

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. 225/RPR/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Jaishri Kesharwani
House No.682/1, Thavait Gali,
Baikuntpur, Raigarh-496 001 (C.G.)
PAN : AKFPJ6433R

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 11.09.2023

घोषणा की तारीख / Date of Pronouncement : 13.09.2023

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 28.04.2023, which in turn arises from the order passed by the AO under Sec. 144 r.w.s.147 of the Income-tax Act, 1961 (in short 'the Act') dated 15.12.2018 for assessment year 2012-13. 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 dismissing the appeal ex-parte overlooking the adjournment application filed.

2) The Id. Commissioner of Income-tax (Appeals) has erred in confirming the initiation of reassessment proceedings u/s 147 of the income-tax Act. 1961 without fulfilling all the necessary conditions. Hence, the said re-assessment proceeding as well as the assessment order are illegal, bad in law and without jurisdiction.

3) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming determination of total income at. Rs.10,09,000/- for assessment year 2012-13.

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

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

2. On the basis of information received by the A.O that the assessee had though deposited cash of Rs.10,09,000/- in his savings bank account maintained with ING Vysya Bank, Raigarh during the year under

consideration, but had not filed his return of income, thus, initiated proceedings u/s.147 of the Act. Notice u/s. 148 of the Act dated 26.03.2018 was issued to the assessee.

3. As the assessee despite having been intimated about the hearing of the appeal, had failed to put up an appearance before the A.O, therefore, the latter was constrained to proceed with the matter after considering the material available on record. Observing, that the assessee had failed to explain the source of the cash deposit of Rs.10,09,000/-, the A.O made an addition of the same by treating it as unexplained income of the assessee. Accordingly, the A.O vide his order passed u/s.144 r.w.s.147 of the Act dated 15.12.2018 assessed the income of the assessee at Rs.10,09,000/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee failed to put up an appearance before the CIT(Appeals) on the various dates, viz. 05.01.2021, 17.04.2023 and 24.04.2023, therefore, the latter finding no infirmity in the view taken by the A.O upheld the addition of Rs.10,09,000/- and dismissed the appeal in limine, observing as under:

“5.1 Ground of appeal No.1 relate to re-assessment u/s.147 and Ground No.2 relate to addition of cash deposit of Rs.10,09,000. As these two grounds are inter-related, they taken up together for adjudication.

5.2 As observed earlier, in this case information was received that the assessee had deposited cash of Rs.10,09,000/- in his Saving Bank Account maintained with ING Vysya Bank, Raigarh during the F.Y.2011-12. As the assessee had not filed the return of income, the source of cash deposits remained undisclosed. Therefore, the AO has reason to believe that the income of the assessee to the extent of cash deposit of Rs.10,09,000/- had escaped from being assessed. Accordingly, the case was reopened by issuing notice u/s 148 on 26.03.2018 requiring him to file the return of income for A.Y.2012-13 within 30 days of receipt of the statutory notice. As the assessee failed to file any return of income, notice u/s 142(1) was issued on 17.08.2018. As there was no compliance to this notice, a show-cause was issued to the assessee for compliance on 16.10.2018. Again, there was no compliance from the assessee. Finally, a show cause notice was issued to the assessee stating that if no compliance is made, assessment will be completed on merit on the basis of material available on record. But again there was no compliance to this notice. On verification of the material on record, it was seen that the assessee had deposited cash of Rs.10,09,000/- in the Savings Bank Account maintained with ING Vysya Bank, Raigarh during the F.Y.2011-12. The AO submitted that as the assessee did not furnish any documentary evidence and valid explanation, the assessee had failed to explain the source of this cash deposit. Therefore, the income of the assessee to the extent of Rs.10,09,000/- has escaped the assessee and needed to be brought under the tax net. Accordingly, the AO added Rs.10,09,000/- to the total income of the assessee.

