

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.120/RPR/2022
निर्धारण वर्ष / Assessment Year : 2013-14

Santosh Kumar Gupta
Kharsiya Road, Ambikapur,
Sanguja (C.G.)
PAN : AGJPG1262H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Smt. Ila M. Parmar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 10.07.2023
घोषणा की तारीख / Date of Pronouncement : 14.07.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT') u/s.263 of the Income-tax Act, 1961 (for short 'Act') dated 18.03.2021, which in turn arises from the order passed by the A.O. u/ss.143(3)/147 of the Act, dated 08.12.2018 for A.Y. 2013-14.

2. At the very outset of hearing of the appeal, we may herein observe that the present appeal involves a delay of 400 days. On being confronted with the aforesaid fact the Ld. Authorized Representative (for short 'AR') for the assessee took us through a letter dated 16.06.2023. Elaborating on the reasons leading to the aforesaid delay, it was submitted by the Ld. AR that delay of 379 days (out of 400 days) pertained to the period which was covered by the order of the Hon'ble Apex Court in Suo Moto Writ Petition (Civil) No.3 of 2020 dated 23.03.2020, which thereafter was modified vide further order(s) dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022. As regards the delay of balance period of 21 days, it was submitted by the Ld. AR that the same was on account of lapse of his earlier counsel who at the relevant point of time due to certain health issues had failed to advise the assessee for assailing the order passed by the Pr. CIT u/s.263 of the Act before the Tribunal. Elaborating on his

aforesaid contention, it was submitted by the Ld. AR that the assessee's earlier counsel, viz. Shri Vijay Jaiswal had suffered certain cardiac problems in February, 2021 onwards and had, thereafter, undergone a heart surgery in the month of July, 2022, due to which he could not properly attend to his professional work. Carrying his contention further, it was submitted by the Ld. AR that due to his failing health the assessee's earlier counsel had failed to advise the assessee to assail the order passed by the Pr. CIT u/s.263 of the Act before the Tribunal. Our attention was drawn by the Ld. AR to the affidavit dated 20.06.2023 of the assessee wherein the facts leading to the aforesaid delay were deposed by him. On the basis of the aforesaid facts, it was submitted by the Ld. AR that as the delay involved in filing of the present appeal was for bonafide reasons which did not smack of any malafide intention or lackadaisical approach of the assessee, therefore, the same in all fairness be condoned.

3. Per contra, the Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of condonation of delay involved in filing of the present appeal by the assessee.

4. Having given a thoughtful consideration to the reasons leading to the effective delay of 21 days involved in filing of the present appeal, we are of the considered view that as the same had occasioned on account of

bonafide reasons which by no means could be attributed to any intentional lapse of the assessee, therefore, the same merits to be condoned.

5. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the order passed by the Pr. CIT u/s.263 of the Act, wherein he had set-aside the order passed by the A.O, for the reason that he while framing the assessment had without carrying out necessary enquiries summarily accepted the assessee's claim as regards the source of cash deposit of Rs.33,59,375/- made in his savings bank account during the year.

6. Admittedly, it is a matter of fact borne from record that the case of the assessee was reopened u/s.147 of the Act, for the reason that though he had for the year made cash deposits of Rs.33,59,375/- in his bank account with State Bank of India, Branch: Ambikapur but had not filed his return of income for the said year.

7. Ostensibly, the assessee in the course of assessment proceedings, vide his reply dated Nil filed with the A.O, Page 11 of APB, had, inter alia, submitted that cash deposits in his bank account were sourced out of his business of trading of vegetables during the year. It was stated by him that income from his aforesaid business was disclosed by him in his return of income on a presumptive basis u/s.44AD of the Act. As the aforesaid explanation of the assessee found favour with the A.O, therefore, he vide

his order passed u/s.143(3) r.w.s.147 of the Act dated 08.12.2018 assessed his income at Rs.2,42,890/-, i.e. as returned.

8. The Pr. CIT observed that though the A.O in his assessment order had held that the assessee on being queried about the cash deposits in his savings bank account had stated that the same were sourced out of his sale proceeds of his business of trading in vegetables, however, the said fact was not borne out from the record. The Pr. CIT observed that as the assessee had neither before the A.O nor in the course of the proceedings before him furnished any satisfactory explanation a/w. documentary evidence as regards the nature and source of cash deposits in his bank account, thus, the failure of the A.O to carry out necessary verifications with respect to cash deposits under consideration had rendered his order erroneous in so far it was prejudicial to the interest of the revenue as per "Explanation-2" to Section 263 of the Act. Accordingly, the Pr. CIT set-aside the order passed by the A.O u/ss.143(3)/147 of the Act, dated 08.12.2018 with a direction to him to frame a fresh assessment after conducting necessary enquiries and affording adequate opportunity to the assessee.

9. Aggrieved, the assessee has assailed the order passed by the Pr. CIT u/s.263 of the Act dated 18.03.2021 in appeal before us.

10. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. On a perusal of the records it transpires that the assessee on being queried about the source of cash deposits of Rs.33.59 lacs (approx.) in his savings bank account, vide his letter dated Nil, Page 11 of APB had claimed that the same were sourced out of the sale proceeds garnered from his business of purchase and sale of vegetables during the year. We find on a perusal of the return of income of the assessee that he had disclosed a turnover of Rs.28,23,762/- from his business of trading in vegetables and had offered income from his said stream of business under the deeming provisions of Section 44AD of the Act. At the very outset, we are unable to comprehend that now when the gross receipts/turnover of the assessee from his business of trading of vegetables aggregated to Rs.28.23 lacs (approx.) then how the same would have sourced the cash deposits of Rs.33.59 lacs (supra) in his savings bank account during the year. Incomprehensible facet of the aforesaid explanation of the assessee in itself supports the observation of the Pr. CIT that the A.O had without carrying out any verification summarily accepted the claim of the assessee as regards the source out of which cash deposits were made by him in his bank account.

12. Apart from that, neither the assessment order reveals that any verifications were carried out by the A.O as regards the claim of the assessee that the cash deposits in question were sourced out of his business of trading in vegetables; nor any material have been placed before us by the Ld. AR which would reveal that the A.O in the course of assessment proceedings had only after carrying out necessary verifications accepted his claim.

13. Considering the fact that the A.O had framed the assessment vide his order passed u/s.143(3) r.w.s. 147 of the Act, dated 08.12.2018 without carrying out any verification with respect to the very issue on the basis of which the case of the assessee was reopened u/s.147 of the Act, therefore, finding no infirmity in the view taken by the Pr. CIT who had rightly set-aside his order with a direction to the A.O to reframe the same after carrying out necessary verifications, we uphold the same.

14. In the result, appeal of the assessee being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 14th day of July, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 14th July, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.