

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.167/RPR/2023
निर्धारण वर्ष /Assessment Year: 2017-18

Dinesh Kumar Dixit 1, Dixit Bhawan, K.K. Road Moudhapara, Raipur-492 001 (CG)	Vs	Income Tax Officer Ward-3(4) Raipur (C.G.)
PAN: ACTPD 0023H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Prafulla Pendse, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, SR-DR
सुनवाई की तारीख / Date of Hearing	:	22/08/2023
घोषणा की तारीख/ Date of Pronouncement	:	23/08/2023

आदेश / ORDER

Per Arun Khodpia, AM :

This appeal is filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 20.03.2023, arose on the issues raised against the order of Assessing Officer framed u/s 144 of the Income Tax Act dated 27.11.2019. The grounds of the appeal raised by the assessee are as under:

"1. That the order is bad in law as well as on facts as the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs.96,43,971/- under the Income Tax Act, 1961 contrary to the provisions of Income Tax Act.

2. The learned CIT(A) erred in sustaining addition of Rs.70,31,100/- in respect of alleged cash deposits in bank account during the period of demonetization, when the same is same at variance with the actual figures recorded in the books of accounts.

3. That the addition of Rs.70,31,100/- made by Ld. AO and sustained by Ld. CIT(A) under section 68 is bad in law as the section does not cover cash deposits made in bank account, therefore, the same is liable to be deleted.

4. That the invocation of Section 115BBE is itself bad in law and also invalid because the same is not applicable for the AY 2017-18, more so when the tax audit report mentioning the sources of income was duly e-filed on 05.11.2017 under section 44AB of the Income Tax Act, 1961.

5. That the Ld. CIT(A) erred in sustaining addition of Rs.19,30,220/- made by Ld. AO on adhoc and irrational basis by computing the difference between total expenditure incurred for FY 2016-17 and FY 2015-16.

6. That the Ld. CIT(A) erred in sustaining addition of Rs.6,43,932/- made by Ld. AO on adhoc and irrational basis by treating the increase in proprietor's capital during the financial year as income of the appellant.

7. That the Ld. CIT(A) erred in sustaining addition of Rs.38,719/- made by Ld. AO on adhoc and irrational basis by treating the difference between closing balance of unsecured loans as at 31.03.2015 with balance on 31.03.2016 as income of the appellant.

8 The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal.”

2. The brief facts of the case are that the assessee is an individual. The case of the assessee for the relevant AY was selected under scrutiny through CASS and the assessee was issued a notice u/s 143(2) of Income Tax Act, 1961 dated 27.11.2019. Later on, the assessee was also issued a notice u/s 142(1) of the Act dated 05.07.2019 and was requested to submit certain details/documents on or before 11.07.2019. The assessee was non-compliant towards both the aforesaid notices, therefore, was again issued a penalty show cause notice u/s 272A(1)(d) of Income Tax Act, but assessee remain non-complaint. Further notice issued u/s 142(1), also the penalty u/s 272A(1)(d) was imposed on the assessee of Rs.10,000/-. Despite all such actions of the AO, the assessee again choose not to file

any submissions nor to appear. A final show cause notice u/s 144 of the Income Tax Act was issued on 18.10.2019 for fixing the hearing on 22.10.2019. Even in response to notice u/s 144, the assessee neither appeared nor have made any submissions before the Ld. AO. Upon such conduct of the assessee, the Assessing Officer proceeded with to frame the assessment on the basis of best judgement assessment under the provisions of section 144 of the Act. The Ld. AO also issued notices u/s 133(6) of the Act to the ICICI Bank and Vyavasayik Sahakari Bank to provide the Bank Statement of the assessee. In response to these notices, the Vyavasayik Sahakari Bank supplied the bank statement of the assessee. On perusal of the statement of the assessee by Vyavasayik Sahakari Bank, it is noticed by the Ld. AO that during the demonetization period, the assessee had deposited a sum of Rs.70,31,100/- in his bank account. In absence of any explanation from the assessee, this amount of Rs.70,31,100/- was treated as unexplained income of the assessee and addition u/s 68 of the Act was made. Further, in absence of books of accounts of the assessee, a disallowance of Rs.19,30,220/- was also made, wherein certain expenditure including purchases for the Financial Year 2015-16 were compared with Financial Year 2016-17 relevant to AY 2017-18 and the excess was added to the income of assessee. The Ld. AO also observed that there was an increase in capital account of the proprietor for Rs.6,43,932/-, the same was also taken as unexplained income of the assessee and addition u/s 68 of the Act was made. An another addition

pertaining to increase in unsecured loan for Rs.38,719/- was made u/s 68 of the Act.

