

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. 215/RPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Vimlesh Kumar Sharma
1, Main Road, Opp. Prakash Petrol Pump,
Bankimogra, Korba (C.G.)-495447

PAN : ANOPS4525M

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.10.2023
घोषणा की तारीख / Date of Pronouncement : 20.10.2023

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 03.10.2022, which in turn arises from the intimation issued by the Centralized Processing Center (CPC)/A.O under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 27.03.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

“That, on the facts and in the circumstance of the case, the learned CIT (A), NFAC, New Delhi, grossly erred to dismissing the appeal.

1.1. That the appellant had sought adjournment upto 14/10/2022 and the request was uploaded in the Online Portal of the Income Department. But, without informing about its denial, the Id. CIT(A) passed the order and dismissed the appeal. No sufficient opportunity was given to the appellant.

1.2. That the Id. CIT(A) did not look into the 'Statement of Facts' and dismissed the appeal.

1.3. That, on the facts of the case, the Id. CIT(A) erred in confirming addition of Rs.1,35,85,882.00 made by the CPC, Bengaluru, u/s 143(1) adjustment. The addition is liable to be deleted.

2. That other ground shall be pressed at the time of hearing.”

2. Shorn of unnecessary details, the return of income filed by the assessee for the A.Y.2017-18 was processed by the Centralized Processing Center (CPC), Bengaluru, vide an intimation issued u/s.143(1) of the Act, dated 27.03.2019. As is

discernible from the records, the CPC, while processing the return of income of the assessee, had made an addition of Rs.1,35,85,882/- to his returned income.

3. Aggrieved the assessee assailed the intimation issued u/s.143(1) of the Act before the CIT(Appeals) but without success. As the assessee, despite having been intimated about the hearing of the appeal, failed to put up an appearance before the CIT(appeals), he dismissed the same in limine. For the sake of clarity, the observations of the CIT(Appeals) are culled out as follows:

“3. The appeals were taken up and fixed for hearing as per Section 250(1) of the Income Tax Act, 1961. The first notice i.e. ITNS-37 was issued for the year under consideration dated 01.01.2021 fixing the hearing on 15.01.2021 but on 15.01.2021 neither any reply was filed by the appellant nor any adjournment was received. Another notice was issued for the year under consideration dated 17.08.2021 fixing the hearing on 31.08.2021 but again on 31.08.2021 neither any reply was filed by the appellant nor any adjournment was received. Subsequently, notice was issued for the year under consideration dated 12.09.2022 fixing the hearing on 19.09.2022 but again on 19.09.2022 neither any reply was filed by the appellant nor any adjournment was received.

3.1 Thereafter, a 'Final Opportunity Notice was, issued for the year under consideration dated 28.09.2022 fixing the hearing on 30.09.2022 but again on 30.09.2022 no response was filed by the assessee.

3.2 The notices sent to the appellant by ITBA PORTAL, amounts to service of notice as provided u/s 282 of the Income Tax Act, 1961 as good service. The appellant has been duly notified on various occasions by this office by way of the notices. Since the appellant has deliberately avoided to avail the opportunities provided, therefore it is presumed that the appellate has nothing to say in the matter.

4. The maxim `vigilantibus non-dormientibus jurasubvenunt' i.e. the law assists those who are vigilant and not those who sleep over their rights, is applicable in this case. The Hon'ble ITAT, Chandigarh in ITA no. 1025-1027/Chandigarh/2005 for the AN 2002-03 in the case of M/s Chhabra Land and Housing Ltd, following the decision of the Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC),

has held that appeal does not mean merely filing of the appeal but rather, effectively pursuing it. The notices sent to the appellant by Portal indicating that these have been served upon the appellant. It is apparent that the appellate is not interested in pursuing the appeal. In this case, the AO mentioned that the amount of Rs. 1,35,85,882/- was added to the income of the assessee as receipts of the partnership firm but as per the AO, the TDS details have not been filed by the appellant and then the CPC disallowed the same. The AO CPC has duly mentioned the reasons for making such addition and the assessee has not been able to rebut the findings of the AO as nothing has been submitted during the appellate proceedings on the grounds taken by the assessee. Hence, the additions made by the AO are found sustainable as per law. The ground(s) of appeal raised by the assessee against the additions are not found maintainable and hence liable to be dismissed.

