

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 Nos. 220 & 221/RPR/2023**

**निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13**

Arun Soni  
Industrial Area, Tifra  
Bilaspur (C.G.)-495 001  
PAN: AJEPS8535K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nilesh Jain, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.08.2023

घोषणा की तारीख / Date of Pronouncement : 05.09.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 09.05.2023, which in turn arises from the orders passed by the AO under Sec. 143(3)/147 of the Income-tax Act, 1961 (in short 'the Act') dated 18.12.2018 for assessment years 2011-12 & 2012-13. As a common issue is involved in the captioned appeals, the same are being taken up and disposed of by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.220/RPR/2023 for the assessment year 2011-12 as lead matter and the order therein passed shall *mutatis-mutandis* apply to the other appeal. The assessee has assailed the impugned order on the following grounds of appeal:

"1) In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in summarily dismissing the appeal ex-parte on the grounds of non-compliance without deciding each of the grounds of appeal taken in Appeal Memo and without considering the Application for Adjournment.

2) In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in not deciding the ground challenging validity of initiation of re-assessment proceedings u/s 147 of the Income-tax Act, 1961 without fulfilling all the necessary conditions.

3) In the facts and circumstances of the case and in law the Ld. Assessing Officer has erred in not supplying copy of approval obtained u/s 151 of the Income-tax Act, 1961 as mandated in the case of Sabh Infrastructure Ltd. vs. ACIT (Delhi High Court) 2017 (9) TMI 1589.

4) In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in upholding addition of Rs.22,27,400/- made by Id. Assessing Officer as undisclosed investment.

5) In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in upholding the action of Id. Assessing Officer treating the appellant as beneficial owner of land and properties of Shri Santosh Kumar Gautam and firm M/s. Saptrishi Infrastructure in vague terms on the basis of borrowed satisfaction of the Assistant Commissioner of Income-tax (Benamidar Prohibition), Raipur without even whisper of substantive assessment and the entire assessment is bad in law and without jurisdiction.

6) In the facts and circumstances of the case and the law laid down by Hon'ble Supreme Court in the case of UOI vs. Ganapati Dealcom Pvt. Ltd. [SCC online SC 1064] the Id. Commissioner of Income-tax (Appeals) has erred in upholding action of Id. Assessing Officer treating the appellant as beneficial owner of land and properties of Shri Santosh Kumar Gautam and firm M/s. Saptrishi Infrastructure in vague terms on the basis of borrowed satisfaction of the Assistant Commissioner of Income-tax (Benamidar Prohibition), Raipur and making addition of Rs.22,27,400/-.

7) The impugned order is bad in law and on facts.

8) The appellant reserves the right to add, alter or omit all or any of the grounds of appeal in the interest of justice."

3. Succinctly stated the assessee had filed his return of income for A.Y.2011-12 on 31.03.2012 declaring an income of Rs.7,96,040/-. Case of the assessee was reopened u/s.147 of the Act. Notice u/s.148 of the Act dated 31.03.2018 was issued to the assessee.

4. On the basis of information gathered by the A.O from the O/o. ACIT (Benami Prohibition), Raipur that the assessee was one of the beneficial owner of a number of landed properties which were purchased in the names

of certain benamidars, viz. Shri Santosh Kumar Gautam, M/s. Saptrishi Infrastate and Saptrishi Infrastructure, the A.O called upon him to put forth an explanation with regard to the aforesaid impugned benami transactions. Although the assessee filed an explanation but the same did not find favour with the A.O. Accordingly, the A.O rejected the explanation of the assessee by observing as under:

“On perusal of the reply filed, the para wise comments are as under:

Para b) 1.1 & 1.2. It is correct that the information was received from ACIT (Benami Prohibition) but after applying the mind on the basis of study of the case records, the case has been reopened.

Para 1.3 There are corroborative material on record as clearly established by the ACIT (Benami Prohibition) in his report.

Para 1.4 In the statement given under oath, Santosh Goutam had no knowledge about the lands purchased and he, did not had capacity to pay the sums which is clear from the report of the ACIT (Benami Prohibition).

Para 1.5 It has been clearly established by the ACIT (Benami Prohibition) that Shri Santosh Gautam is a person of very small means and was working since 2003 as an employee of the assessee, therefore, the assessee along with Nitin Agrawal is the beneficial owner of the properties purchased.

Para 1.6 The contention of the assessee is not correct. The assessee's statement had been recorded by the ACIT (Benami Prohibition) and the statements of Shri Manish Bansal had been confronted to him. The assessee had never requested ACIT (Benami Prohibition) for cross examination of Shri Manish Bansal. Therefore, request for allowing cross examination is nothing but trying to take the advantage of the legal process which is not required in this case.

Para 1.7 No comments

Para 1.8. The entire story put forth by the assessee is an afterthought as the documentary evidence for opening of the bank account has been issued by M/s. Balaji Marketing in which Shri Arun Soni is a partner. Further in his statement before the ACIT ( Benami

Prohibition), Shri Santosh Gautam has said that he is working with Shri Arun Soni since 2003.

