

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद, न्यायिक सदस्य, एवं  
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष  
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.52/RPR/2023  
निर्धारण वर्ष /Assessment Year: 2015-16

Pinky Sachdev,  
'Nitya', Plot No.25,  
Krishna Sakha Society,  
Rohini Puram, Raipur-492 001

v. ITO (TDS),  
Raipur (C.G.)-492 001

[PAN: ATSPS 8079 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Nikhilesh Begani, C.A.  
प्रत्यर्थी की ओर से /Respondent by : Shri Satya Prakash Sharma,  
Sr. D.R.

सुनवाई की तारीख/Date of Hearing : 07.08.2023  
घोषणा की तारीख /Date of Pronouncement : 14.09.2023

**आदेश / ORDER**

**PER ARUN KHODPIA, ACCOUNTANT MEMBER:**

This captioned appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals) and National Faceless Appeal Centre (NFAC)- Delhi under Section 250 for Assessment Year 2015-16 dated 11.01.2023, arises from the order of the Learned ITO (TDS), Raipur under Section 201 of the Income-tax Act dated 31.03.2022.

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2. The assessee has raised the following grounds of appeal:

**GROUND NO. I**

1. *That the ex-parte Appellate Order passed by the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre ("the Ld CIT(A)") under section 250 of the Income Tax Act, 1961 (the Act) is highly unjustified, bad in law, erroneous, without providing adequate opportunity of being heard and not in accordance with the provisions of law. Further, the Ld CIT(A) has grievously erred in dismissing the appeal ex parte merely for non-prosecution without rendering any decision on merits which is contrary to the ratio laid down by the Hon'ble Bombay High Court in the case of CIT v Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom). It is prayed that the Appellate Order passed under section 250 of the Act may please be cancelled/set-aside on this ground alone.*

*That the Order passed by the Learned Income Tax Officer (TDS) (the Ld AO") is highly illegal, unjustified, and barred by limitation hence, liable to be cancelled.*

**GROUND NO.II**

2. *On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has grossly erred in confirming the action of the Learned Income Tax Officer (TDS) (the Ld AO) in treating the appellant as "an assessee in default" u/s 201(1) of the Act thereby determining the liability for deduction of tax at source invoking the provisions of section 206AA of the Act thereby foisting higher liability of twenty percent as per the said provisions which is highly illegal, unjustified, unwarranted, not proper on facts and not in accordance with the provisions of law.*

*He has failed to appreciate that the agricultural land was beyond the distance specified as per the aerial limits hence, does not qualify to be an immovable property accordingly, there was no requirement of deduction of tax at source u/s 1941A of the Act.*

*He has failed to appreciate that there was no requirement of obtaining PAN of the seller at the time of registration of deed nor was it enforced by the registering authority and further, obligation to furnish PAN was cast on the seller thereof who did not intimate the same to the appellant buyer and hence, there was no occasion to resort to deduction of tax at source under the provisions of section 1941A of the Act hence, the provisions of section 206AA would have no applicability in the present case.*

*Hence, it is earnestly prayed that the demand of Rs.12,07,700/- may please be deleted.*

**GROUND NO.III**

3. *On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has erred in confirming the Order of the Ld.AO in holding the appellant liable for payment of an interest of Rs 11,00,007/- as per section 201(1A) of the Act which is highly illegal, unjustified, unwarranted, not proper on facts and*

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*not in accordance with the provisions of law. Hence, it is earnestly prayed that the demand of interest of Rs.11,00,007/- may please be deleted.*

**GROUND NO IV**

*4. That the Appellant craves leave to add, amend, alter or delete all or any of the Grounds of Appeal at the time of hearing of the appeal."*

3. The brief facts of the case are that the appellant is an individual. During the Financial Year 2014-15, the assessee/appellant Smt. Pinky Sachdev along with Smt. Aruna Tiwari has purchased one immovable property (land) situated at Mauza Gram – Mana, Patwari Halka No.116/56, R.N.M – Raipur for Rs.1,20,77,000/- from Shri Sharda Prasad Bais S/o. Late Shri Jhumuk Lal Bais, Village – Mana, Raipur. The impugned sale was executed on 05.09.2014. Learned AO observed that the purchased property is a land and was well covered by the definition of immovable property given in Section 194IA of the Act and so the property is well covered for the purpose of making TDS on its purchase. To examine this issue, Learned AO issued a show-cause notice under Section 201 of the Act to the assessee on 25.03.2022 requesting the assessee to show-cause as to why not she should be deemed to be an assessee in default in respect of non-deduction of tax at source in respect of the property purchased by her during the relevant financial year. The assessee was also requested to show-cause as to why not liability of interest under Section 201(1A) of the Act and fee under Section 234E of the Act

