

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.141/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2017-18**

Kanti Lal Duggad  
35/1008, RMS Colony, Tagore Nagar,  
Raipur (C.G.)-492 001  
PAN : AGAPD7948J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-4(1), Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, CA  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.05.2023

घोषणा की तारीख / Date of Pronouncement : 31.05.2023

**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 23.03.2023, which in turn arises from the order passed by the A.O. under Sec. 143(3) r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 22.09.2021 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before me:

"1. GROUND No. I That the ex-parte Appellate Order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ("the Ld.CIT(A)") is highly unjustified, bad in law, without providing reasonable opportunity of being heard, against the principles of natural justice and not in accordance with the provisions of law. Further, the Ld.CIT(A) has grievously erred in summarily dismissing the appeal by not rendering any decision on merits which is contrary to the law laid down by the Hon'b/e Bombay High Court in the case of CIT v. Prem Kumar Arjundas Luthra (HUE) (2017) 297 CTR 614 (Bom.). It is prayed that the Appellate Order passed under section 250 of the Income Tax Act, 1961 ("the Act") may please be cancelled/set-aside on this ground alone.

2. GROUND No.II That the Re-assessment Order passed under section 147 r.w.s.143(3)/144B of the Act is highly illegal, bad in law, void ab initio, invalid, unsustainable, nullity in the eyes of law and not in accordance with the provisions of the law since, the same has been passed without issuance of mandatory notice under the provisions of section 143(2) of the Act before completion of reassessment proceedings thereby vitiating the entire reassessment order. Hence, it is earnestly prayed that the Reassessment Order may please be quashed and cancelled on this ground alone.

3. GROUND NO. III On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming the addition of Rs.33,00,000/- on account of cash deposits made during the demonetization period treating the same as unexplained income under section 69A of the Act as has been done by the Ld.AO which is highly unjustified, unwarranted, unsustainable, not proper on facts, based on presumptions & surmises, contrary to the principles of natural justice and not in accordance with the provisions of law.

The Ld.AO & the Ld.CIT(A) has failed to appreciate that the cash deposits has immediate & proximate nexus with the cash sales effectuated by the appellant and hence, the source of cash deposits was sufficiently explained during assessment proceedings.

Hence, it is earnestly prayed that the addition of Rs.33,00,000/- confirmed by the Ld.CIT(A) may please be deleted.

4. GROUND NO. IV That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of Appeal at the time of hearing of the appeal.”

2. Succinctly stated, the assessee had filed his return of income for A.Y.2017-18, declaring an income of Rs.5,58,000/-. On the basis of information received by the A.O that the assessee had made cash deposits of Rs.33 lacs during the demonetization period i.e. 09.11.2016 to 30.12.2016 in his bank account No.242600000176 with Bank of Baroda, Branch : Vivekanand Nagar, Raipur, the A.O initiated proceedings u/s.147 of the Act in his case. Notice u/s.148 of the Act dated 04.02.2020 was issued to the assessee, which, however was not complied with by the assessee.

3. During the course of assessment proceedings, the A.O called upon the assessee to put forth an explanation as regards the nature and source of the cash deposits of Rs.33 lac (supra) made in his bank account during

demonetization period. However, the assessee failed to come forth with any explanation as regards the source of the cash deposits in his bank account to the satisfaction of the A.O. Observing, that the assessee had failed to substantiate his claim that the cash deposits in his bank account were sourced out of his cash sales and realization of sundry debtors on the basis supporting documents, viz. complete details of sundry debtors, bills & vouchers of purchase and sale, details of stock, VAT/GST, therefore, the A.O held the amount of Rs.33 lac as assessee's unexplained income u/s.69A of the Act. Accordingly, the A.O vide his order passed u/s.147 r.w.s. 143(3) r.w.s. 144B of the Act, determined the income of the assessee at Rs.38.58 lac dated 22.09.2021.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded several opportunities failed to participate in the proceedings before the CIT(Appeals), therefore, the latter was constrained to dispose off the appeal on an ex-parte basis. On a perusal of the order of the CIT(Appeals), it transpires that the assessee had failed to put up an appearance before the CIT(Appeals) on four occasions, as under:

S. No.	Date of notice of hearing	Hearing Date	Remarks
1.	13.12.2022	20.12.2022	No compliance
2.	21.12.2022	30.12.2022	No compliance
3.	10.01.2023	16.01.2023	No compliance
4.	24.01.2023	30.01.2023	No compliance

Observing, that the assessee had neither participated in the proceedings before him nor submitted any reply, the CIT(Appeals) concluded that the assessee was not interested in pursuing his appeal. Thus, the CIT(Appeals) on the basis of his aforesaid observations dismissed the appeal filed by the assessee. For the sake of clarity the relevant observation of the CIT(Appeals) are culled out as under:

7. अपीलीय कार्रवाई के दौरान अपीलकर्ता ने सिर्फ तथ्यों का विवरण ही प्रस्तुत किया है । उसके पश्चात् न तो उसने किसी नोटिस का जवाब दिया और न ही अपना पक्ष रखने के लिए कोई दस्तावेज सबूत / सूचना प्रस्तुत की । पृष्ठ सं. 1 पर दर्शाई गई तालिका के अनुसार अपीलकर्ता को अपना पक्ष रखने के लिए पर्याप्त एवं समुचित अवसर प्रदान किए गए लेकिन अपीलकर्ता द्वारा कोई भी जवाब नहीं प्रस्तुत किया गया । यह माना जा सकता है कि अपीलकर्ता अपनी अपील के लिए इच्छुक नहीं है । इसलिए अधोहस्ताक्षरी को निर्धारण अधिकारी द्वारा पारित आदेश में हस्तक्षेप करने का कोई कारण नहीं दिखाई देता । इसलिए अपीलकर्ता द्वारा दी गई अपील को खारिज किया जाता है ।

7. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at page no 1. No reply whatsoever has been submitted by the appellant. It can be

safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed."

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

6. Shri Nikhilesh Begani, the Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that there was no justification on the part of the CIT(Appeals) to dispose off the appeal on an ex-parte basis by way of a non-speaking order. Apart from that, it was submitted by the Ld. AR, that as the A.O in the present case had framed the impugned assessment u/s.147 r.w.s. 143(3) r.w.s. 144B dated 22.09.2021, without issuing any notice u/s.143(2) of the Act, therefore, the assessment so framed by him was liable to be struck down on the said count itself.

7. Shri Piyush Tripathi, the Ld. Departmental Representative (for short 'DR') rebutting the contention advanced by the assessee's counsel submitted that as the assessee not filed return of income in compliance to the notice u/s.148 of the Act, therefore, there remained no occasion for the A.O to have issued any notice u/s.143(2) of the Act.

8. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities as well as the material available

on record. Admittedly, it is a matter of fact borne from record that as the assessee had failed to participate in the proceedings before the CIT(Appeals), therefore, the latter was constrained to proceed with and dispose off the appeal on an ex-parte basis. At the same time, I may herein observe that the CIT(Appeals) had failed to deal with the grounds of appeal which were raised by the assessee before him, and had categorically observed that as the assessee had neither put up an appearance before him nor filed any reply, therefore, it could safely be presumed that the assessee was not interested in pursuing his appeal. 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 had 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 an 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 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."

9. I, thus, not being able to persuade myself 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.

10. 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 31<sup>st</sup> day of May, 2023

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 31<sup>st</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