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

5. Shri Ravi Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold submitted that the CIT(Appeals) had disposed off 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 had uploaded on the online portal a letter requesting for an adjournment of the appeal up to 14.10.2022, Page 56 of APB. The Ld. AR had drawn our attention to the order passed by the CIT(Appeals) wherein the matter was last fixed for hearing on 30.09.2022. Carrying his contention further, it was submitted by the Ld. AR that the CIT(Appeals), without intimating the declining of his request for adjournment that was uploaded on the online portal, had dismissed his appeal. 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 application for adjournment, therefore, for the said reason, he remaining under a bonafide belief that the matter was adjourned and a fresh date of hearing would be intimated had, thus, failed to participate in the proceedings on the stipulated date. The Ld. A.R submitted that as the CIT(Appeals) had disposed of the appeal without intimating the rejection 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. The Ld. AR has also filed before us a letter dated 14.08.2023 seeking admission of additional evidence. The Ld. A.R submitted that as the CIT(Appeals) had dismissed his appeal on an ex-parte basis, there was no occasion for the assessee to produce the documents, viz. additional evidence before him and request for admission of the same. For the sake of clarity, the documents filed before us as additional evidence are s under:

S.no.	Documents	Page no.
1.	ITR and Computation of Vimlesh Kumar Sharma (individual)	1 - 7
2.	Form 26 AS of Vimlesh Kumar Sharma (individual)	8- 11
3.	Copy of Partnership Deed of M/s Vimlesh Kumar Sharma(firm)	12 - 17
4.	Copy of audit report of M/s Vimlesh Kumar Sharma (firm)	18 - 36
5.	ITR and Computation of M/s Vimlesh Kumar Sharma (firm)	37 - 40
6.	26AS of M/s Vimlesh Kumar Sharma (firm)	41 - 42
7.	Copy of ledger accounts of M/s Vimlesh Kumar Sharma (firm)	43 - 55
8.	Copy of screenshot of online portal of Income Tax Department	56

7. Per contra, the Ld. Departmental Representative (for short, "DR") relied on the orders of the lower authorities. The Ld. D.R submitted that though the lower authorities gave several opportunities to the assessee but he failed to produce the aforesaid documents, which he now had sought to place on record as additional evidence. The Ld. D.R. averred that the additional evidence produced by the assessee be not taken on record. However, the Ld. DR fairly conceded that the adjournment letter, which was uploaded by the assessee seeking adjournment up to 14.10.2022, had not been considered by the CIT(Appeals), and there is no mention of the same in his order.

8. We 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 a request letter for adjournment up to 14.10.2022, Page 56 of APB. 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 his appeal. We 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 he had uploaded was accepted by the CIT(Appeals), and a fresh date of hearing would be intimated to him.

9. Be that as it may, we are of the considered view that now, when the assessee had uploaded an application requesting for adjournment before the CIT(Appeals), then in case the same was to be declined and the matter was to be proceeded with on 30.09.2022, then, 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. We, 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 30.09.2022 and defended his case with whatever material that was available to him. As the CIT(Appeals) had proceeded with and disposed off the appeal without intimating to the assessee about the declining of his request for adjournment, we concur with the

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

10. Considering the aforesaid facts, we are 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. Needless to say, the CIT(Appeals) shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee, Also, the assessee shall be at liberty to seek admission of the documents filed as additional evidence before us in the course of the set-aside proceedings before the CIT(Appeal), which, the latter may admit as per his discretion.

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

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

Order pronounced in open court on 20th day of October, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 20th 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, 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.