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should be imposed to her for the related fault. No compliance was made by the assessee. Therefore, a letter was issued to the assessee on 28.03.2022 requesting once again to comply on the same points. In response, assessee vide letter dated 28.03.2022 furnished through mail on 29.03.2022 in the night stated that the property purchased was an agricultural land therefore, Section 194IA of the Act for TDS on property is not applicable on sale/purchase of agricultural land even if the transaction value is more than 50 lakhs. It was the submission of the assessee before the Learned AO that the land was located at village Tuta which is approximately 10.50 KMs from municipal limits, map showing distance also enclosed with the reply of the assessee. It was the contention of assessee, since the land is an agricultural land hence, assessee is not in default under Section 201 of the Income-tax Act, 1961, thus, the proceedings initiated under Section 201 of the Act may be dropped. The assessee's submissions was considered but was not found favour from the Learned AO. For physical verification of the land, Learned AO deputed an inspector to examine the claim of the assessee. However, the inspector vide his report dated 30.03.2022 has submitted that he had visited the land situated at village – Mana (Khasra No.1651, 1653/1, 1653/2, 1653/3) which had shown him by the seller Shri Sharda Prasad Bais, also local enquiries revealed that regular agricultural

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activities are conducted and a single crop of paddy was regularly taken on the said land. As per the Google Earth App, the aerial distance from the said land to Devpuri was found to be of 5.47 Kms. He has also enclosed relevant photographs and screen shots. When such facts were submitted by the inspector, the assessee was given a show-cause notice immediately on 30.03.2022 confronting that the claim of assessee that the land was located at village – Tuta is approximately 10.5 Kms from the municipal limit of Raipur whereas on physical verification of the land as per report of the inspector of the Department, the aerial distance of the said land to Devpuri only 5.47 Kms. Since the seller himself has shown the said land, there is no doubt about the exact whereabouts and distance from the then outer limits of Raipur Nagar Nigam, i.e. Devpuri, as claimed by the assessee. Distance of that particular land is merely 5.47 Kms. From Devpuri, therefore, it is found that the purchased property is well situated within the area for the purpose of making TDS as per the provisions of Section 194IA of the Act. With such observation, Learned AO observed that the assessee is found to be in default since has failed to make TDS as prescribed under provision 194IA of the Act. Accordingly, interest under Section 201(1A) of the Act of Rs.22,00,014/- was worked out for both the joint purchases and the share of the assessee was worked out to be at Rs.11,00,007/-.

4. Aggrieved with the order of Learned ITO (TDS), Raipur under Section 201 of the Act, assessee preferred an appeal before the Learned CIT(A), NFAC – Delhi, however, appeal of the assessee was dismissed *in limine*. The Learned CIT(A) observing that the appellant has been provided more than sufficient opportunity, but she failed to submit any fact or submissions during the appellate proceedings in her support and remained non-compliant, therefore, the appeal of the assessee relying on the decision in the case of CIT vs. Gold Leaf Capital Corporation Ltd. dated 02.09.2011 (ITA No.798 of 2009) by Hon'ble High Court of Delhi. The appeal of the assessee was dismissed.

5. To challenge the order of Learned CIT(A), now the assessee in appeal before us on the grounds raised and accepted hereinabove. At the outset, the Learned AR of the assessee furnished before us an application for admission of additional evidence under Rule 29 in order to impart justice to the applicant. Since, the additional evidence submitted by the assessee found to be crucial and material for adjudication of the issue having information which goes to the root of issue in hand, we find it suitable to consider the additional evidences submitted by the assessee under provision of Rule 29. Regarding

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additional evidence submitted by the assessee, it was the submission of the Ld AR drawing our attention to pages 1 to 3 of additional paper book, furnished therein a copy of Certificate found issued by Patwari in-charge that the distance of the impugned land is beyond 8 KMs from municipal limits. The distance of the impugned land was certified to be beyond 8 Kms away from the Municipal limit of Devpuri. It was also brought to our notice that the Learned AO who has placed reliance on the report of inspector, the copy of the map enclosed with the assessment order shows that the distance was calculated from Raipur, Swami Vivekanand International Airport whereas, as per provision of the act the distance should have been calculated from Municipal limit of the concerned Municipality. Therefore, it was the contention of the Learned AR that the addition made was on account of wrong appreciation of facts and thus the additional evidence may be considered, and relief may be granted to the assessee, by not treating the assessee as the assessee in default within the provision of Section 194IA of the Act.

