

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. 245/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Rahul Sharma
Saraswati Floor Mill Gudhiyari,
Raipur (C.G.)-492 001
PAN : CCCPS3530F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Dolly Keshwani &
Shri Sunil Kumar Agrawal, CA

Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.09.2023

घोषणा की तारीख / Date of Pronouncement : 14.09.2023

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 17.05.2023, 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 29.11.2018 for assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal :

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the addition made by Id. AO of Rs.13,79,300/- on account of cash deposit in bank account treating it as unexplained cash credit u/s. 68 of the Act.

2. The appellant craves to be allowed to add, amend, withdraw or otherwise modify the aforesaid grounds of appeal during the hearing of the case."

Also, the assessee has raised an additional ground of appeal which reads as under:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the addition of Rs.13,79,300/- u/s.68 on account of cash deposits in bank account, where the assessee was not liable to maintain books of account, so no addition can be made u/s.68."

2. It was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that as the aforesaid additional ground of appeal involved

purely a legal issue which required no further verification of facts, therefore, the same did merit admission in light of judgment of the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

3. Per contra, the Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of admission of the additional ground of appeal by the assessee appellant.

4. After having given a thoughtful consideration, I am of the view that as the adjudication of the aforesaid additional ground of appeal involves purely a question of law which would not require looking any further beyond the facts available on record, therefore, I have no hesitation in admitting the same. My aforesaid view that where an assessee, had raised, though for the first time, an additional ground of appeal before the Tribunal which involves purely a question of law and requires no further verification of facts, then, the same merits admission is supported by the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Ltd. Vs. CIT (supra).

5. On the basis of information received by the A.O that the assessee had during the year under consideration had though made substantial cash deposits of Rs.13,79,300/- in his savings bank account but had not filed his return of income, the A.O initiated proceedings u/s 147 of the Act. Notice

u/s.148 of the Act dated 20.03.2018 was issued to the assessee. As the assessee failed to comply with the aforesaid statutory notice u/s.148 of the Act dated 20.03.2018 and did neither filed his return of income in compliance thereto; nor participated in the assessment proceedings, therefore, the A.O proceeded with on an ex-parte basis and held the amount of cash deposits of Rs.13.79 lacs (approx.) as unexplained cash credit u/s.68 of the Act. Accordingly, the A.O vide his order passed u/s. 144 r.w.s. 147 of the Act dated 29.11.2018 determined the income of the assessee at Rs.13,79,300/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded sufficient opportunity by the CIT(Appeals) failed to put up an appearance in the course of the proceedings before him, therefore, the latter was constrained to dismiss the appeal by observing as under:

“3. Decision on Grounds of Appeal:

First Hearing Notice u/s 250 of the IT Act was issued to the assessee on 22-01-2021 to furnish the details on or before 29-01-2021. The notice was served through online portal and was not complied with by the assessee.

Second Hearing Notice u/s 250 of the IT Act was issued to the assessee on 14-12-2021 to furnish the details on or before 22-12-2021. The notice was served through online portal and was not complied with by the assessee.

Third Hearing Notice u/s 250 of the IT Act was issued to the assessee on 12-03-2022 to furnish the details on or before 21-03-2022. The notice was served through online portal and was not complied with by the assessee.

Fourth Hearing Notice u/s 250 of the IT Act was issued to the assessee on 12-05-2022 to furnish the details on or before 19-05-2022. The

notice was served through online portal and was not complied with by the assessee.

Fifth Hearing Notice u/s 250 of the IT Act was issued to the assessee on 09-05-2023 to furnish the details on or before 16-05-2023. The notice was served on 09-05-2023 at email provided by the assessee skc.itr@gmail.com & venkatesh.cg@rediffmail.com and was not complied with by the assessee.

It is quite manifest from the above that ample opportunities were conferred on the appellant in the course of Appellate proceedings. However, the Appellant chose not to pursue the matter. The Hon'ble Bombay High Court in M/s Chemipol vs. Union of India & Ors., in Central Excise Appeal No. 62 of 2009, vide judgement dated 17th September 2009 while considering the judgments of Hon'ble Supreme Court in CIT vs. S. Cheniappa Mudaliar, AIR 1969 SC 1068, Sunderlal Mannalal vs. Nandramdas Dwarkadas, AIR 1958, and other judgments observed as follows:

"We cannot altogether lost sight of the Rule that every court or tribunal has an inherent power to dismiss a proceeding for non-prosecution when the petition /Appellant before it does not wish to prosecute the proceedings. In such a situation, unless the statute clearly requires the court or tribunal to hear the Appeal /proceeding and decide it on merits, it can dismiss the Appeal/proceeding for.

