

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.152/RPR/2019**  
(Assessment Year: 2012-2013)

ACIT-4(1), Raipur	Vs	M/s Saini Industries Limited, HIG-10, Taitabandh, G.E.Road, Raipur
<b>PAN No. :AAICS 2395 D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Nikhilesh Begani, CA
राजस्व की ओर से /Revenue by	:	Shri V.K.Singh, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	03/07/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	05/07/2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

The revenue has filed this appeal against the order passed by the Id. CIT(A)-II, Raipur, dated 22.02.2019 for the assessment year 2012-2013, on the following grounds :-

- 1. Whether in law and on facts and circumstances of the case, the Id.CIT(A) has erred in allowing the assessee's appeal on the ground that the assessee could not produce books of accounts while under judicial custody.*
- 2. Whether in law and on facts and circumstances of the case, the Id.CIT(A) has erred in allowing the assessee's appeal though the assessee had never produced his books of accounts or other documents during the period of one year before the arrest of the assessee. Later on after arrest the plea of being arrested and expressed his inability to produce the same before the A.O.*
- 3. Whether on the facts and in the circumstances of the case, the Id.CIT(A) was justified in ignoring the fact that the assessee has been running his business for the past many years and he could have easily produced the said bills, vouchers etc. through his counsel from the dealers, people etc with whom he has been dealing for so many years.*
- 4. Whether in law and on the facts and circumstances of the case, the Id.CIT(A) has ignored the fact that sufficient number of opportunities were provided to the assessee which is evident*

*from the office copies of the various notices issued to the assessee which is placed on record.*

5. *Whether in law and on the facts and circumstances of the case, the Id.CIT(A) was justified in admitting additional evidence u/r 46A of the Income Tax Rules, 1962.*
6. *Whether in law and on the facts and circumstances of the case, the Id.CIT(A) was justified in observing that the assessee was prevented by good and sufficient cause to produce books of account by ignoring the fact that the Director of the assessee company was under judicial custody before passing final order but he was available from date of issue of notice u/s 143(2) of the Act from 06-08-2013 to 15-08-2014, but didn't produce the books of accounts.*
7. *The order of the Id.CIT(A) is erroneous both in law and on facts.*
8. *Any other ground that may be adduced at the time of hearing.*

2. Brief facts of the case are that the assessee is a limited company engaged in the business of manufacturing of Iron & Steel Rolled Products with finished goods as TMT Bars & Rods and Heavy Structural Items and Raw material as Ingots & Billets, doing conversion work for SAIL BSP & others and transportation income etc. The assessee filed its return of income for the assessment year 2012-2013 on 25.09.2012 declaring total loss at Rs.47,60,00,474/-. The case of the assessee was selected for scrutiny under CASS. A notice u/s.143(2) of the Act was issued on 06.08.2013 and served upon the assessee. Further, notice u/s.142(1) of the Act along with questionnaire was issued on 28.07.2014 but neither the assessee nor AR of the assessee attended the proceedings. Subsequently, notice u/s.142(1) of the Act was issued fixing the case for hearing on 05.01.2015 but the same was also remained not responded. Thereafter a summon u/s.131 of the Act was also issued and served on the assessee asking to attend before the AO but again no compliance.

The Id. AO thereafter has proceeded to frame the assessment u/s.144 of the Act, after rejecting the books of accounts of the assessee u/s.145(3) of the Act. During the course of assessment proceedings, a letter was received from Shri Charanjeet Singh Saini, Managing Director of the Company stating therein that he had been arrested by the Police Officers on 14.08.2014 and had been retained in Judicial Custody. His bail application was rejected by the Hon'ble Chhattisgarh High Court vide order dated 12.01.2015. It was also stated that he is a key person, who manages day to day affairs of the company and also that the police seized the documents/papers relating to the company, therefore, no documents/papers were available with him to reply the queries raised in the questionnaire. In absence of books of accounts and response from the assessee, the Id. AO has prepared a comparative chart on the basis of income tax returns filed by the assessee for the relevant period and immediately preceding two years and assessment was culminated u/s.144 of the Act. Ld. AO has observed that that the assessee has shown profit @ 8.7% of the sales in the return if income for the immediately preceding assessment year 2011-2012. The same ratio was applied by the AO for the year under consideration and arrived at a profit of Rs.15,69,99,648/- (8.7% of sales of Rs.180,45,93,658/- shown by the assessee) and treated the same as taxable income of the assessee.

3. Aggrieved with the above findings of the AO, the assessee filed appeal before the Id. CIT(A) and the Id. CIT(A) has disapproved the findings of the Id. AO and has held that the return as shown by the

assessee at Rs.(-) 47.67 crores is accepted and deleted the addition made by the AO in this regard.

