

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. 117/RPR/2023

निर्धारण वर्ष / Assessment Year : 2009-10

Dayaram Agrawal
H-1, Rajiv Nagar, Near Shiv Mandir,
Raipur (C.G.)
PAN : ACGPA8622C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, CA
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.07.2023

घोषणा की तारीख / Date of Pronouncement : 11.07.2023

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 20.02.2023, which in turn arises from the order passed by the A.O. under Sec. 147 r.w.s. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 27.12.2016 for the assessment year 2009-10. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in circumstances of the case, the Learned CIT(A) had erred in passing order without calling for the documents submitted with the A.O in the re-assessment proceeding. Therefore, order passed without verifying the documents available with the department is unjustified, unwarranted and uncalled for.

2. On the facts and in the circumstances of the case, the Ld. AO has erred in making addition of Rs.29,76,000/- being unexplained investment u/s. 69 by treating the assessee as beneficiary. The addition made by the A.O and treating the assessee as beneficiary is unjustified, unwarranted and uncalled for.

3. The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. Succinctly stated, the case of the assessee was reopened vide notice issued u/s.148 of the Act dated 31.03.2016, allegedly for the reason that an amount of cash of Rs.29.76 lacs was deposited in his

benami account i.e. in the name of Dinesh Kumar Jain A/c. No.01522000016673 with HDFC Bank, Devendra Nagar, Raipur.

3. Assessment was, thereafter, framed by the A.O vide his order passed u/s.147 r.w.s. 143(3) of the Act dated 27.12.2016, wherein after making an addition of Rs.29.76 lacs the income of the assessee was determined at Rs.32,62,270/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

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 ld. Authorized Representatives of both the parties, perused the orders of the lower authorities as well as the material available on record.

7. On a perusal of the order of the CIT(Appeals), it transpires that he had dismissed the appeal of the assessee for non-prosecution by observing as under:

“2. Aggrieved with the order issued by the A.O, the appellant had filed present appeal on 12.01.2017. In the course of appellate proceedings, it is seen that the appellant was issued and served various notices u/s 250 of the Act from this office to present his contentions and any supporting documents. The said notices were issued right from 2020 through till 2022 and all of them remain un-complied with. The appellant vide his submission dt.03.10.2022 has requested for adjournment

for 15 days but after that despite issuing another notice u/s. 250 of the Act whereby the date of hearing was accorded to the appellant for 28.10.2022 no reply was received. Further, the National Faceless Appeal Centre (NFAC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail.

3. In view of the above, it is clear that the appellant is not interested in prosecuting the present appeal because there has been no response as yet. In view of the above, the appeal stands dismissed. Thus, the appeal filed by the appellant stands dismissed.”

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 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 (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. I, thus, not being persuaded 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.

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 11th day of July, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 11th July, 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