50 Lac (supra) as commission receipts in the hands of the assessee. In my considered view, the A.O. ought to have verified the factual position before summarily characterizing the said receipts as commission income in the hands of the assessee. Accordingly, on the basis of my aforesaid observations, I restore the matter to the file of the A.O with a direction to re-adjudicate the aforesaid issues afresh. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidence. Thus, the **Grounds of appeal No.3 & 4** are allowed for statistical purposes.

18. The **Ground of appeal No. 5 & 6** being general are dismissed as not pressed.

19. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 26th day of May, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 26th May, 2023.

Thirumalesh/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