Para 2.1 No Comments

Para 2.2. The contention of the assessee is not correct as it has been clearly established by ACIT (Benami Prohibition) in his report that the funds received in M/s. Saptrishi Infrastructure has been routed through the companies of the assessee and his partner Shri Nitil Agrawal.

Para 2.3. No comments

Para 3.1 The contention of the assessee is not correct as Shri Santosh Gautam is a man of very small means and he had no knowledge about the investment made in the land as established by the ACIT (Benami Prohibition) and therefore, the cash payments were made by Shri Nitin Agrawal and the assessee as they are the beneficial owners of the landed properties.

Para 4.1 There is credible information from the ACIT (Benami Prohibition) regarding the fact that the assessee along with Shri Agrawal is the beneficial owner of the landed properties and therefore after due application of mind the case of the assessee has been reopened. Further, it is to state that apart from the statement of Shri Munish Bansal, there are other evidences on record to establish that the assessee along with Shri Nitin Agrawal are the beneficial owners of the landed properties in the name of Shri Santosh Gautam and Saptrishi Infrastructure.

In view of the above discussion, the investments made in cash at Rs.44,54,400/- is treated as undisclosed investment in the hands of the assessee and Shri Nitin Agrawal. The share of the assessee is determined at Rs.22,27,200/-. Accordingly, the sum of Rs.22,27,200/- is added to the total income as undisclosed investment. Penalty proceedings u/s.271(1)(c) is initiated for concealment of income separately.”

The A.O on the basis of his aforesaid deliberations, vide his order passed u/ss.143(3)/147 of the Act dated 18.12.2018 after making an addition of Rs.22.27 lacs (approx.) towards assessee's share of undisclosed investment assessed his income at Rs.30,23,440/-

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). The assessee despite having been afforded sufficient opportunities of hearing failed to put up an appearance before the First Appellate Authority, as under:

S. No.	Date of issue of notice/letter	Date of fixing the case for hearing	Remarks
1.	08/01/2021	14/01/2021	Notice was sent to appellant through ITBA portal bearing DIN ITBA/NFAC/f/APL_1/2020-21/1029598619 (1). No reply has been received from the appellant till date.
2.	03/08/2022	18/08/2022	Notice was sent to appellant through ITBA portal bearing DIN ITBA/NFAC/f/APL_1/2022-23/1044446413(1). No reply has been received from the appellant till date
3.	19/04/2023	03/05/2023	Notice was sent to appellant through ITBA portal bearing DIN ITBA/NFAC/f/APL_1/2023-24/10521183397 (1). No reply has been received from the appellant till date.

Considering the aforesaid facts, the CIT(Appeals) holding a conviction that the assessee was not interested in pursuing the matter before him, therein dismissed the appeal in limine, observed as under:

“6. As is evident from the above chart, the appellant has been given adequate opportunities on various occasions. However, no written

submission was filed by the appellant till now on the portal. The appeal has been filed almost 4 years ago and this should have been sufficient time for the appellant to prepare a reply on the issues raised. In these circumstances, the appeal is decided upon the materials available on record/portal.

7. In view of the above facts and circumstances of the case, it is noticed that the proper opportunity given to appellant at the time of assessment proceedings as well as appellate proceedings to furnish the necessary details/documentary evidences in support of his case but the appellant has failed to produce any supporting material in this regard.

8. In light of the above details of non-compliance and non-pursuance of appeal, reference is made to the following judicial ruling of the Hon'ble Apex Court. In CIT vs. B.N. Bhattacharya (1977) 118 ITR 461(SC), the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in CIT vs. Multiplan India Pvt. Ltd., as reported in 38 ITD 320 (Delhi), when faced with a similar situation of non-pursuing of appeal dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus Jura subveniunt". In view of the above, it is clear that the appellant is not interested in pursuing this appeal. Therefore, the appeal filed by the appellant is decided based on merits.

9. In the result, appeal is treated as dismissed."

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal. 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 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.”

7. 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.

8. In the result, the appeal filed by the assessee in ITA No.220/RPR/2023 for A.Y.2011-12 is allowed for statistical purposes in terms of the aforesaid observations.

**ITA No.221/RPR/2023**  
**A.Y.2012-13**

9. As the facts and issues involved in the captioned appeal remain the same as those before me in the case of the assessee in ITA

No.220/RPR/2023 for the assessment year 2011-12; therefore, my order therein passed while disposing off the said appeal shall apply *mutatis-mutandis* for disposing off the captioned appeal, i.e., ITA No. 221/RPR/2023 for A.Y.2012-13. In this case also, I set-aside the order of the CIT(Appeals) with a direction to dispose off the same on merits on the same terms which I have recorded while disposing the appeal in ITA No. 220/RPR/2023 for A.Y.2011-12.

10. In the result, both the appeal(s) of the assessee in ITA Nos. 220 & 221/RPR/2023 for A.Ys.2011-12 & 2012-13 are allowed for statistical purposes in terms of my observations above.

Order pronounced in open court on 05<sup>th</sup> day of September, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05<sup>th</sup> September, 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, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

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