

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्यकेसमक्ष
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No: ITA296/RPR/2023
(Assessment Years: 2017-18)

Ashok Kumar, B-11, Pink City, Gayatri Nagar, Raipur, 492007 (C.G.)	V s	Income Tax Officer- Ward 4(1), Central Revenue Building, Civil Lines, Near Akashwani, Raipur (C.G.)
PAN: BGNPK9988H		
(अपीलार्थी/Applicant)	..	(प्रत्यर्थी / Respondent)
निर्धारितीकीओरसे /Assessee by	:	Shri Prafulla Pendse, CA
राजस्वकीओरसे /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाईकीतारीख/ Date of Hearing	:	13-10-2023
घोषणाकीतारीख/ Date of Pronouncement	:	18-10- 2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Ld. CIT(A), (NFAC), Delhi, passed u/s 250 dated 20-07-2023 for the AY 2017-18, which in turn has arisen from the order of Ld. AO u/s 147 r.w.s. 144, 144B of the Income Tax Act (herein referred to as "Act"), dated 25/02/2022.

2. Grounds of appeal raised by the assessee are as under:

1. That the order of Ld. CIT(A) is bad in law as well as on facts.
2. That the order is bad in law as well as on facts as the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs. 1,77,21,630/-, which is contrary to the provisions of income tax act.
3. The Ld. CIT(A) erred in dismissing the appeal filed by the appellant on the plea that admitted taxes were not paid

when the fact remains that appellant did not have any taxable income so as to oblige him to pay either advance tax or file return of income, as such the provisions of section 249(b) were not applicable to the appellant.

4. That the invocation of Section 115BBE is itself bad in law and invalid because the same is not applicable for the AY 2017-18 and moreover the sources of cash deposits are business receipts and not unexplained money.
5. The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal.

3. The brief facts of the case are that the assessee is an individual who has not filed his return of Income for the AY 2017-18. As per the information available in AIMS module the assessee has entered into substantial financial transactions of Rs.1,07,95,997/- but has not filed the return of income. Accordingly, notice u/s 133(6) was issued to the assessee and proceedings u/s 147 for reopening scrutiny assessment were initiated. During the course of assessment proceedings when it was questioned that substantial cash has been deposited in the bank account of the assessee, the assessee has only stated that his income is below the limit for filing of income tax return, so he has not filed the return. Assessee is working as RTO agent involved in the services of issuances of Driving licenses, vehicle permits, vehicle fitness and all services of vehicle work. The Ld. AO observed that no documentary evidence in

support of business activity and in support that the income is below taxable limit have been furnished by the assessee. Further details and explanations were not provided by the assessee, therefore, Ld. AO has denied the claim of the assessee on the basis of general statement and has proposed that the credit and cash deposit found in the bank account of the assessee to the extent of Rs. 17288933 during the year under consideration to be treated as unexplained so the same is charged to income tax by invoking the provisions of Section 69(A) of the I.T. Act. Ld. AO further observed that an amount of Rs. 4,32,697/- has been received by te assessee as contractual receipt u/s 194C, which in absence of any explanation by the assessee are treated as income escaped assessment. A draft assessment order indicating proposed addition in respect of the above issues was served on the assessee with a show cause notice dated 16/02/2022, with a request to furnish a reply by 22/02/2022. Assessee has not made any reply to the proposed addition, which was considered as that the assessee has nothing to say. Finally, the draft assessment order was passed as final assessment order with total addition of Rs. 1,77,21,630/-.

4. Aggrieved with the aforesaid order of Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), wherein, in absence of compliance towards deficiencies noted and intimated to the assessee by

Ld. CIT(A). The appeal of the assessee was dismissed in view of the provisions of Sections 249(4) of the Act.

5. Again, dissatisfied with the order of Ld. CIT(A), NFAC, now the assessee has filed the instant appeal before us.

6. At the outset, Ld. AR of the assessee has submitted that the assessee is a RTO Agent with very meagre income, who has received various amounts on behalf of his clients and such amounts were deposited in his bank accounts and the same were further paid on behalf of the clients in the course of assessee's regular service work, however, Ld. AO has only concentrated on the receipt side of the bank account of the assessee and has not examined the payments made from the said bank accounts. Ld.AR fairly admitted that the assessee was also on negligence before the Ld. AO in not explaining such details. It is also submitted that the reason for non-response of the assessee before of LD. AO and Ld. CIT(A) was also on account of health issues of the assessee's mother and wife during the impugned period, which is still continuing whereby the assessee is under great stress. It was the submission of Ld. AR that the defect memo issued by the office of the Ld. CIT(A), were not found with attachment, thus, could not be downloaded and opened when the same were reflected on the IT portal. To this effect, assessee has also submitted his response on 27/06/2023 in response to notice dated 23/06/2023 on the ITBA portal saying that "Dear sir,

deficiency letter not attached. It is the submission of Ld. AR that such memos are now available on the portal but the same were not at that time. Copy of the response of the assessee and notice dated 03/07/2023 by the Ld. CIT(A) furnished before us, are extracted as under:

Acknowledgement Number : 304462041270623

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	BGNPK9988H			
Name	ASHOK KUMAR			
Financial Year	2016-17			
Assessment Year	2017-18			
Proceeding Name	First Appeal Proceedings			
Notice/Communication Reference ID	100063806005			
Notice Section				
Description	[ITBA]Deficiency Letter			
Notice Issue Date	23-Jun-2023			
Due Date for Submission				
Communication Sent date				
Document Reference ID	ITBA/NFAC/S/25/2023-24/1053906379(1)			
RESPONSE SUBMITTED				
Remarks	Dear Sir, Deficiency letter not attached.			
Hash * Value Of Remarks	3abeebdd438aa7106eb76c83562dbd4cad306a3c6ccf4e2e160ce007cede791d			
SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
		No Records Added		
This is a system generated acknowledgement and does not require signature				
* Hash : This value will uniquely identify the uploaded files and remarks.				