The Delhi Bench of this tribunal in CIT vs. M/s Multiplan India Pvt. Ltd (1991) 38 ITD 320 (Del), has held that in a similar circumstance, the Appeal may be dismissed as unadmitted.

In fact, the Hon'ble Apex Court in CIT vs. B. N. Bhattachargee & ANR (1979) 10 CTR 0354: (1979) 118 ITR 0461 has held that the words "preferred an appeal" in section 245 M means more than formally filling it but effectively pursuing it.

In view of the above judicial pronouncements coupled with the fact that the appellant has not pursued the Appeal, I am left with no option but to complete the appeal proceedings based on documentary evidences available on record.

During the appeal proceedings, Grounds of appeal, facts of the case, Assessment order dated 29.11.2018 are noted.

During the appeal proceedings, no documentary evidences have been submitted by the assessee to verify his claim in-spite of multiple opportunities being provided by this office as stated above. Therefore, the appeal is decided on the basis of verified documentary evidences available on record.

In view of the above, order of AO is upheld and the ground is noted as dismissed.”

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

8. I have heard the Id. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home her contentions.

9. Adverting to the additional ground of appeal that was raised by the assessee, Smt. Dolly Keshwarni, Ld. A.R, at the very threshold submitted that the addition of Rs.13.79 lacs (supra) made by the A.O u/s.68 of the Act was not sustainable in the eyes of law and was liable to be quashed on the said count itself. Elaborating on her aforesaid contention, it was submitted by the Ld. AR that an addition u/s.68 of the Act could be made only where any sum is found credited in the “books” of an assessee maintained for any previous year, and the assessee either fails to offer any explanation as regards the nature and source of such credit; or the explanation offered by him is not found in the opinion of the A.O to be satisfactory. Carrying her contention further, it was submitted by the Ld. AR that as the aforesaid sum of Rs.13.79 lacs (supra) was not found credited in any “books of account” of the assessee,

therefore, no addition of the said amount could have been made u/s.68 of the Act. It was, thus, submitted by the Ld. AR that as the addition of Rs.13.79 lacs (supra) made by the A.O u/s.68 of the Act was not sustainable in the eyes of law, therefore, the same was liable to be vacated on the said count itself. The Ld. AR in support of her aforesaid contentions had relied on a host of judicial pronouncements, as under:

- (i) .CIT Vs. Bhaichand Gandhi (1983) 141 ITR 67 (Bom.)
- (ii). Mehul V. Vyas Vs. ITO (2017) 164 ITD 296 (Mumbai)
- (iii). Satish Kumar Vs. ITO (2019) 198 TTJ 114 (Asr)
- (iv). Harjindar Singh Bal Vs. Deluty Commissioner of Income Tax, ITA No.57/RPR/2020 dated 26.12.2022

It was, thus, in the backdrop of the aforesaid facts, submitted by the Ld. AR that now when the addition of Rs.13.79 lacs (supra) made by the A.O u/s.68 of the Act did not fall within the four corners of the additions which could be made under the said statutory provision, therefore, the same being absolutely devoid and bereft of any force of law could not be sustained and was liable to be vacated.

10. Alternatively, on merits, it was submitted by the Ld. AR that as the cash deposit of Rs.13.79 lacs (supra) were business receipts of the assessee from his small time business of retail trading in car accessories/fittings, therefore,

there was no justification for the A.O to have held the said amount as unexplained cash credit u/s.68 of the Act.

11. On the other hand, the Ld. DR relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee had failed to participate in the course of the proceedings before the lower authorities, therefore, in absence of any explanation forthcoming about the nature and source of the cash deposits made in his bank account, they had rightly made made/sustained the addition u/s 68 of the Act.

