

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. 259/RPR/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Shiv Singh,
Quarter No.4/B, Street No.12
Sector-8, Bhilai, Durg-490 009
PAN : BDTPS1578Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.10.2023

घोषणा की तारीख / Date of Pronouncement : 18.10.2023

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 Center (NFAC), Delhi, dated 21.07.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short, "the Act") dated 21.12.2017 for the assessment year 2015-16. 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 Ld. Commissioner of Income-tax (Appeals) has erred in dismissing the appeal unilaterally without allowing the appellant to file his written submission by overlooking the adjournment application.
- 2) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) is not justified in confirming the addition of Rs.14,53,494/- as unexplained investments u/s. 69 of the Income-tax Act, 1961.
- 3) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) is not justified in confirming the addition of Rs.14,99,300/- as unexplained cash gifts received from parents u/s. 69 of the Income-tax Act, 1961.
- 4) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) is not justified in confirming the addition of Rs.6,03,850/- as unexplained peak credit u/s. 69 of the Income-tax Act, 1961.
- 5) The impugned order is bad in law and on facts.
- 6) The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice.”

2. Succinctly stated, the assessee, who is engaged in the retail business of general items, had filed his return of income for A.Y. 2015-16 on 06.08.2015, declaring an income of Rs.2,69,640/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. The assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act dated 21.12.2017 determining the income of the assessee at Rs.38,26,294/- after, inter alia, making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Addition on account of unexplained investment u/s.69 of the Act	Rs.14,53,494/-
2.	Addition on account of unexplained cash gifts received from parents u/s.69 of the Act	Rs.14,99,300/-
3.	Addition on account of peak credit u/s.69 of the Act	Rs.6,03,850/-

3. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5.1 I have perused the assessment order and the material on record. The facts of this case are that the assessee runs a cosmetic and gift shop and has filed return of income by opting for provisions u/s 44AD of the I.T. Act. No regular books of accounts are maintained. During the year, the assessee has purchased residential property for Rs. 43,78,970/- and a Maruti Dzire Car for Rs. 5,50,000/-, for which deposits have been made in the bank on various dates. During the course of assessment proceedings, the assessee submitted a cash flow statement for the previous year. The AO found that the closing

cash in hand as per the balance sheet as on 31.03.2014 was Rs. 7,00,706/-, whereas the opening cash balance as on 01.04.2014 was Rs.27,33,981/-. Also the fund flow statement submitted by the assessee showed that cash in hand as on 01.04.2014 was Rs. 21,54,200/-. The assessee explained that he had collected cash from his relatives amounting to Rs.41,00,000/- for buying a residential house. The AO has discussed in detail in paras 4, 5, 6 & 7 of the assessment order that the explanation given by the assessee is not acceptable for detailed reasons given in the aforesaid paragraphs of the assessment order. On this basis, in para 7 the AO has added the difference between the cash in hand in the balance sheet as on 31.03.2014 & opening cash in hand in the fund flow statement as on 01.04.2014 amounting to Rs.14,53,494/- = (Rs.21,54,200—Rs.7,00,706) as unexplained investment for the purchase of house property and car. In para 8 of the assessment order, the AO has added gift from father of Rs.7,37,600/- and mother of Rs.7,61,700/- aggregating to Rs.14,99,300/-, as unexplained, since the assessee was not able to explain the credit worthiness of these persons. In para 9 of the assessment order, the AO has added peak credit balance of Rs. 6,03,860/- in the assessee's Bank Account with IDBI Bank after the purchase of residential house as being unexplained.

5.2 During the course of appeal proceedings, the appellant has not given any reply or submission or evidence to controvert any of the findings given by the AO on the basis of which the above additions have been made to the total income. I find that the additions made by the AO are in accordance with the facts of the case and provisions of law. Therefore, the additions made by the AO are upheld. Grounds No.1 to 4 are dismissed.”

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

5. Shri S.R. Rao, Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that the CIT(Appeals) had disposed of the appeal without affording a sufficient opportunity of being heard to the assessee. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the assessee in the course hearing of the appeal had uploaded a request letter on 17.07.2023 requesting for an adjournment of the appeal that was fixed for hearing on 18.07.2023 . The Ld.

AR had drawn my attention to the order passed by the CIT(Appeals) wherein the matter was last fixed for hearing on 18.07.2023. Carrying his contention further, it was submitted by the Ld. AR that the CIT(Appeals), without disposing of the assessee's application for adjournment, had proceeded with the appeal and dismissed the same. Based on his aforesaid contention, it was submitted by the Ld. A.R that as the assessee had remained unaware of the fate of his aforesaid applications for adjournment, therefore, for the said reason, he remained under a bonafide belief that the matter was adjourned and the fresh date of hearing would be intimated had thus failed to participate in the proceedings on the stipulated date of hearing. The Ld. A.R submitted that as the CIT(Appeals) had disposed off the appeal without intimating the declining of the assessee's request for adjournment, the latter had remained divested of a sufficient opportunity of defending his case before the first appellate authority. Referring to the aforesaid facts, it was averred by the Ld. AR that the matter, in all fairness and in the interest of justice, 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.

6. Per contra, the Ld. Departmental Representative (for short, "DR") relied on the orders of the lower authorities.

7. I have heard the Ld. 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 the record that the assessee had, in the course of

hearing of the appeal before the CIT(Appeals), uploaded on 17.07.2023 a request letter for adjournment vide Acknowledgement No.510956631170723 dated 18.07.2023. Ostensibly, the CIT(Appeals) had, without intimating to the assessee that his request for adjournment had been turned down, proceeded with the matter and disposed off the appeal of the assessee. I find substance in the claim of the Ld. AR that the assessee had remained under a bona fide belief that the letter of adjournment that was uploaded by him was accepted by the CIT(Appeals), and a fresh date of hearing would be intimated to him.

8. Be that as it may, I am of the considered view that now, when the assessee had on 17.07.2023 uploaded an application seeking an adjournment before the CIT(Appeals), then in case the same was to be declined and the matter was to be proceeded with on 18.07.2023, the assessee appellant should have been intimated about the said fact. As stated by the Ld. AR and, rightly so, the failure on the part of the CIT(Appeals) to intimate to the assessee the rejection of his request for adjournment had clearly divested him of an opportunity to defend his case by placing on record whatever material/submissions he had as on the date on which the appeal was fixed for hearing. I, say so, for the reason that in case the rejection of the request for adjournment would have been intimated to the assessee, then he might have participated in the proceedings on the stipulated date of hearing, i.e., on 18.07.2023 and defended his case with whatever material that was available to him. As the CIT(Appeals) had proceeded with and disposed off the appeal at the back of the

assessee, I concur with the claim of the Ld. AR that the latter had remained divested of his right to defend his case before the first appellate authority.

9. Considering the aforesaid facts, I am of the view that the matter, in all fairness and the interest of justice, 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.

10. As I have restored the matter to the file of the CIT(Appeals) for fresh adjudication, I refrain from dealing with the contentions as advanced by the Ld. AR qua the merits of the case, which, thus, are left open.

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

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

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 18th October, 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.