6. Learned Sr. D.R. vehemently supported the order of Learned CIT(A) and the Assessing Officer and requested to sustain the same.

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7. We have heard the rival contentions, perused the material available on record and grounds of appeal raised by the assessee. On perusal of the order under Section 201 of the Act passed by ITO (TDS), Raipur, it is clear that the proceedings were initiated against the assessee on 25.03.2022 and the same were culminated on 31.03.2022. The report from the inspector was received by the Learned AO on 30.03.2022 and the same was show-caused on 30.03.2022 itself to respond in the matter which in our opinion is not a reasonable time offered to the assessee so as to respond in the matter. Since this was the contention raised by the assessee in her ground of appeal that sufficient time was not provided by the Learned AO also when the matter of the assessee was in appeal before the Learned CIT(A). It was the allegation of the assessee that adequate opportunity of being heard was not provided although Learned CIT(A), who had observed that the sufficient opportunities were provided to the assessee, Ld PCIT relied upon various judgments including decision rendered in the case of PCIT Vs. M/s I ven Interactive Ltd. In civil Appeal No 8132 of 2019 (Arising out of SLP(C) No 3530/2019) and order of Hon'ble Delhi, High Court in the case of Golf Leaf Capital Corporation (supra). After going through all these facts and circumstances of the matter, we are of the considered opinion that since, the assessee was not given reasonable opportunity

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by the AO during the proceedings under Section 201 of the Act also the assessee was unable to substantiate its claim before the Learned CIT(A), however, in the interest of substantial justice, placing reliance in the case of CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2017) 297 ITR 614 (Bom) which was relied upon by the assessee, wherein hon'ble Mumbai High court has held that:

9. 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 Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 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. section 251(1)(a) and (b) 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-section (2) of Section 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 Section 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 with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer 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 section 251(1)(a) and (b) and Explanation to Section 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.

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Similar contention is approved by the Honble Apex Court in The case of PCIT Vs. M/s I ven Interactive Ltd.(supra) which is being relied upon by the Ld CIT(A) while dismissing the appeal of the assessee without considering the merits of the case. Hon'ble Apex Court in the case of PCIT Vs. M/s I ven Interactive Ltd. (supra) has held as under:-

*9. In view of our findings, recorded hereinabove, the impugned judgment and order passed by the High Court as well as the orders passed by the learned C.I.T (Appeals) and the I.T.A.T holding the assessment order bad in law on the aforesaid ground cannot be sustained and the same deserve to be quashed and set aside. As the learned C.I.T (Appeals) has not considered the other grounds on merits and has not considered the appeal on merits, the matter is required to be remanded to the learned C.I.T (Appeals) to consider the appeal on merits, in accordance with law.*

8. Respectfully following the ratio of law laid down by Hon'ble Apex Court in the case of PCIT Vs. M/s I ven Interactive Ltd. (supra) and Hon'ble Mumbai High Court in the case of Prem Kumar Arjundas Luthra (supra), since the matter needs to be examined and decided on merits and certain facts needs to be verified at ground, we find it suitable to restore the matter back to the file of AO with the directions to adjudicate the issue afresh after checking and verifying the facts and additional evidence furnished before us. Needless to say, that

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sufficient opportunity of being heard is to be provided to the assessee. The assessee is also directed to be comply as and when called for by the Assessing Officer, failing which the Learned Assessing Officer will be at liberty to decide the issue in accordance with law.

9. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced on the 14<sup>th</sup> day of September 2023, in Raipur.

Sd/-  
(रवीश सूद)  
**(RAVISH SOOD)**  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(अरुण खोडपिया)  
**(ARUN KHODPIA)**  
लेखा सदस्य/ACCOUNTANT MEMBER

रायपुर/Raipur,

दिनांक/Dated: 14<sup>th</sup> September, 2023.

**Priti Yadav, Sr.PS (on Tour)**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /  
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

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