4. Now, the department is in appeal before the Tribunal to challenge the decision of the Id. CIT(A).

5. At the outset, Id. CIT-DR, apart from the other grounds, specifically drew our attention to the ground No.5 challenging the admissibility of additional evidence under Rule 46A of IT Rules, 1962, which were wrongly admitted by the Id. CIT(A). Ld. CIT-DR further drew our attention to para 2.3 of the Id. CIT(A)'s order wherein it has been observed that the director of the company was in judicial custody and office premises were sealed in which books of account, invoices vouchers and supporting documents were kept. During the appellate proceedings paper book was filed containing monthly excise return, half yearly service tax return, quarterly VAT return, year Income Tax Return along with Tax Audit report were filed by the AR of the assessee, the same were sent to the AO for a report. The Id. AO has objected accepting the documents filed by the assessee, however, no comment was made on the merits of those documents. Ld. CIT-DR further observed that since the assessee was in judicial custody, he has a reasonable cause for not producing the books of accounts before the Id. AO and, therefore, estimation of income made by the Id. AO on the ground just because books were not produced, is not justified. Ld. CIT(A) further observed that the assessee's books of accounts were audited on 18.05.2005 much before the passing of the assessment order, therefore, the assessee's turnover of Rs.205.51 crores

and net loss of Rs.47.67 crores should be accepted, and the addition made by the Id. AO is to be deleted. Ld. CIT-DR on the observation of the Id. CIT(A) has submitted that the books of accounts and other additional evidences submitted before the Id. CIT(A) were accepted and remand report of the AO objecting to acceptance of such additions evidence was not considered favourably by the Id. CIT(A). The observation that books of accounts are audited, therefore, the same should be accepted in toto, is a mistaken belief of Id. CIT(A). Ld. CIT(A) has accepted the objection of the Id. AO on admissibility of additional evidence but has not given another opportunity to the Id. AO to look into the merits of those documents and simply rejected the contention of the Id. AO. Since no assessment on merits was done in the case of the assessee, the matter should be restored back to the file of Id. AO for de novo assessment of the same.

6. Ld. AR contrary to the submissions made by the Id. CIT-DR above, submitted that since the key person of the assessee was in judicial custody production of books of accounts and other documents or any response was not possible for the assessee, thus, there was a reasonable cause for not producing the requisite details before the Id. AO. Ld. CIT(A) has very reasonably understood the circumstances of the assessee and allowed the additional evidence under entire compliance of rule 46A of IT Rules, 1962 and, therefore, he has very judiciously decided the appeal in favour of the assessee. It is further submitted by the Id. AR that proper opportunity was given to the Id. AO to furnish a remand report and also observation on merits of the documents /evidence additionally submitted

before the Id. CIT(A), however, the AO chose to oppose the admissibility of the evidence instead of examining the same and furnish the comments upon them. In such a circumstance, no second opportunity shall be provided to AO for such an unreasonable approach. It is therefore, the prayer that the order of the Id. CIT(A) deserves to be upheld.

7. We have considered the rival submissions and perused the material available on record. The admitted facts of the case are that the key person of the assessee was in judicial custody during the assessment proceedings and, therefore, it was not possible for the assessee to respond to the questionnaires and queries of the AO. The Id. AO was also under obligation to dispose of the assessment within the stipulated time frame, and, therefore, has rightly made the assessment u/s.144 of the Act. Subsequently, in appeal before the Id. CIT(A), the assessee has produced all the requisite documents, a remand report was also called for from the AO along with substantial documents and evidences but the Id. AO chose to object the acceptance of additional documents and has not commented on the merits of the documents. The Id. CIT(A) has disregarded the objection of the Id. AO and summarily accepted the audited accounts of the assessee without looking into the merits of the case. Since both the revenue authorities have failed to assess the returned income of the assessee on the basis of the documents and information submitted by the assessee, in the interest of natural justice, we are of the considered opinion, in all fairness, the matter in the present appeal needs to be restored back to the file of the Id. AO for de novo

assessment and we do so. Needless to say, the assessee shall be provided reasonable opportunity to furnish the requisite submission and information so as to conclude the assessment as per law. Thus, the appeal of the revenue is allowed statistically on the additional grounds. Since the appeal of the revenue is decided on legal grounds, we are not adjudicating any other grounds raised on merits.

8. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the court on 05/07/2023.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 05/07/2023

*Prakash Kumar Mishra, Sr.P.S(on tour)*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur