

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. 247/RPR/2023

निर्धारण वर्ष / Assessment Year : 2016-17

Jitenderpal Singh Ahluwalia
Opp. Prince Sanitation, Station Road,
Raipur (C.G.)-492 001
PAN : ACKPA2664C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Sakshi Gopal Aggrawal &
Siddharth Parakh, CAs
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.10.2023

घोषणा की तारीख / Date of Pronouncement : 27.10.2023

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 26.05.2023, 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 01.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal:

- “1) That order of CIT(A) is bad-in-law, illegal and void-ab-initio.
- 2) That CIT(A) has erred in upholding the assessment order passed by the AO despite the fact that notice u/s.143(2) was issued only by non-jurisdictional ITO-1(2), Raipur and not by the JAO Assistant Commissioner of Income Tax-1(1), Raipur. Thus, no valid jurisdiction was assumed by AO to pass assessment order.
- 3) That CIT(A) has erred in not providing reasonable opportunity of being heard to the assessee as no notice u/s 250 was issued to the assessee manually despite mentioning explicitly in Form no. 35 that notices/communications should not be sent over mail.
- 4) Without prejudice to ground nos. 1 to 3, CIT(A) has erred in dismissing appeal without deciding appeal on merit of the case properly and judicially.
- 5) Without prejudice to ground nos. 1 to 3, on the facts and in circumstances of the case CIT(A) has erred in confirming the addition of Rs.12,30,000/- made by the Assessing Officer by treating cash deposited in account with Central Bank of India, Sadar Bazar, Raipur during the F.Y.2015/16 as unexplained cash credits u/s.68 without considering the facts and circumstances of the case properly and judicially. Hence, the assessee prays that the addition of Rs. 12,30,000/- be deleted.
- 6) The assessee reserves the right to add, amend, or alter/withdraw any ground/grounds of appeal at the time of hearing.”

2. Succinctly stated, the assessee had e-filed his return of income for A.Y.2016-17 on 12.08.2017, declaring an income of Rs.16,02,950/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.
3. The A.O. thereafter framed the assessment vide his order passed u/s. 143(3) of the Act dated 01.12.2018, wherein after making an addition of the amount of unexplained cash credit of Rs. 12.30 lacs in the assessee's bank account u/s.68 of the Act, the income of the assessee was assessed at Rs.28,32,950/-.
4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.
5. Shri Sakshi Gopal Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal assailed the validity of jurisdiction that was assumed by the A.O, i.e., ACIT, Circle-1(1), Raipur for framing assessment u/s.143(3) of the Act dated 01.12.2018. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that as the assessee had returned an income of Rs.16,02,950/-, therefore, as per CBDT Instruction No.1/2011 dated 31.01.2011, pecuniary jurisdiction to frame the assessment in the case of the assessee was vested exclusively with the ACIT, Circle-1(1), Raipur. The Ld. A.R further submitted that as the ACIT, Circle-1(1), Raipur, i.e., A.O having pecuniary jurisdiction over the case of the assessee had framed the assessment on the basis of notice u/s. 143(2) of the Act dated 17.08.2018, Page 56 to 58 of APB that was issued by the ITO, Ward-1(2), Raipur, i.e., an officer who had no jurisdiction over his

case; therefore, the same could not be sustained and was liable to be struck down. To sum up, it was the claim of the Ld. AR that assessment framed by the ACIT, Circle-1(1), Raipur, i.e., the A.O having jurisdiction over the case of the assessee in the absence of any valid notice u/s.143(2) of the Act could not be sustained and was liable to be struck down.

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

7. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record. Ostensibly, on perusal of the order of the CIT(Appeals), it transpires that as the assessee, despite having been afforded a sufficient opportunity, had failed to participate in the appellate proceedings; therefore, he dismissed the appeal in limine. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

"5. FINDINGS AND DECISION:

5.1 The assessee is on appeal before this office against the order passed under section 143(3) of the Income Tax Act.

5.2 The assessee was provided multiple opportunities by this office to submit documents and make submissions in response to the appeal filed. However, the assessee has not exercised this option despite multiple reminders. The table below indicates the dates and the compliance status of the various notices issued.

Date of notice	Compliance Date	Remarks
24 th December, 2020	30 th December, 2020	No details furnished nor any petition for

		adjournment was received.
5 th March	21 st March, 2022	No details furnished nor any petition for adjournment was received.
13 th April, 2023	20 th April, 2023	No details furnished nor any petition for adjournment was received
19 th May, 2023	25 th May, 2023	No details furnished nor any petition for adjournment was received

The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant is not interested in prosecuting the Appeal.

5.3. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known Latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

5.3.1. The Hon'ble Income Tax Appellate Tribunal — Kolkata in the case of Pradeep Kumar Jhavar Kolkata vs. DCIT — CC - XXI (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asstt. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

5.3.2. The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under: "If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

5.3.3. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT [(2008) 296 ITR 495] returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the

same. Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly, the appeal of the assessee stands dismissed.”

8. As observed hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issue which did arise from the impugned order and was assailed by the assessee before him. I am unable to persuade myself to accept the manner in which the appeal of the assessee has been disposed off by the CIT(Appeals). In my view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit, and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. A perusal of Sec.251(1)(a) and (b), as well as the “Explanation” to Sec.251(2) of the Act, reveals that the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arise from the impugned order before him. As per the mandate of law, the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case, the Hon'ble High Court observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges

the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

9. I, thus, not being able to persuade myself to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(Appeals) shall afford a reasonable opportunity to be heard to the assessee during the de novo appellate proceedings. The grounds of appeal raised by the assessee are disposed off in terms of the aforesaid observations.

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

Order pronounced in open court on 27th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 27th 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.