3. Aggrieved by the additions made by the AO, the assessee preferred an appeal before the Ld. CIT(A), NFAC, Delhi. The Ld. CIT(A) has issued notices to the appellant on 22.01.2021, 18.08.2022 and 01.03.2023 fixing the case for 05.05.2021 on 2nd September, 2022 and 9th March, 2023 respectively, the appellant has filed only written submissions, the same was placed on record by the Ld. CIT(A). The written submissions of the assessee were not found satisfactory by the Ld. CIT(A); therefore, the appeal of the assessee was dismissed all the grounds of appeal. To challenge the decision of Ld. CIT(A), now the assessee is before us with the aforesaid grounds as extracted hereinabove. In order to assail the contentions which could not be properly explained by the Ld. AO as well as the Ld. CIT(A).

4. The Ld. AR of the assessee at the very beginning of the hearing has submitted an application for admission of additional evidence with respect to the present appeal. It was the submission of the Ld. AR that the assessee's case could not be represented properly before the Ld. AO as well as before the Ld. CIT(A) for the reason that the assessee's counsel was arrested by Police Department on 31st March, 2019 when the assessment proceedings were in progress before the Ld. AO, copies of documents pertaining to arrest and investigation of the assessee's counsel Mr. Deepak Kumar Acharya, S/o Mr. Jagannath Acharya by the Police

Department were also furnished before us in the Paper Book of the assessee, with a submission that, since the assessee was entirely depend upon counsel Mr. Deepak Acharya who was looking after entire accounting and tax affairs of the assessee, which is substantiated by the Ld AR by showing the assessee's audited accounts which were placed before us, wherein it is apparent that Mr. Deepak Acharya has signed all such audited financial accounts of the assessee on behalf of the assessee as a partner of ADS and Associates, Chartered Accountants. The Ld. AR further drew our attention to the written submissions along with the application for submissions of the additional evidence, the same are extracted as under:

"1. That the assessment for AY 2017-2018 was completed by Ld. AO ward 3(4), Raipur on 27.11.2019 which was an ex parte order framed under section 144 of the income tax act, wherein aggregate additions of Rs.96,43,971/- were made against returned income of Rs.4,38,900/- thereby assessing total income at Rs.1,00,82,870/-.

2. That the scrutiny proceedings were initiated on 21.09.2018 vide notice under section 143(2) for AY 2017-18. It is essential to mention that the appellant did not have any information regarding online assessment proceedings pending against him, hence he could not submit the necessary documentary evidence on record. Another reason was that the appellant was completely dependent on his counsel in this regard but the counsel for the appellant could not attend his profession for genuine and valid reasons stated below.

3. The foremost reason because of which the appellant was prevented by sufficient cause from submitting the copy of audit report under section 44AB dated 31.10.2017 for FY 2016-2017, copy of cash flow summary, cash flow extract (in two parts) 1.4.2016 to 08.11.2016 and 09.11.2016 to 31.03.2017), copy of VAT returns for FY 2016- 2017, copies of few purchases and sales bills during the course of assessment proceedings is due to negligence of appellants counsel, also being his auditor (hereinafter referred to a 'counsel') in the instant case. The primary reason which prevented the appellant to submit above evidence was that the counsel for the appellant was entangled with legal issues for alleged fraud and misappropriation vide the FIR lodged with Pandri Police Station, Raipur on 18.05.2018 and, therefore, being mentally disturbed the counsel was mostly absent from his office since August, 2018 (scrutiny proceedings began in September 2018 and completed in November, 2019). That a copy of FIR registered against CA Deepak Acharya (counsel for the assessee) along with relevant papers are attached herewith as ANNEXURE to Appellants Affidavit dated 13.05.2023 which justifies that he was booked under section 420, 409, 467 & 471, 34 of the Indian Penal Code for his alleged activities. This is the reason due to which the counsel could not diligently attend the assessment proceedings

and therefore, failed to submit the crucial evidences which were very much essential for the purpose of assessment proceedings and the appellant was kept in dark till the appellate order reached the appellants hands. In this regard the appellant had requested the counsel to issue Affidavit in appellants favour citing the factual circumstances, but he did not care to respond nor does he intend to cooperate with the appellant any further for reasons best known to him, though entire responsibility of negligence lies on him. Only a single ill prepared reply was submitted on 09.11.2022 from the office of the counsel through the signatures of the appellant. Due to his professional negligence and also as a result of his absence from office the appellant could not discuss the matter with the said the counsel and obviously appellant did not have any opportunity to produce evidence before the Ad and was therefore, prevented by sufficient cause from producing evidence before the AO, hence the same may kindly be admitted under Rule 29 of the income tax appellate tribunal rules, 1963.

