

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

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 50/RPR/2023
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Adim Jati Seva Sahkari Samiti Maryadit
Korba, Korba P.O,
Chhattisgarh-495 677
PAN : AADAA9825F

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.09.2023

घोषणा की तारीख / Date of Pronouncement : 18.09.2023

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 14.12.2022, which arises from the order passed by the AO under Sec. 144 of the Income-tax Act, 1961 (in short 'the Act') dated 11.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

"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)") is highly unjustified, bad in law, without providing reasonable opportunity of being heard, against the principles of natural justice and not in accordance with the provisions of law. Further, the Ld.CIT(A) has grievously erred in summarily dismissing the appeal by not rendering any decision on merits which is contrary to the law laid down by the Hon'ble Bombay High Court in the case of CIT v. Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Born.). It is prayed that the Appellate Order passed under section 250 of the Income Tax Act, 1961 ("the Act") may please be cancelled/set-aside on this ground alone.

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 an addition of Rs.2,47,65,369/- made by the Ld.AO on account of cash deposits in the Bank Account of the appellant thereby invoking the provisions of section 69A r.w.s.115BBE of the Act which is highly unjustified, unwarranted, unsustainable, not proper on facts, based on presumptions & surmises, contrary to the principles of natural justice and not in accordance with the provisions of law.

Hence, it is earnestly prayed that the addition of Rs.2,47,65,369/- confirmed by the Ld.CIT(A) may please be deleted.

GROUND No. III

3. 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.”

2. As per the data available on the system, it was observed by the A.O that though the assessee society, during the demonetization period, had made cash deposits of Rs.20,24,520/- in its bank account No.106000074989 maintained with Jila Sahkari Kendriya Bank, Maryadit, but had not filed its return of income within the period prescribed u/s.139(1) of the Act. Accordingly, notice u/s.142(1)(i) dated 06.02.2018 was issued by the A.O. to the assessee, directing it to file its return of income for the A.Y.2017-18 by 03.02.2018, which, however, was not complied with by the assessee.

3. Thereafter, the A.O issued an intimation u/s.129 of the Act as regards the change of incumbent on 22.08.2018 and a notice u/s.142(1) of the Act a/w. detailed query letter. At the same time, the A.O called for information u/s. 133(6) of the Act from Jila Kendriya Sahkari Bank, Korba regarding details of cash deposits in the bank account of the assessee. As the assessee once again did not comply with the aforesaid statutory notices issued by the A.O, a “Show Cause Notice” (SCN) dated 06.09.2019 was issued to it to put forth an explanation as to why the cash deposits of Rs.20,24,520/- may not be treated as its undisclosed income and assessment be completed u/s.144 of the Act.

Thereafter, the case was fixed for hearing before the A.O. on 12.09.2019, on which date the assessee made no compliance. After that, the A.O. issued a final show cause notice dated 12.09.2019, fixing the case hearing on 16.09.2019. The A.O. observed that the assessee did not respond to the abovementioned notice on the said date. Accordingly, the A.O. was constrained to proceed with the best judgment assessment u/s.144(1)(b) of the Act.

4. It was observed by the A.O. that in response to the notice u/s.133(6) of the Act issued to the bank on 16.08.2019, the bank provided complete details of cash deposits in the bank accounts of the assessee. On verification of the said bank details, it was observed by the A.O. that the total cash deposits in the bank account during the year under consideration amounted to Rs.2,47,65,369/- (during the period 01.04.2016 to 31.03.2017). As the assessee had failed to come forth with any explanation as regards the source of the cash deposits in its bank accounts, therefore, the A.O after treating the same as its unexplained money u/s 69A of the Act made an addition in its hands of Rs. 2,47,65,369/-. Based on his observations above, the A.O. vide his order passed u/s. 144 of the Act dated 11.12.2019 determined the income of the assessee at Rs.2,47,65,369/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. 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, the latter was thus constrained to dismiss the appeal by observing as follows:

“6. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the appellant via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition of Rs.2,47,65,369/- on account of unexplained money u/s 69A made by the AO to the appellant's income should not be sustained.

7. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The appellant has further jeopardized its case by not responding despite several opportunities that were provided. The appellant has failed to substantiate the sources of credit in his bank account. In the absence of any evidence whatsoever, whether documentary or otherwise, I am constrained to agree with the approach adopted by the AO in making the addition of Rs. Rs.2,47,65,369/- on account of unexplained money u/s 69A. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

7. Thus, in view of the facts and circumstances of the case, the order passed u/s 144 of the Income Tax Act, 1961 dated 11.12.2019 by the AO is upheld.