12. As is discernible from the orders of the lower authorities, it transpires that the assessee had adopted a lackadaisical approach and failed to participate both in the course of the assessment proceedings as well as in the proceedings before the CIT(Appeals). On a careful perusal of the assessment order, I find that though the notice u/s.148 of the Act was served on the assessee both through speed post and e-mail, but he had failed to comply with the same. Apart from that, the notice u/s.142(1) of the Act dated 11.07.2018, which thereafter was followed by a letter dated 20.08.2018 calling upon the assessee to file his return of income in compliance to notice issued u/s.148 of the Act, dated 20.03.2018 had also remained uncompiled with by the assessee. Also, the "Show Cause Notice" (SCN) dated 11.10.2018 that was issued to the assessee calling upon him to file his return of income in

compliance to the notice u/s.148 of the Act, dated 20.03.2018, failing which his case would be proceeded with and adjudicated on the basis of an ex-parte order, had also remained uncomplied with by the assessee.. Considering the aforesaid facts, I find that in absence of any explanation forthcoming from the assessee as regards the “nature” and “source” of the cash deposits of Rs.13.79 lacs (supra) in his bank account No.01820110003817 with UCO Bank, Raipur, the A.O was constrained to proceed with and after treating the aforesaid cash deposits of Rs.13.79 lacs (supra) as unexplained cash credit u/s.68 of the Act, frame the assessment on an ex-parte basis u/s. 144 r.w.s. 147 of the Act dated 29.11.2018.

13. On a perusal of the order of the CIT(Appeals), I find that the assessee had continued with his callous conduct and despite having been put to notice about hearing of the appeal on five occasions (as culled out by me hereinabove), had failed to participate in the proceedings before him. On a careful perusal of the order of the CIT(Appeals), it transpires that the notices intimating the hearing of the appeal before the CIT(Appeals) were on the first four occasions, i.e. 22.01.2021, 14.12.2021, 12.03.2022 and 12.05.2022 were served upon the assessee through online portal, while for on the last occasion, i.e. on 09.05.2023 the notice intimating the fixation of the hearing of the appeal and calling upon him to furnish the requisite details on or before 16.05.2023

was served by dropping in the same at the email addresses provided by the assessee, i.e. skc.itr@gmail.com & venkatesh.cg@rediffmail.com. However, the assessee, beyond our comprehension, had despite having been put to notice about the hearing of the appeal on five occasions, had failed to comply with the same and participate in the proceedings before the first appellate authority. Considering the aforesaid facts, it transpires that the CIT(Appeals) being left no other alternative was constrained to proceed with and dispose off the appeal based on the documentary evidence available on his record. Observing, that not only the assessee had adopted an evasive approach and not participated in the course of proceedings before him; but also despite sufficient opportunities no documentary evidence was submitted by him to substantiate his claim that the A.O had erred in treating the entire amount of cash deposits of Rs.13.79 lacs (supra) as unexplained cash credit u/s.68 of the Act, the CIT(Appeals) had upheld the addition of Rs. 13.79 lacs (supra) made by the A.O u/s 68 of the Act.

14. On the basis of the aforesaid peculiar facts involved in the present appeal before me, I find that it is not a case where the CIT(Appeals) had summarily dismissed the appeal of the assessee in limine for want of prosecution on his part. Rather, it is a case where due to the habitual lackadaisical conduct of the assessee leading to failure on his part to

participate in the proceedings before the first appellate authority; and absence of any documents/material which would have supported the claim of the assessee that the A.O was in error in treating the entire cash deposits of Rs.13.79 lacs (supra) in the assessee's bank account as unexplained cash credit u/s.68 of the Act, the CIT(Appeals), in our view, had rightly approved the order of the A,O.

15. Considering the aforesaid facts, due to which the assessee was visited with an ex-parte assessment order and had further suffered dismissal of his appeal based on an ex-parte order, which, as observed by me hereinabove, in either case was attributable to the callous approach which he had adopted in course of proceedings before both the lower authorities, I find that there is no reason to intervene and dislodge the view taken by them. Accordingly, finding no merit in the present appeal, I am constrained to dismiss the same.

16. In the result, appeal of the assessee is dismissed in terms of the aforesaid observations.

Order pronounced in open court on 14th day of September, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 14th September, 2023.

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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.