4. We wish to submit following documentary evidences on record as additional evidence under Rule 29 of the income tax appellate tribunal rules, 1963:-

(i) Affidavit of the Appellant dated 13.05.2023.

(ii) Copy of Audit Report for FY 2016-2017 (though copy of Fno.3CB-3CD filed online by the auditor on 05.11.2017 vide Ack. No. 289891941051117 is available on income tax portal).

(iii) Copy of cash flow summary justifying nature and source of cash deposits.

(iv) Extract of cash book in two parts 01.04.2016 to 08.11.2016 and from 09.11.2016 to 31.03.2017 justifying the cash position on 08.11.2016 and sources of cash deposits in bank and it subsequent utilization.

(v) Copy of VAT returns justifying turnover resulting from trade of tyres and tubes for FY 2016-2017.

(vi) Copies of few purchases and sales bills in order to justify that the appellant was duly engaged in trading of tyres and tubes and the cash deposits in bank account are undoubtedly business receipts and not unexplained income as has been alleged by the Ld. AO and also by Ld. CIT(A).

5. Therefore, in the interest of justice and for reasons stated above, it is ardently prayed before the Hon'ble Income Tax Appellate Tribunal to exercise its power vested in under Rule 29 of the income tax appellate tribunal rules, 1963 and admit additional evidences as it has a crucial bearing on the issues that arise in the appeals."

5. Based such submissions, it was the prayer of Ld. AR that there were sufficient reasons by which the assessee was prevented, which were beyond the control of assessee, therefore, one more chance may kindly be provided to the assessee to explain his case before the Ld. Assessing Officer. As per additional evidence, all the explanations pertaining to

additions made by the assessee are now available with the assessee and assessee is in position to satisfy the revenue authorities.

6. The Ld. Sr. DR, on the other hand, submitted that since the assessee was a persistent non-compliant at both the stages may it be before the Ld. AO or before the Ld. CIT(A). No further chances to such assessee shall be granted. If the counsel of the assessee was not available due to whatsoever reasons the assessee was at liberty to engage a new counsel to explain his matter before the Ld. AO as well as Ld. CIT(A). It was the request that no second inning should be provided to the assessee so as to prevent the time and energy and resources of the nation. Regarding, additional evidence submitted by the assessee which were shown and confronted to the Ld. Sr. DR after perusal of such evidence, Ld Sr DR has not objected on admission of the same.

7. We have heard the rival contention, perused the materials available on record and have gone through the orders of revenue authorities as well as the additional evidence submitted by the assessee which were not objected to be admitted by the revenue. Admittedly, since the assessee was depending on a particular counsel and according to the police investigation documents submitted by the assessee, the counsel of the assessee was undergoing an investigation before the Police Department and was also arrested at a point of time, we found force in the contentions of the assessee on this aspect that the assessee was prevented by

sufficient cause beyond his control, therefore, in absence of his regular counsel, it was not possible for the assessee to explain the entire affairs of his accounts to any other counsel, therefore, the assessee's contentions are accepted and the additional evidences submitted before us are permitted to be placed on records. On admission of additional evidences which are to be used by the assessee to substantiate his claims but the same were never produced before the revenue authorities, we are of the considered view that all such documents which are substantial to explain the case of the assessee pertaining to additions made by the Ld. AO and sustained by the Ld. CIT(A), in the interest of natural justice under the facts and circumstances of the present case, should be verified by the Ld AO, thus, without adverting to the grounds of appeal on merits, it would be appropriate in the present case to remitted the same back to the files of the Ld. AO for denovo assessment. Accordingly, the order of the Ld. CIT(A) and Ld. AO are directed to be set aside, and the case of the assessee is restored back to the file of the AO for adjudication afresh.

8. In the result, the appeal of the assessee is partly allowed in terms of our observations herein above.

Order pronounced in the court on 23/08/2023.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 23/08/2023

Pramod Kumar, Sr. PS (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