8. In the result, the appeal of the appellant is dismissed.”

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

7. Shri Nikhilesh Begani, Ld. Authorized Representative (for short 'AR) for the assessee society submitted that the CIT(Appeals) had grossly erred in dismissing the assessee's appeal vide an ex-parte order without dealing with the specific issues raised before him. The Ld. A.R. submitted that the CIT(Appeals) had not adjudicated the merits involved in the case and had summarily dismissed the assessee's appeal. In support of his contention above, the Ld. AR has relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom.). Based on his contention above, it was submitted by the Ld. AR that the matter, in all fairness, may be restored to the CIT(Appeals) file for fresh adjudication.

8. Per contra, the Ld. Departmental Representatives (for short, 'DR') relied on the orders of the lower authorities. It was submitted that by the Ld. DR that as the assessee was not keen to pursue its case either before the A.O. during the assessment proceedings or before the CIT(Appeals) during appellate proceedings, both the lower authorities had rightly made/sustained the addition.

9. We have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on

record and considered the judicial pronouncement that have been pressed into service by the Ld. AR to drive home his contentions.

10. On a perusal of the assessment order, it transpires that though the A.O. had provided sufficient opportunities to the assessee to represent its case, it was the assessee which, for reasons best known to it, despite being well informed about the ongoing assessment proceedings, had not only failed to file its return of income but had also evaded its participation in the said proceedings. Also, the assessee had failed to file any reply to the query letters that were served on it during the assessment proceedings. Accordingly, the A.O., in the absence of any return of income and also any explanation forthcoming about the source of the cash deposits in the bank account of the assessee society, which had chosen to lie low and neither participate in the assessment proceedings nor furnish any reply to the query letters that were issued to it, thus, was constrained to treat the cash deposits of Rs. 2,47,65,369/- (supra) as the assessee's unexplained money u/s 69A of the Act, and frame the best judgment assessment vide his order u/s. 144 of the Act dated 11.12.2019.

11. Before the CIT(Appeals), the conduct of the assessee society was no better than that it had adopted during the assessment proceedings. Although the CIT(Appeals) afforded sufficient opportunities to the assessee to put up its

case on merits before him but it had once again adopted an evasive approach and on no occasion participated in the proceedings before the first appellate authority, which were spread over two years, i.e. from 25.01.2021 to 09.12.2022. Also, the assessee society did not file any written submissions before the CIT(Appeals). For the sake of clarity, the details of notices issued by the CIT(Appeals) are culled out as follows:

S. No.	Date of notice sent	Compliance date	Remark
1.	25.01.2021	29.01.2021	No response from the appellant
2.	04.11.2022		Issued Enablement of Commission window. No response from the appellant.
3.	15.11.2022	30.11.2022	No response from the appellant.
4.	29.11.2022	09.12.2022	No response from the appellant.

12. Considering the facts above, the CIT(Appeals), being left with no other alternative, was constrained to proceed with and dispose off the appeal based on the material available on record, observing as follows:

“6. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. **No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order.** The notices have been duly served

upon the appellant via e-mail. Regrettably, no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition of Rs. 2,47,65,369/- on account of unexplained money u/s 69A made by the AO to appellants income should not be sustained.

7. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The appellant has further jeopardized its case by not responding despite several opportunities that were provided. The appellant has failed to substantiate the sources of credit in his bank account. **In the absence of any evidence whatsoever, whether documentary or otherwise, I am constrained to agree with the approach adopted by the AO in making the addition of Rs. 2,47,65,369/- on account of unexplained money u/s 69A.** The AO has passed a reasoned and speaking order considering all the facts and circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

7. Thus, in view of the facts and circumstances of the case, the order passed u/s 144 of the Income-tax Act, 1961 dated 11.12.2019 by the AO is upheld.”

(emphasis supplied by us)

13. The CIT(Appeals), taking notice of the fact that the assessee appellant had adopted an evasive approach and, despite being well informed, had not only chosen not to participate in the proceedings before him but also, despite sufficient opportunities, had not placed on record any evidence whatsoever, whether documentary or otherwise, to substantiate its claim that the A.O had erred in treating the cash deposits of Rs.2,47,65,369/- (supra) in his bank

account as unexplained money u/s.69A of the Act, thus, upheld the order passed by the A.O u/s 144 of the Act, dated 11.12.2019.

11. Considering the facts of the case, we find that it is not a case where the CIT(Appeals) had discarded any material available on the record and summarily dismissed the assessee's appeal in *limine* for want of prosecution. Instead, it is a case where in the absence of any evidence whatsoever, whether documentary or otherwise, which would substantiate that the A.O was unjustified in treating the cash deposits of Rs.2,47,65,369/- (supra) in the assessee's bank account as its unexplained money u/s.69A of the Act, the CIT(Appeals) had sustained the addition made by the A.O u/s 144 of the Act, dated 11.12.2019.