भारत सरकार / GOVERNMENT OF INDIA
 वित्त मंत्रालय / MINISTRY OF FINANCE
 आयकर विभाग / INCOME TAX DEPARTMENT
 राष्ट्रीय पहचान विहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
 दिल्ली / DELHI

To,
 ASHOK KUMAR
 B-11 PINK CITI, GAYATRI NAGAR
 RAIPUR 492007, Chhattisgarh
 India

PAN: BGNPK9988H	AY: 2017-18	Dated: 03/07/2023	DIN & Letter No : ITBA/NFAC/S/25/2023-24/1054082298(1)
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Sir/Madam/M/s,

Subject: Clarification in respect of Appeal application vide acknowledgment No. for the A.Y. 2017-18 U/s 147r.w.s144 -Regarding

Please refer to your Appeal application in **Form No 35** filed with this office on **20/02/2023**. The Appeal application is found to be deficient on following grounds:

- 1 Tax on Returned Income not paid/Particulars of payment not mentioned.**

You are requested to clarify on the above defects / deficiencies within 7 days of receipt of this letter, failing which your Appeal may be treated as invalid, and hence not admitted.

Any further communication in this regards be made through the e-proceeding of the Appeal proceedings created against the appeal number, under the login-id of your e-filing account.

Yours faithfully,

**Commissioner of Income-tax (Appeals)
 Income Tax Department**

Note: For appeal related to TDS order, Assessment Year is the year relevant to Financial Year for

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

7. In view of the aforesaid facts and circumstances, it is the submission of Ld. AR that on perusal of the aforesaid notice issued by the Ld. CIT(A), wherein, the defect pointed out by the Ld. CIT(A) was "Tax on returned income not paid/ particulars of payment not mentioned", shows that there was certain returned income however in the present case assessee has never filed any return of income. Ld. AR with such

assertions have requested to restore the matter of the assessee back to the file of Ld. CIT(A) so as to explain the deposits made by the assessee in his bank account but could not explain before the revenue authorities due to unavoidable circumstances as contended herein above.

8. Contrary to submission of Ld. AR, Ld. Sr. DR vehemently supported the order of Revenue Authorities and requested to sustain the same.

9. We have considered the rival submission, perused the material available on record and the orders of the authorities below. In the present case it is an admitted fact that the assessee was not found to be cautious and compliant towards the show cause and notices of the Revenue Authorities. Ld. AO has made the addition in absence of any plausible explanation supported with corroborative cogent evidence or on the basis of no response by the assessee towards the draft assessment order proposing additions against the assessee. Before the Ld. CIT(A), it is noticed that the defect memos issued by the Ld. CIT(A) were not found by the assessee attached on the ITBA portal, for which assessee has made an e-Proceedings Response Acknowledgment vide No. 304462041270623, wherein last 6 digits of the acknowledgment No. represent date of response which in the present case is 27/06/2023, this shows that the assessee has attempted to look into the notice issued by the Ld. CIT(A) but was unable to fetch the same. Further, a perusal of the findings given by the Ld. CIT(A), wherein it was observed that “*the*

appellant fail to remove the deficiency, the appeal filed by the appellant cannot be admitted, in view of the provisions of section 249(4) of the IT Act, 1961 and the same is not maintainable". From such observations of the Ld. CIT(A), if the same are read with notice issued for removal of deficiency wherein the deficiency noted was "*Tax on returned income not paid/ particulars of payment not mentioned*", it is apprehended that Ld. CIT(A) has though not mentioned the sub clause of Section 249(4), but apparently has invoked the provisions of sections 249(4)(a), which deals with a case where a return has been filed by the assessee. In the present case, it is an undisputed fact that the assessee has never filed any return of income for the relevant AY, and, therefore in such a case provisions of section 249(4)(b) has to be applied.

10. In backdrop of aforesaid observations and looking to the overall facts and circumstances of the case, in our considered opinion, in interest of substantial justice, without dealing with the merits of the grounds of appeal, we deem it suitable to restore the issues raised in the present appeal back to the file of the Ld. CIT(A) to adjudicate the issues afresh. The assessee shall be provided with reasonable opportunity of being heard. The assessee is also directed to comply with and assist in the set aside appellate proceedings without any excuse, failing which Ld. CIT(A) would be at discretion to decide the issue in accordance with law.

11. In the result the appeal filed by the assessee is partly allowed, in terms of our observations.

Order pronounced in the court on 18/10/2023.

Sd/-
(RAVISH SOOD)

न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखासदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 18/10/2023

Vaibhav

आदेशकीप्रतिलिपिअद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant-
2. प्रत्यर्थी/ The Respondent-
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्डफाईल / Guard file.

// True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकरअपीलीयअधिकरण, रायपुर/ITAT, Raipur

