

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.131/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2013-14**

Rathi Bandhus Nirman Pvt. Ltd.  
Jagdalpur, Baster (C.G.)  
PAN : AAECR9010N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-Jagdalpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Durga Prasad Mohanty, CA  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.05.2023

घोषणा की तारीख / Date of Pronouncement : 30.05.2023

**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 28.02.2023, 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 08.03.2016 for the assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before me:

"1. That the Order of the Hon. Commissioner of Income tax (Appeals) of is bad in law and facts.

2. That the order of the Hon. CIT(Appeals) is arbitrary, under presumption & surmises & is unjustified.

3. On the facts and circumstances of the case and in law the Commissioner of Income tax (Appeals) erred in disallowing a portion of land development expenditure on the so-called ground of absence of supporting documents even as documentary evidences in the form of bills, muster rolls etc. were produced and recorded during the course of in-depth scrutiny.

The Appellant prays that the addition of Rs.5,00,000/-as per the Order of AO and confirmed by CIT(Appeals) be deleted. The Appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of Appeal.

2. Succinctly stated, the assessee company which is engaged in the business of real estate & colonizers, had e-filed its return of income for

A.Y.2013-14 on 07.04.2014 declaring an income of Rs.1,10,890/-. Return of income filed by the assessee was processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of assessment proceedings, it was, inter alia, observed by the A.O that the assessee had sold immovable property worth Rs.73.30 lac on 26.03.2013 and purchased property worth Rs.39 lac on 21.01.2013. On a perusal of the return of income, it was observed by the A.O that the assessee had claimed deduction of an amount of Rs.52,26,504/- towards project expenses; Rs.17,17,970/- as development expenses and Rs.2,95,154/- towards other expenses. On being called upon to substantiate its aforesaid claim for deduction of expenses that were claimed with respect to the sale consideration of immovable property of Rs.73.30 lac, the assessee placed on record a copy of the registered purchase deed dated 28.03.2011. Also, the assessee in order to support its claim for deduction of development charges of Rs.17,17,970/-, furnished copy of its ledger account a/w. supporting vouchers. On a perusal of the vouchers, it was observed by the A.O that almost all the vouchers that were produced before him in support of purchase of murram, sand, gitti, JCB/Tractor payment etc. were self-made. Also, the A.O was not inspired with the half page computer printed vouchers which were produced before him. Elaborating on the

contents of the aforesaid vouchers it was observed by the A.O that the assessee had only referred to item, quantity and the amount of expenditure therein involved but had not mentioned about the name and address, date, signature or seal of the suppliers. Apart from that, it was observed by him that some of the vouchers were unverifiable in nature. It was further observed by him that the assessee had not maintained the labour payment register. It was noticed by him that the assessee in order to support its claim for deduction of labour expenses had maintained labour payment sheets showing the name of the labourer a/w. their thumb impressions for different months. It was further observed by the A.O that the thumb impressions which were shown against the name of some labourers were found to be different in each month. Considering the aforesaid facts, the A.O called upon the assessee to furnish its explanation as regards the aforesaid defects that had surfaced in its record. In reply, it was the claim of the assessee that as the material were purchased from local market, therefore, no bills were submitted by the suppliers.

4. Apropos non preparation of labour payment register, it was observed by the A.O that the assessee had failed to come forth with any explanation. It was also observed by the A.O that the assessee was having two plots of land adjacent to the land sold by it during the year under consideration. Observing, that the assessee had during the year under consideration sold

only 3.77½ acres of land on 26.03.2013, the A.O was of the view that considering the highly pitched amount of development charges of Rs.17.18 lac and Rs.2.95 lacs of other expenses which the assessee had claimed to have incurred, it could safely be inferred that part of the same might have been incurred towards development of the adjacent piece of land. On the basis of his aforesaid deliberations, the A.O on an ad-hoc basis disallowed an amount of Rs.5 lac out of the assessee's claim for deduction of development charges. Accordingly, the A.O vide his order passed u/s.143(3) of the Act dated 08.03.2016 determined the income of the assessee at Rs.6,10,890/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). Ostensibly, the assessee despite sufficient opportunities had failed to participate in the course of proceedings before the CIT(Appeals), details of which are culled out as under:

| Sr. No. | Date of notice issued | Date of compliance | Remarks                        | Notices sent to the mail-ids  |
|---------|-----------------------|--------------------|--------------------------------|---|
| 1.      | 03.01.2021            | 15.01.2021         | No response from the appellant | itereturnjdp@gmail.com<br>Babla-roy@in.com ( as from 35 and as per last return filed) |
| 2.      | 18.12.2021            | 004.01.2022        | No response from the appellant | itereturnjdp@gmail.com<br>Babla-roy@in.com ( as from 35 and as per last return filed) |
| 3.      | 03.01.2023            | 11.01.2023         | No response from the appellant | itereturnjdp@gmail.com<br>Babla-roy@in.com ( as from 35 and as per last return filed) |

|    |            |            |                                |   |
|----|------------|------------|--------------------------------|---|
| 4. | 09.02.2023 | 15.02.2023 | No response from the appellant | itereturnjdp@gmail.com<br>Babla-roy@in.com ( as from 35 and as per last return filed) |
|----|------------|------------|--------------------------------|---|

Considering the fact that the assessee was not interested in pursuing his appeal, the CIT(Appeals) solely on the said basis observed that there was no reason to interfere with the order of the A.O. Accordingly, the CIT(Appeals) dismissed the appeal filed by the assessee.

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

7. As observed by me hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had absolutely 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(A) 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.”

8. On a perusal of the observations of the CIT(Appeals) in the backdrop of the aforesaid settled position of law, I am unable to persuade myself to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution. As is discernible from the order of the CIT(Appeals), he had not uttered a word about the merits of the case and had summarily dismissed the appeal holding a conviction that as the assessee appellant had failed to participate in the proceedings before him, therefore, it could be inferred that it was not interested in pursuing the appeal. I am unable to fathom the approach adopted by the CIT(Appeals) for disposing off the assessee's appeal. Accordingly, I set-aside the order of the CIT(Appeals), and restore the matter to his file for disposing 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.

9. 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 30<sup>th</sup> day of May, 2023.

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 30<sup>th</sup> 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.