

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.119/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Sai Kripa Trading Pvt. Ltd.
G-11, Anupam Nagar, Behind
TV Tower, Shankar Nagar Ward,
Raipur (C.G.)-492 001
PAN : AAICS1638P

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.05.2023

घोषणा की तारीख / Date of Pronouncement : 29.05.2023

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 15.02.2023, which in turn arises from the order passed by A.O. under Sec. 144 r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 29.01.2016 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before me:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in sustaining the addition u/s.68 of Rs.10,00,000/- on account of income from undisclosed sources.

2. The assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal."

2. On the basis of information that the assessee as a beneficiary had obtained accommodation entry from one Shri Nitesh Bajoria, an infamous accommodation entry provider, the case of the assessee was reopened by the A.O u/s.147 of the Act. Notice u/s.148 of the Act was issued to the assessee on 30.09.2014. In response, the assessee requested that his return of income filed u/s.139(1) of the Act may be treated as his return filed in response to the notice u/s.148 of the Act.

3. As the assessee despite having been afforded sufficient opportunities had failed to comply with the notice issued by the A.O, therefore, the latter was constrained to proceed with and frame the assessment to the best of his judgment u/s.144 of the Act. Referring to the facts available on record, it was observed by the A.O that the assessee had received a sum of Rs.10 lac from Shri Nitesh Bajoria (supra). It was further observed by the A.O that Shri Nitesh Bajoria in his statement recorded u/s.131 of the Act on 25.07.2014 by the DDIT (Inv.), Unit-IV(2), Kolkata had categorically admitted that he in lieu of commission income was involved in providing accommodation entries through jamakharchi/shell/paper companies to various beneficiaries. Also, it was stated by him that the various paper/shell companies were being maintained from his office: 4, Ganesh Chandra Avenue, 1st Floor, Kolkata-700 013. Apart from that, Shri Nitesh Bajoria in his statement had categorically admitted that one Shri Kailash Barik, a dummy director of the company had signed the papers and documents at his behest. As is discernible from the assessment order, Shri Nitesh Bajoria had specifically mentioned that the assessee is one of the beneficiaries of the accommodation entries. In order to verify the factual position, the A.O though issued summons u/s.131 of the Act on 20.08.2015 to Shri Nitesh Bajoria (supra) but he did not comply the same. Considering the aforesaid facts, and holding a conviction that as the assessee had failed to substantiate the nature and source of the cash credit

in his books of accounts, the A.O vide his order passed u/s.144 r.w.s. 147 of the Act dated 29.01.2016 held the aforesaid amount of Rs.10 lac as the income of the assessee from undisclosed sources.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. On a perusal of the order of the CIT(Appeals), I find that the latter had disposed off the appeal of the assessee for non-prosecution without applying his mind to the issue before him. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

"2. Aggrieved with the assessment order issued by the A.O, the appellant has filed present appeal on 01.03.2016. In the course of appellate proceedings, it is seen that the appellant was issued and served various notices u/s 250 of the Act from this office to present his contentions and any documents supporting them. In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by the appellant, the case was posted for hearing on various dates, the details of which are as under:

Date of notice	Date of compliance	Status
27.12.2020	31.12.2020	No compliance
01.12.2021	10.12.2021	No compliance
23.12.2021	07.01.2022	No compliance
06.12.2023	13.02.2023	No compliance

3. The aforesaid notices remain un-complied with. The National Faceless Appeal Centre (NFAC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but appellant has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal.

3.1 Reference is made to the decision of Hon'ble Supreme Court in the case of CIT vs. BN Bhattacharya (1997) 118 ITR 461 (SC), in which the Hon'ble Apex Court while dealing with the issue of persuasion of appeal has stated that-

"Preferring an appeal means more than formally filing it but effectively pursuing it."

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

6. As observed hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issue which did arise from the impugned order and was assailed by the assessee before him. I am unable to persuade myself to accept the manner in which the appeal of the assessee has been disposed off by the CIT(Appeals). In my considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. 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. As per mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas Luthra (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.”

7. I, thus, not being persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. 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.

8. 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 29th day of May, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 29th May, 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