

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. 254/RPR/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Jyoti Sharma
QR No.3D, ST 30, Sector-1,
Bhilai, Durg-490 001
PAN : AVTPS5669P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(2), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.08.2023

घोषणा की तारीख / Date of Pronouncement : 05.09.2023

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 26.05.2023, which in turn arises from the order passed by the AO under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 14.12.2017 for assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That CIT Appeals-NFAC has erred in both fact and in law in confirming the additions made by Assessing Officer without considering the instructions to provide remand report called by CIT(A)-II, Raipur and without disposing off the additional evidences under rule 46A of the Rules.

2. That CIT Appeals-NFAC and AO have erred in facts and in law in treating the entire agricultural receipts of Rs.20,52,410/- as unexplained cash credits without considering that only Rs.5,00,000/- has been deposited in Bank.

3. That CIT Appeals-NFAC while confirming the addition made by A.O of Rs.10,00,000/- u/s.68 has failed to consider that gifts u/s.56 from Relatives are exempt. Further CIT Appeals-NFAC has erred in confirming the addition of Rs.5,00,000/- as unexplained deposit u/s.68.

4. That CIT Appeals- NFAC and Assessing Officer has erred on facts and in law in passing the assessment order u/s.143(3) where the notice u/s. 143(2) was issued by an Non jurisdictional Assessing Officer i.e. ITO 1(1), Raipur instead of ITO-1(2), Bhilai and therefore, entire proceedings are bad in law and void ab initio.

5. That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.”

2. Succinctly stated, the assessee had e-filed her return of income for A.Y.2015-16 on 02.01.2016, declaring an income of Rs.2,52,520/- a/w. agricultural income of Rs.20,52,410/-. The case of the assessee was thereafter selected for scrutiny assessment under CASS and notice u/s.143(2) was issued to her.

3. During the course of assessment proceedings, though the assessee in order to substantiate her agricultural income was asked to produce various documents viz., (i) panch sala khasra; (ii) pustika of total land possession; (iii) bills of purchases of manure, pesticides, insecticides; (iv) bills of seeds and plants purchased; (v) sales/receipts profit (Mandi & Major purchases); and (vi) copy of bank account, but she only filed Rin Pustika. On verification of the Rin Pustika, it was observed by the A.O that out of the total Rakba of 2.24 hectares the land under agriculture was only 1.52 hectares. It was also observed by the A.O that the land was in joint holding wherein assessee's share of agriculture sale proceeds was 50% of the total. As the assessee had failed to prove her claim of having garnered agriculture income of Rs.20,52,410/-, therefore, the A.O dubbed the same as unexplained cash credit u/s.68 of the Act.

4. Further, it was observed by the A.O that the assessee had made cash deposits of Rs.5,00,000/- on 02.01.2015 and Rs.10,00,000/- on 16.02.2015

in her bank account bearing No.34484706590 with State Bank of India, Branch : Bhilai. As the assessee had failed to prove the source of cash deposits, therefore, the A.O made an addition of the entire sum of Rs.15,00,000/- (Rs.10,00,000/- (+) Rs.5,00,000/-) by treating the same as cash credits from unexplained sources u/s.68 of the Act. Accordingly, the A.O vide his order passed u/s.143(3) dated 14.12.2017 after, inter alia, making the aforesaid additions assessed income of the assessee at Rs.38,04,930/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. At this stage, I may herein observe that as the assessee, despite having been afforded sufficient opportunities had failed to put up an appearance in the course of proceedings before the CIT(Appeals); therefore, he had dismissed its appeal for want of prosecution and refrained from dealing with the merits of the case. The dates and compliance status of the assessee before the CIT(Appeals) as regards the various notices issued, is as under:

Date of notice	Compliance Date	Remarks
26-12-2020	31-12-2020	No details furnished nor any petition for adjournments was received.
13-04-2023	20-04-2023	No details furnished nor any petition for adjournments was received.

19-05-2023	25-05-2023	No details furnished nor any petition for adjournments was received.
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6. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before me. As observed by me hereinabove, the CIT(Appeals) had disposed of the appeal for non-prosecution and failed to apply his mind to the issues arising from the impugned order as were 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 of 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 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. A perusal of Sec.251(1)(a) and (b) of the Act, 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 arise 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 view above is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614**

(Bom). In the case mentioned above 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 able to persuade myself 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 to be heard to the assessee during the de novo appellate proceedings. The grounds of appeal raised by the assessee are disposed off in terms of my observations above.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes in terms of my observations mentioned above.

Order pronounced in open court on 05th day of September, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05th 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.