12. Now, when the assessee society, as per its volition, had not filed any return of income for the year under consideration A.Y 2017-18, i.e., either u/s 139 or in compliance to notice u/s 148 of the Act; or appeared before the A.O during the assessment proceedings or placed on his record any written submission or filed replies to the queries that were raised vide notice(s) issued u/s.142(1) of the Act; nor despite sufficient opportunities participated in the proceedings before the CIT(Appeals), then, in the absence of any evidence whatsoever, whether documentary or otherwise, which would reveal that there was no justification for treating the cash deposits of Rs. 2,47,65,369/- (supra)

in the assessee's bank account as its unexplained money u/s.69A of the Act, we are of a firm conviction that no infirmity emerges from the order of the CIT(Appeals) who had rightly approved the order passed by the A.O u/s 144 of the Act, dated 11.12.2019.

13. Although Section 253 of the Act, inter alia, vests with an assessee a statutory right to assail before the Income-Tax Appellate Tribunal an order passed by the Commissioner (Appeals), but a careful perusal of the aforesaid statutory provision reveals that the same can be triggered only where the assessee appellant is, inter alia, aggrieved with “....any order of assessment”.

For the sake of clarity, Sec. 253 (relevant extract) is culled out as under:

“253 (1) Any assessee **aggrieved by any of the following orders** may appeal to the Appellate Tribunal against such order:

(a). an **order passed by** a Deputy Commissioner (Appeals) [before the 1st day of October, 1998] [or , as the case may be, **a Commissioner (Appeals)**] **under** [section 154], **section 250**, [section 270A,] [section 271, section 271A[section 271J] or section 272A]' or

(b) To (f.)

(emphasis supplied by us)

Thus, considering the scope of Sec. 253 of the Act, it transpires that the same lays down as a pre-condition a grievance of the assessee appellant arising from the order passed by the Commissioner (Appeals).

14. Reference of the “grounds of appeal” based on which the assessee appellant has assailed the order of the CIT(Appeals) before us reveals three reasons, viz. (i). the CIT(Appeals) has erred in disposing off the appeal without affording a reasonable opportunity of being heard to the assessee; (ii). the CIT(Appeals) had grievously erred in summarily dismissing the appeal by not rendering any decision on the merits of the case, which is contrary to the judgment of the Hon’ble High Court of Bombay in the case of CIT Vs. Prem Kumar Arjun Dass Luthra (HUF) (2017) 297 CTR 614 (Bom); and (iii). the CIT(Appeals) had grossly erred in confirming the addition of Rs. 2,47,65,369/- made by the A.O. by treating the cash deposits as the assessee’s unexplained money u/s 69A of the Act.

15. We shall hereinafter deal with the aforesaid grievance of the assessee appellant before us, as under:

(A). The CIT(Appeals) had disposed off the appeal without affording a reasonable opportunity of being heard to the assessee :

(i). The assessee's claim that the CIT(Appeals) had grossly erred in disposing of its appeal without affording it a reasonable opportunity of being heard is factually incorrect. As observed by us herein above, the conduct of the assessee society before the CIT(Appeals) was no better than that it had adopted during the assessment proceedings. Although

the CIT(Appeals) had afforded sufficient opportunities to the assessee to put up its case on merits before him, but it had once again adopted an evasive approach and on no occasion participated in the proceedings before the first appellate authority (that were spread over two years, i.e 25.01.2021 to 09.12.2022). Also, the assessee society did not file any written submissions before the CIT(Appeals). The fact that the assessee society, despite being put to notice about the hearing of the appeal, had adopted a lackadaisical approach and, despite being well informed, had evaded from participating in the proceedings before the CIT(Appeals), which were spread over a time span of two years can safely be gathered from the following details :

S. No.	Date of notice sent	Compliance date	Remark
1.	25.01.2021	29.01.2021	No response from the appellant
2.	04.11.2022		Issued Enablement of Commission window. No response from the appellant.
3.	15.11.2022	30.11.2022	No response from the appellant.
4.	29.11.2022	09.12.2022	No response from the appellant.

(B). The CIT(Appeals) had grievously erred in summarily dismissing the appeal by not rendering any decision on merits of the case,

which is contrary to the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Prem Kumar Arjun Dass Luthra (HUF) (2017) 297 CTR 614 (Bom):

