

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.92/RPR/2023  
निर्धारण वर्ष / Assessment Year : 2011-12

Jhumuklal Panigrahi  
Prop. M/s. Jhumuklal Panigrahi & Sons,  
Ward No.9, Bhahmanpara, Main Road,  
Karitgaon, Dist. Bastar (C.G.)-494 221

PAN : BJNPP2195L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-Jagdarpur, Dist. Baster (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.10.2023

घोषणा की तारीख / Date of Pronouncement : 11.10.2023

**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 Centre (NFAC), Delhi, dated 31.01.2023, which in turn arises from the order passed by the A.O. u/ss. 147/143(3) of the Income-tax Act, 1961 (for short 'Act') dated 09.08.2016 for A.Y. 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1) That order of CIT(A) is bad-in-law, illegal and void-ab-initio.

2) That order of CIT(A) is bad-in-law, illegal and void-ab-initio as ITO Ward, Jagdarpur, who had issued notice u/s 148 and passed assessment order u/s.147 r.w.s. 143(3), had not assumed valid jurisdiction to pass assessment order as he had recorded reason by stating that "I have reason to believe that assessee has concealed his income and/or furnished inaccurate particulars of income. Therefore, this is a fit case for issue of notice u/s 148 r.w.s. 147 of the I.T. Act, 1961" wherein basic condition of section 147 that to have a reason to believe that particular income chargeable to tax has escaped assessment for a particular assessment year is absent.

3) Without prejudice to ground nos. 1 & 2, CIT(A) erred in passing order on 31.01.2023 because he had not appreciated fully and properly reason for adjournment of case stated in reply filed on 19.12.2022 that "Sir, assessee has filed a letter before AO on 19.12.2022 for collecting certain information and documents for the A.Y.2011/12 as assessment file of the assessee is misplaced. Copy of letter filed before AO on 19.12.2022 is attached. It is therefore, your honour is kindly requested to give a month time to file written submission on the subject" and he had not issued fresh notice for fixation of the case after filing reply on 19.12.2022. That assessee has got these documents from the AO on 03.02.2023.

4) Without prejudice to ground nos. 1 & 2, on the facts and in the circumstances of the case CIT(A) erred in confirming addition of

Rs.11,00,000/- made by the Assessing Officer by invoking provision of sections either 68 or 69A, as it is not clear from the reading of assessment order which section is in fact invoked by the AO, in respect of cash deposited in bank account during the F.Y. 2010/11 of Rs.11,00,000/-, duly recorded in the books of account maintained by the assessee produced before the AO for verification also, without considering the facts and circumstances of the case properly and judicially. The assessee prays that the addition of Rs. 11,00,000/- be deleted.

5) The appellant reserves the right to add, amend, or alter/withdraw any ground/grounds of appeal at the time of hearing.”

2. Succinctly stated, the A.O based on AIR information that the assessee had during the year under consideration, made cash deposits over Rs. 10 lacs in his bank account but did not file his return of income, reopened his case u/s 147 of the Act. Notice u/s 148 of the Act, dated 30.04.2015, was issued to the assessee. In response, the assessee filed his return of income (though belated) with the A.O

3. During the assessment proceedings, the A.O. observed that the assessee had made cash deposits of Rs. 11 lac in his savings account no 10460916070 with State Bank of India, Branch: Main Bazaar, Jagdarpur. As the explanation of the assessee regarding the source of the cash deposits did not find favor with the A.O, he held the entire amount of Rs. 11 lac as the assessee's unexplained money/cash credits u/s 68 r.w.s 69A of the Act. Accordingly, the A.O. vide his order u/ss. 147/143(3), dated 09.08.2016 assessed the income of the assessee at 12,03,270/-

4. Aggrieved, the assessee assailed the order passed by the A.O u/ss. 147/143(3) before the CIT(Appeals), who dismissed the appeal vide his order dated 19.08.2016..

5. As the assessee had expired, the present appeal assailing the order of the CIT(Appeals) has been filed before us by the legal heir of the assessee (since deceased).

6. At the very outset of the hearing of the appeal, Shri R.B Doshi, Ld. The authorized Representative (for short 'AR') for the assessee (since deceased) submitted that the assessee had expired on 07.11.2019. The Ld. A.R submitted that the fact that the assessee had expired was brought to the notice of the CIT(Appeals) in the course of appellate proceedings vide an adjournment letter dated 25.11.2022, which was uploaded in the e-filing portal. Our attention was drawn to the adjournment letter dated 25.11.2022, Page 2 of APB, which reads as follows.:

“Reason for seeking adjournment

Gathering of material from multiple sources requires time

Assessee is expired on 07/11/2019 death certificate is enclosed herewith. We are trying to gather required material and documents for the above assessment year. So kindly adjourn the date of hearing required.”

The Ld. A.R submitted that though the assessee's counsel had intimated the CIT(Appeals) about the death of the assessee and had also uploaded a copy of his death certificate, the Ld. CIT(Appeal) had, however, proceeded with

and disposed off the appeal in the name of the deceased assessee, and that too based on a non-speaking order. Backed by the facts above, the Ld. AR submitted that the matter be restored to the CIT(Appeals).

7. Per contra, the Ld. Departmental Representative (for short 'DR') did not raise any objection to the submissions put forth by the Ld. AR.

8. We have heard the Id. Authorized Representatives of both parties, perused the material available on record as well as orders of the lower authorities. As is discernible from the order of the CIT(Appeals), we find that he had dismissed the assessee's appeal in limine without adverting to the grounds based on which the impugned order was assailed before him. For the sake of clarity, the relevant observation of the CIT(Appeals) is culled out as follows:

"6.4 Further, during, the appellate proceedings, various notices were issued to the appellant to submit the details regarding his claim. But the appellant has not filed any written submission despite a reply on 19/12/2022 asking for adjournment for 1 month period. but till date the appellant had not filed any reply. In the absence of the written submission and evidence, it remained to be unexplained as to how appellants claim is erroneous. If the appellant claims that he is eligible for any claim he should have furnished supporting documents. However, the appellant failed to avail the same by non-complying. During the appellate proceedings, the appellant has not availed of the opportunities given. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous."

Considering the fact that the CIT(Appeals) had passed the order in the name of the deceased assessee, his order on the said count itself cannot be sustained. Also, we find that the CIT(Appeals) had dismissed the appeal of the assessee (since deceased) without adverting to the grounds raised before him. Based on the facts above, we are of the view that the matter, in all fairness, must be revisited by the CIT(Appeals) for fresh adjudication after impleading the legal heir/heirs of the assessee (since deceased). Needless to say, the CIT(Appeals), in the course of set-aside proceedings, shall afford a reasonable opportunity of being heard to the assessee. The assessee appellant (through legal heir/heirs) shall remain at liberty to substantiate his claim based on fresh documentary evidence, if any.

9. In the result, the assessee's appeal is allowed for statistical purposes in terms of our observations above.

Order pronounced in open court on 11<sup>th</sup> day of October, 2023.

**Sd/-**  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 11<sup>th</sup> October, 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, 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.