

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.195/RPR/2023
(Assessment Years: 2011-2012)

Durga Shankar Chodhery, Main Road Village Chattigirola, Post : Chattigirola, The: Saraipali Chhattisgarh-493558	Vs	ITO, Ward-Mahasamund, Near Trimurti Colony, Raipur Road, Mahasamund (CG)
PAN No. :AGVPG 1837 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri Nikhilesh Begani, CA
राजस्व की ओर से /Revenue by	:	Shri Choudhary N.C.Roy, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	04/07/2023
घोषणा की तारीख/ Date of Pronouncement	:	05/07/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The assessee has filed this appeal against the order passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 15.05.2023 for the assessment year 2011-2012, on the following grounds:-

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'ble Bombay High Court in the case of CIT v. Prem Kumar Arjundas Luthra (HUF) (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.

GROUND NO. II

That the Re-assessment Order passed by the Learned Assessing Officer ("the Ld.AO") under section 147 r.w.s.144 of the Act is highly

illegal, bad in law, void ab initio, invalid, unsustainable, without jurisdiction, nullity in the eyes of law and not in accordance with the provisions of the law since, the reasons recorded by the Ld.AO lacks formation of belief of escapement of income 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.

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.61,53,134/- thereby treating the cash deposits to the extent of Rs.47,00,512/- and credits to the extent of Rs.14,52,622/- appearing in the bank accounts of appellant treating the same as unexplained cash credits under section 68 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.CIT(A) & the Ld.AO failed to appreciate that the appellant is not statutorily required to maintain the Books of Accounts under the Act which is a sine qua non for invocation of deeming fiction engrafted under the provisions of section 68 of Act hence, the additions made as unexplained cash credit is highly illegal, bad in law, unsustainable and not in accordance with the provisions of law. Further, the Ld.AO & the Ld.CIT(A) has failed to appreciate that the cash deposits has immediate & proximate nexus with the cash withdrawals 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.61,53,134/- confirmed by the Ld.CIT(A) may please be deleted.

GROUND NO.IV

On the facts and circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming the addition of Rs.1,31,979/- on account of undisclosed interest income as has been done by the Ld.AO which is highly unjustified, unwarranted, unsustainable, presumptive, not proper on facts and not in accordance with the provisions of law. Hence, it is earnestly prayed that the addition of Rs.1,31,979/- confirmed by the Ld.CIT(A) may please be deleted.

GROUND No. V

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. At the outset, Id.AR of the assessee drew our attention to the application for additional evidences dated 03.07.2023. It was the submission that the assessee is an individual being agriculturist did not have any taxable income apart from agricultural income, hence, he was not liable to file return of income. The case of the assessee was picked up for reopening u/s.148 of the I.T.Act, 1961 and the assessee in response to the same, has filed return of income declaring interest income of Rs.5,990/- and agricultural income of Rs.3,45,870/-. The assessee due to his limited understanding of law could not furnish all the documentary evidences in order to substantiate his return of income particularly the cash deposited in the bank accounts and the credit entries in the said account. The assessment was culminated u/s.147 r.w.s.144 of the Act, ex-parte without affording adequate opportunities to the assessee. Ld. AR also submitted that Section 68 of the Act does not trigger in absence of maintenance of books of accounts, mere simplicitor cash deposit in bank account could not be taxed, since the bank passbooks could not be construed as books of accounts. Further, the Id. AR contended that mere cash deposit in bank account could not constitute undisclosed income or income escaping assessment for the purpose of reassessment u/s.148 of the Act. Another argument of the Id. AR was that no addition u/s.68 of the Act when cash withdrawn was re-deposited, length of delay between cash withdrawal and subsequent re-deposit irrelevant when delay explained with plausible reasons. Ld. AR relied on several case laws to substantiate his arguments raised hereinabove. It was the prayer of the Id. AR that the

assessment and appellate order both shall be quashed being highly illegal, bad in law, void av initio, invalid, unsustainable, without jurisdiction, nullity in the eyes of law and not in accordance with the provisions of the law.

3. In reply, Id Sr DR submitted that proper opportunities were allowed as is evident from the impugned orders, but the assessee was persistent non-compliant before both the revenue authorities, also the assessee who was not appeared for prosecution before the Id. CIT(A) and the case of the assessee was decided ex-parte, therefore, it was submitted that the order passed by the CIT(A) deserves to be upheld or the matter should be restored back to the file of Id. CIT(A) for readjudication on merits.

4. We have considered the rival submissions and perused the material available on record. On perusal of the impugned order, it is found that the Id.CIT(A) has dismissed the appeal of the assessee on the ground of non-appearance, non-filing of any written submissions or any documents to substantiate the claim of the assessee. Since the grounds raised before us are also assailed before the Id. CIT(A), however, because of non-appearance or non-compliance by the assessee, the adjudication in this case was done on ex-parte basis. The grounds raised by the assessee were not adjudicated by the Id. CIT(A). It is also a fact that the assessee has submitted additional evidences before us which were never available before the revenue authorities, in backdrop of such facts, without adjudicating the individual grounds of the present appeal, we are of the considered view that the matter in all its fairness for the substantial justice,

should be remanded back to the file of Id. CIT(A) for adjudication afresh. Needless to say, proper opportunity of being heard shall be provided to the assessee, the assessee is also directed to cooperate the appellate proceedings before Id. CIT(A) without any further excuses. Consequently, the appeal is set aside and restored to the file of the Id CIT(A) for fresh adjudication on merits.

5. In the result, appeal of the assessee 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