5.3 In the appellate proceedings, the appellant has not made any specific submissions either in the grounds of appeal and the statement of facts. From the facts narrated in para 5.2 above, it can be noted that reasonable opportunities were provided by the AO to the appellant right from the stage of assessment till the stage of finalization of the assessment order. For reasons best known to the appellant, he has preferred to be totally non-compliant at each and every stage in the present appellate proceedings.

5.4 As noted earlier, even, in the present appellate proceedings, the appellant has not bothered to file any submissions other than the general grounds of appeal in Form No. 35 despite several opportunities provided vide notice dated 05.01.2021, 17.04.2023 and 24.04.2023. In view of the above detailed discussion, no infirmity is found in the action of the AO of making addition of Rs.10,09,000/-. Accordingly, the various Grounds of appeal Nos.1 and 2 raised by the appellant are dismissed.

5.5 Grounds of appeal No.3 and 4 are general grounds and does not require separate adjudication. These two grounds are dismissed.”

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

6. Shri Nilesh Jain, Ld. Authorized Representative (for short 'AR') for the assessee at the very outset of hearing of the appeal submitted that the CIT(Appeals), NFAC had disposed off the appeal without considering the request of the assessee who had sought adjournment for 24.04.2023 i.e. the date on which the matter was listed for hearing. Copy of the aforesaid letter that was uploaded by the assessee requesting for an adjournment has been placed on record. Considering the aforesaid facts, it was submitted by the Ld. AR that as the assessee had not been given an opportunity to put forth an explanation as regards the impugned cash deposits of Rs.10,09,000/- (supra), therefore, the matter may be restored to the file of the first appellate authority with a direction to him to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee.

7. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. On being confronted with the fact that the CIT(Appeals) had failed to address the application filed by the assessee seeking adjournment on 24.04.2023, the Ld. DR fairly admitted the said factual position.

8. I have heard the Id. authorized representatives of both the parties, perused the orders of the lower authorities as well as material available on record. Admittedly, it is a matter of fact borne from record that the assessee had neither put up an appearance in the course of the assessment proceedings nor before the first appellate authority. On a perusal of the assessment order, it transpires that due to failure on the part of the assessee to put up an appearance, the A.O was constrained to proceed with framing of the assessment u/s.144 r.w.s. 147 of the Act dated 15.12.2018. Although the CIT(Appeals) in the course of the proceedings before him had afforded sufficient opportunities to the assessee to put forth an explanation as regards the addition made by the A.O, and had fixed the hearing of the appeal on three occasions, viz. 05.01.2021, 17.04.2023 and 24.04.2023, but the assessee had failed to comply with the said notices and not participated in the said proceedings.

9. Be that as it may, it is brought to my notice by the Ld. AR that the assessee had uploaded an application seeking adjournment for 24.04.2023, i.e. the date on which appeal was fixed for hearing by the CIT(Appeals). For the sake of clarity, the contents of the aforesaid application are culled out as under:

“Respected sir, In this connection, it is humbly submitted that the assessee has recently bought the fixation notice to us and it requires

some time to prepare the written submission. It is, therefore, requested to kindly allow three weeks time in the interest of justice and oblige. Thanking You.”

On a perusal of the order of the CIT(Appeals), I find that he had failed to take cognizance of the aforesaid letter of the assessee requesting for an adjournment. It is not that the CIT(Appeals) had declined the request for an adjournment that was filed by the assessee after considering the same.

10. On the basis of my aforesaid observations, I find substance in the claim of the Ld. AR that the letter for adjournment that was filed by the assessee had been summarily discarded by the CIT(Appeals) on 24.03.2023. At this stage, it would be relevant to point out that it is not that the CIT(Appeals) had disposed off the appeal on the very same date, i.e. on 24.04.2023 but had disposed the same on 28.04.2023. Considering the aforesaid facts, I am of the view that in totality of the facts involved in the present appeal, the matter in all fairness requires to be restored to the file of the CIT(Appeals) with a direction to him to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee appellant.

11. In the result, appeal of the assessee is allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 13th day of September, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 13th 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.