(i). It is a matter of fact borne from the record that the assessee society, had neither filed any return of income for the year under consideration A.Y 2017-18, i.e., either u/s 139 or in compliance to notice u/s 148; nor appeared before the A.O during the assessment proceedings or placed on his record any written submission or filed replies to the queries that were raised vide notice(s) issued u/s.142(1) of the Act; nor despite sufficient opportunities participated in the proceedings before the CIT(Appeals). Considering the aforesaid factual position, we are unable to fathom that in the absence of any evidence whatsoever, whether documentary or otherwise, which would reveal that there was no justification for treating the cash deposits of Rs. 2,47,65,369/- (supra) in the assessee's bank account as its unexplained money u/s.69A of the Act, what decision other than approving the well-reasoned view of the A.O that the said amount was the assessee's unexplained money u/s 69A of the Act could have been taken by the CIT(Appeals). Once again, we may observe that as the assessee society had, viz. (i). failed to file its return of income, i.e. both u/s 139 or u/s 148 of the Act; (ii). failed to appear before the A.O. during the

assessment proceedings; (iii). failed to file before the A.O. any written submission; (iv). failed to file its replies to the queries that the A.O. raised vide notice(s) issued u/s.142(1) of the Act; (v). failed to participate in the course of the proceedings before the CIT(Appeals) despite being afforded sufficient opportunities; and (vi). failed to furnish any written submissions before the CIT(Appeals); therefore, the CIT(Appeals) in the absence of any evidence whatsoever, whether documentary or otherwise, which would reveal that the A.O was not justified in treating the unexplained cash deposits of Rs. 2,47,65,369/- (supra) in the assessee's bank account as its unexplained money u/s. 69A of the Act, had, thus, rightly disposed off the appeal on merits and approved the order passed by the A.O u/s 144 of the Act, dated 11.12.2019.

(ii). Apropos the reliance placed by the assessee appellant on the judgment of the Hon'ble High Court of Bombay CIT Vs. Prem Kumar Arjun Dass Luthra (HUF) (2017) 297 CTR 614 (Bom), the same being distinguishable on facts will not assist its case. The indulgence of the Hon'ble High Court was, inter alia, sought for adjudicating as to whether or not the Tribunal was justified in holding that the CIT(Appeals) does not have the power under the income-tax Act, 1961 to dismiss the

appeal of the assessee for non-prosecution of the appeal. Answering the aforesaid issue, the High Court had observed that once the assessee files the appeal, then it is obligatory for the CIT(Appeals) to dispose off the same on merits, and he is vested with no power to dismiss the appeal for non-prosecution. In the present appeal before us, the CIT(Appeals) observed that no material/evidence was placed on record by the assessee appellant to substantiate the sources of the credit in its bank account. It was, thus, in the absence of any evidence whatsoever, whether documentary or otherwise, that the CIT(Appeals) had agreed with the AO that the unexplained cash deposits of Rs. 2,47,65,369/- (supra) in the bank account of the assessee society was to be held as its unexplained money u/s 69A. As the appeal in the case of the present assessee society before us had not been dismissed in *limine* by the CIT(Appeals), therefore, the same is distinguishable on facts as were there before the Hon'ble High Court in the case of Prem Kumar Arjun Dass Luthra (supra).

(C). The CIT(Appeals) had grossly erred in confirming the addition of Rs. 2,47,65,369/- made by the A.O by treating the cash deposits as the assessee's unexplained money u/s 69A of the Act.

- (i). The aforesaid claim of the assessee, i.e. the CIT(Appeals), had erred in confirming the addition of Rs. 2,47, 65,369/- made by the A.O u/s 69A

of the Act is misconceived. As observed by us hereinabove, in the absence of any evidence whatsoever, whether documentary or otherwise, which would reveal that there was no justification for treating the cash deposits of Rs. 2,47,65,369/- (supra) in the assessee's bank account as its unexplained money u/s.69A of the Act, the CIT(Appeals) had approved the well-reasoned addition made by the A.O. The CIT(Appeals) observing that no material/evidence was placed on record by the assessee appellant to substantiate the sources of the credit in its bank account, thus, was constrained to sustain the addition made by the A.O u/s 69A of the Act.

Thus, in terms of our observations above, we find no merit in the grounds on which the assessee society has assailed the order of the CIT(Appeals) before us.

15. Apropos, the claim of the Ld. A.R. that the matter in all fairness be restored to the file of the A.O. for fresh adjudication, the same does not favor us. As observed by us herein above, the grounds based on which the order of the CIT(Appeals) has been assailed before us are devoid and bereft of any merit; therefore, the appeal is liable to be dismissed on the said count itself. Apart from that, we are of a firm conviction that the right vested with an appellant to approach the tribunal by preferring an appeal before it is for a

limited purpose, i.e. a grievance that the assessment framed by the AO, or for that matter, order of the CIT(Appeal) were not according to law. In no case can the Tribunal be taken as a forum for an appellant who, as per his volition, had either adopted an evasive or lackadaisical approach before the lower authorities and not participated in the assessment or appellate proceedings to come up with its case for the first time before the Tribunal and, as a matter of right seek restoring of the impugned order to the file of the lower authorities for fresh adjudication.

21. Considering the facts mentioned above, finding no infirmity in the view taken by the lower authorities who had rightly made/sustained the addition of 2,47,65,369/-, we uphold the same.

22. In the result, the assessee's appeal is dismissed in terms of our observations above.

Order pronounced in open court on 18th day of September, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 18th 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, Raipur-1 (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.