

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.197/RPR/2022

(निर्धारण वर्ष / Assessment Year: 2018-19)

Income Tax Officer, Ward-Mahasamund, Chhattisgarh	Vs	Smt. Nirmala Devi Shrishrimal, 31, M.B. Building, Gandhi Chowk, Mahasamund, Chhattisgarh
PAN No. : AJGPS 0562 G		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
------------------------	----	---------------------------

निर्धारित की ओर से /Assessee by	:	Sh. Amit M. Jain, Advocate
राजस्व की ओर से /Revenue by	:	Sh. Simran Bhullar, CIT(DR)
सुनवाई की तारीख / Date of Hearing	:	18.07.2023
घोषणा की तारीख/ Date of Pronouncement	:	31.07.2023

आदेश / ORDER

Per Arun Khodpia, AM :

The present appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals) – National Faceless Appeals Centre (NFAC), Delhi, dated 29.08.2023 for the assessment year 2018-19. The revenue has raised the following grounds of appeal:-

1. *On the facts and the circumstances of the case whether the Id. CIT(A), NFAC was justified in deleting the addition of Rs.3,12,98,657/- u/s 68 of the I.T. Act, 1961 without calling for Remand Report from the AO on the issue of unexplained increase in capital u/s 68 of the Act.*

2. *Any other grounds that may be adduced at the time of hearing.*

2. The brief facts of the case are that the appellant assessee is an individual has filed her return of income for the assessment year 2018-19 on 30th March, 2019, showing a total income of Rs.7,03,830/-. The case of assessee was selected for limited scrutiny assessment under E-Assessment Scheme, 2019 on the issue of share capital/other capital.

Notice under section 143(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was issued and duly served upon the assessee. The learned AO has requested the assessee to substantiate the reasons and source of increase in capital by issuing several notices from time to time. However, no reply was furnished by the assessee. Therefore, the income of the assessee was determined and assessed under section 144 read with section 143(3A) & 143(3B) of the Act by the AO. Learned AO has made certain calculations regarding the increase in the share capital of the assessee and after making such calculations learned AO arrived at a conclusion that a sum of Rs.3,12,98,657/- was unexplained cash credit withing the meaning of section 68 of the Act and, therefore, he has made the said addition.

3. Dissatisfied with the conclusion of learned AO, the assessee carried the issue before learned CIT(A) by filing an appeal under section 250 of the Act, wherein, learned CIT(A) had examined the facts by verifying the relevant Income Tax Returns of the assessee for the assessment years 2017-18 and 2018-19. Learned CIT(A) observed that the opening capital balance as on 1st April, 2017 (closing capital as on 31st March, 2017) was noted by leaned AO at Rs.3,51,75,236/- and accordingly has worked out the closing capital balance as on 31st March, 2018 at Rs. 6,95,70,060/-. On going through the Income Tax Returns of the assessee, which were submitted by the assessee before the learned CIT(A), and figures of the opening and closing capital were demonstrated by the assessee before the learned CIT(A). The assessee has also emphasized that the AO has

mistakenly taken the closing balance as on 31st March, 2017 at Rs.3,51,75,236/-, which was the balance of capital as on 31st March, 2016. Since, the learned AO has mistakenly worked out unexplained capital to the extent of Rs.3,12,98,657/- due to incorrect opening capital balance as on 1st April, 2017 taken by the AO, learned CIT(A), based on Income Tax Returns of the assessee, has disapproved the AO's point of view on capital balance as on 1st April, 2017. It was also observed by learned CIT(A) that, even though, the order passed by the AO is under section 144 of the Act due to no reply to the queries of the AO by the assessee, he do not find any reason to remand the matter back to the AO as no new evidence were filed and Income Tax Returns uploaded in the appellate proceedings were very well accessible by the AO. Even, the AO worked out the difference in capital balance from the details in the Income Tax Returns itself but have committed mistake in taking figures correctly. With such observations, learned CIT(A) – NFAC had deleted the addition made by learned AO based on incorrect interpretation of the facts. Since, the addition was deleted by learned CIT(A), the Revenue has now carried this matter before us for adjudication.

4. At the outset, learned DR has reiterated the facts of the case from the orders of learned AO and learned CIT(A). It was the submissions of learned CIT-DR that the assessee was non-compliant before the AO, details as requested by the AO and the explanation, which were called for, were not submitted by the assessee. Therefore, learned AO has no option but to examine the information and materials available on record.

Accordingly, learned AO has made necessary calculations and has added the difference in closing capital of the assessee as compared to closing capital as calculated and arrived at by the AO. Learned CIT-DR further drew our attention to the operating paragraph of the order of CIT(A) – NFAC and has argued that if there are some mistakes in the working of learned AO, which were never pointed out or explained by the assessee during the assessment proceedings, learned CIT(A) – NFAC was dutybound to confront such mistakes with the Assessing Officer so as to provide a fair opportunity to explain the method of working by the Assessing Officer and, in case, there was some actual mistakes apparent from record, a remand report from the AO accepting such mistake was to be called for. Since, learned CIT(A) has not adopted the settled method of admitting evidence and examining the same with giving a proper opportunity to the AO by calling a remand report pertaining to unexplained increase in the capital under section 68 of the Act, the order of learned CIT(A) is perverse to that extent and unjustified and was culminated with an erroneous application of the law. It is, therefore, the prayer of CIT-DR that such an error, mistake, wrong finding of the learned CIT(A) deserves to be reversed and the order of learned AO needs to be sustained.

