

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 Nos.102 & 103/RPR/2023
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13**

Prahlad Kori,
Gali No.6, Behind Taiyyab Masjid,
Bharatiya Nagar, Bilaspur-495 001 (C.G.)
PAN : AYWPK4060C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Bilaspur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Sunil Kumar Agrawal, CA
Prahlad Kori, assessee

Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.05.2023

घोषणा की तारीख / Date of Pronouncement : 26.05.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 14.02.2023, which in turn arises from the orders passed by the A.O. under Sec. 144/147 of the Income-tax Act, 1961 (in short 'the Act') dated 11.12.2018 for the assessment years 2011-12 & 2012-13. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal marked as ITA No.102/RPR/2023 for assessment year 2011-12, wherein 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 Id CIT(A) erred in sustaining the addition of Rs.26,92,000 on the count of unexplained cash deposited into bank.

2. On the facts and in the circumstances of the case, the Id CIT(A) erred in sustaining the addition of Rs.47,270 on the count of Income from interest.

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

3. On the basis of information received by the A.O from NMS-1 data available on ITD system that the assessee had made cash deposits of Rs. 24.25 lac in his savings bank account but had not filed return of income for the year under consideration, the A.O had initiated proceedings u/s.147 of the Act. Notice u/s.148 of the Act dated 17.11.2017 was issued by the AO, which, however, was not complied with by the assessee. Also, as the assessee had during the course of the assessment proceedings failed to comply with the notice(s) issued by the A.O u/s.142(1) of the Act, therefore, the latter was constrained to proceed with and frame the assessment to the best of his judgment u/s.144 of the Act. Observing, that the assessee had made cash deposits of Rs.24.25 lac in his savings bank account No.947210100050241 with Bank of India, Branch : Bharatiya Nagar but had not filed his return of income for the year under consideration, the A.O, in the absence of any explanation forthcoming held the same as an unexplained deposit u/s.69 of the Act. Also, the A.O made an addition of the interest income that had accrued on the aforesaid bank account amounting to Rs.47,270/-. Accordingly, the A.O vide his order passed u/ss.144/147 of the Act dated 11.12.2018 determined the income of the assessee at Rs.27,39,270/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee had failed to put up an appearance before the CIT(Appeals), therefore, the latter disposed off the appeal by way of an ex-

parte order. The CIT(Appeals) had categorically observed that as the assessee had failed to come forth with any explanation as regards the nature and source of the cash deposits in his bank account, therefore, the addition made by the AO was liable to be affirmed.

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, perused the orders of the lower authorities as well as the material available on record.

7. It is the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that the assessee who is a newspaper agent was during the year deriving commission income from various print media/newspaper publishing companies. It was submitted by the Ld. AR that the amount of cash deposits in the assessee's bank account was the collection from his customers which thereafter, was primarily remitted vide demand drafts drawn in favour of various print media/newspaper publishing companies, viz. The Times of India, The Hindu, Hindustan Times, Economic Times etc. In order to buttress his aforesaid claim, the copy of the bank account of the assessee, viz. Saving Bank A/c No. 947210100050241 with Bank of India, Branch: Bharatiya Nagar was placed on record. My attention was drawn by the Ld. AR to the respective cash

deposits in the bank account a/w. drawing of demand drafts in favor of various branches on the same dates over the year.

8. The assessee, viz. Shri Prahlad Kori was personally present in the course of the proceedings before me. On being queried about the nature and source of the cash deposits on various dates, as well as that of the remittances made vide demand drafts that were drawn during the year, he had categorically stated that the cash deposits were the monthly collections from his customers/readers, which were on a month-to-month basis remitted to the print media companies. In sum and substance, it was the claim of the Ld. AR/assessee that the cash deposits were his business receipts which were primarily utilized for making remittances to the various print media/newspaper publishing companies. Also, it was stated by the assessee that the balance cash withdrawals from his bank account were made for making payments to newspaper hawkers/employees and for meeting out his personal household expenses. On being queried as to why the said facts were not brought to the notice of the lower authorities and also, regular books of account not maintained by him, it was candidly admitted by the assessee that he had remained absolutely unaware about the same. It was further submitted by the Ld. AR that although the A.O had separately referred to a cash deposit of Rs.2.67 lac in the body of the assessment order, however, a careful perusal of the order revealed that the reference of the same was made as the said cash

deposit made in a single stance had exceeded the threshold amount of Rs.2 lac. Be that as it may, the total cash deposits in the bank account during the year under consideration aggregated to Rs.24.25 lacs (supra).

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

10. Having given a thoughtful consideration, I find substance in the claim of the Ld. AR/assessee that the cash deposits in his savings bank account No. 947210100050241 with Bank of India, Branch: Bharatiya Nagar during the year were his business receipts generated in the course of his business as that of a newspaper agent. My aforesaid conviction is all the more fortified by the fact that prima facie, the demand drafts drawn in favour of various branches on the very same dates on which cash was deposited, as stated by the Ld. AR/assessee, were towards payments made to the print media/newspaper publishing companies wherefrom newspapers were received. Be that as it may, I am of the considered view that the A.O had lost sight of the fact that the monthly cash deposits in the assessee's bank account were on the same dates remitted by way of demand drafts drawn in favour of various branches. At the same time, I cannot remain oblivion of the fact that in absence of any assistance by the assessee during the course of the assessment proceedings the A.O could not have verified the correct factual position.

11. Considering the aforesaid factual position, I am of a strong conviction that the matter in all fairness requires to be revisited by the A.O. Accordingly, I restore the matter to the file of the A.O with a direction to re-adjudicate the same afresh. Needless to say, the A.O in course of the set-aside proceeding shall 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. In case the claim of the assessee is found to be in order, and he is able to substantiate to the satisfaction of the AO that the cash deposits in his bank account during the year were sourced out of his business receipts as a newspaper agent, then, the AO shall restrict the addition to the extent of the profit garnered by him from his said line of business. Before parting, I may herein observe that the A.O in the course of set-aside proceedings shall remain at a liberty to carry out necessary verifications as he may deem fit. As I have set-aside the matter to the file of the A.O for fresh adjudication after carrying out necessary verification, therefore, merits of the case have not been adverted to by me.

12. In the result, appeal of the assessee in ITA No.102/RPR/2023 for A.Y.2011-12 is allowed for statistical purposes in terms of my aforesaid observations.

ITA No.103/RPR/2023
A.Y.2012-13

13. As the facts and issues involved in the captioned appeal remains the same as were there before me in ITA No.102/RPR/2023 for assessment year 2011-12, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal i.e., ITA No. 103/RPR/2023 for assessment year 2012-13. In this case also, I restore the matter to the file of the A.O with similar directions as were recorded by me while disposing off the appeal in ITA No.102/RPR/2023 for A.Y.2011-12.

14. Resultantly, the appeal filed by the assessee in ITA No.103/RPR/2023 for A.Y.2012-13 is allowed for statistical purposes in terms of my aforesaid observations.

15. In the result, both the appeals of the assessee are 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.

*#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