5. Contrary to the submissions of learned CIT-DR, learned AR of the assessee submitted that as per the Income Tax Returns of the assessee for the AY 2017-18 filed with the department on 30th March, 2019 vide acknowledgement no. 597009520310318, a copy of which was available at page no. 6-48 of the paper-book of the assessee, at relevant page no.

7 and 8, our attention was drawn by the learned AR and shown that opening balance of proprietors capital as on 01.04.2016 was Rs.3,51,75,236/-, which was added with the profit for the current year under the head "another reserve" to the tune of Rs.3,25,59,263/-, which became Rs. 6,77,34,499/- at the end of the financial year 2016-17 as on 31st March, 2017. Learned AR further drew our attention to page no. 49 of the paper-book containing statement of income of the assessee for the assessment year 2017-18, wherein, profit before tax as per P & L Account was shown of Rs.3,25,59,263/-, substantiating the fact that the profit for the current year, i.e., 2016-17 (AY 2017-18) was the same as shown in the Income Tax Return. After showing these figures, it was the assertion by learned AR that the assessee has rightly mentioned all the figures in her Income Tax Return. However, learned AO has mistakenly taken the figure of opening proprietors capital (as on 01.04.2016) when the figures of closing proprietors capital (as on 31.03.2017) was to be taken, which is consequently, was the opening balance of proprietors capital as on 01.04.2017. It was the submissions of learned AR that since the assessee appellant has rightly shown all the figures in her Income Tax Return, based on which, due to picking up of and input of wrong information, learned AO has carried out an incorrect calculation in the assessment order and has landed with an assumption to make an addition in the hands of the assessee. Since, the mistake was apparent from records, the assessee has opted to file an application for rectification under section 154 of the Act, which was submitted to the Department on 11th April,

2022, a copy of the same has been furnished for our perusal. Learned AR further submitted that the application of the assessee for rectification under section 154 of the Act was never disposed of by the Department, thus, the same is still pending with the Department. As an alternate remedy, the assessee has filed an appeal before the CIT(A), the same was disposed of in favour of the assessee. According to Ld AR, while disposing off the appeal of the assessee, since, the mistake was obvious and apparent from records, learned CIT(A) had not found it necessary to call a remand report from the AO, which is observed by the learned CIT(A) in his order in the last and finding paragraph. Learned AR of the assessee requested that, since, the mistake was on the part of the Ld. AO, also the same was apparent from record, the learned CIT(A) has recognised the same and decided the issue legitimately. It was, therefore, the submissions of learned AR that the reasoned and speaking order of learned CIT(A) deserves to be sustained. It was also the submission of learned AR that, since, the mistake was on the part of learned AO and the same is apparent from the record, which the AR has duly demonstrated, therefore, the appeal of the Revenue is baseless and needs to be dismissed in limine, restoring the matter back would be tantamount to allowing a second inning to the Ld. AO.

6. We have heard the rival contentions and perused the materials available on record and orders of the Revenue authorities. Apparently as demonstrated by learned AR, the figures of the proprietors' capital were wrongly understood by the learned AO and, therefore, the addition made

was not justifiable. However, since, the assessee was a non-compliant before the learned AO, the requisite details were explained before the learned CIT(A), wherein, learned CIT(A) has not considered this to be necessary by observing that he do not find any reasons to remand the matter to the AO as no new evidence were filed and the Income Tax Returns uploaded in the appellate proceedings were very well accessible by the AO. Since, an issue which the learned AO has examined based on the information available with him, who had offered reasonable opportunity of being heard to the assessee, but the assessee has chosen not to respond the same, it was the responsibility on the learned CIT(A) that before deciding anything contrary to the decision of the learned AO, specifically pertaining to certain issue which was dealt differently by the Ld AO, the same should have been confronted with the learned AO. But learned CIT(A) has decided not to call any remand report from the AO. Such conduct of the learned CIT(A) was not justified and is against the principle of natural justice. In such a scenario, we are of the considered opinion that the order of the learned CIT(A) was not according to settled principle of law, therefore, deserves to be set aside, and we do so. However, since, the information, as demonstrated by learned AR are prima facie inspiring our confidence that the same are wrongly pulled by learned AO from the records available while computing the taxable income at the time of framing the assessment, but in the interest of justice, we find it appropriate to restore the matter back to the AO for verification of veracity of evidence and facts by adjudicating the issue

afresh. Needless to say, that reasonable opportunity of being heard and to submit necessary information and corroborative evidence to substantiate the claim by the assessee be granted. Assessee is directed to make compliance as and when necessitate by the Ld AO while deciding the issue, failing which the Ld AO will be at liberty to decide the issue in accordance with law. The issue raised in the present appeal is thus disposed off accordingly.

7. In the result, appeal of the Revenue is partly allowed for statistical purposes in terms of our observations herein above.

Order pronounced in the open court on 31/07/ 2023.

**Sd/-
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 31/07/2023

RK/-, Sr. P.S.(on tour)/SB

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.

// True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur