

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

Kesari Bai Katiya
6/663, Karma Chowk,
Ram Nagar, Raipur (C.G.)-492 001
PAN : ASBPG3620R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(4),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 31.10.2023
घोषणा की तारीख / Date of Pronouncement : 31.10.2023

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 25.08.2023, which in turn arises from the order passed by the A.O under Sec.144 r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 08.10.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in circumstances of the case, the Learned CIT(A) has erred in not considering the order u/s.154 passed by assessing officer on 21.02.2019 where in addition made in assessment to the extent of Rs.1,30,23,986/- was reduced to Rs.36,04,000/- and thereby erred in sustaining the addition to the extent of Rs.1,30,23,986/-.

2. On the facts and in the circumstances of the case, the Ld. A.O. has erred in sustaining the addition made by Income tax Officer of Rs.1,30,23,986/- on account of Unexplained Investment. The order of Ld. CIT (A) is unjustified, unwarranted and uncalled for.

3 The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. On the basis of information received by the A.O that the assessee had made certain cash deposits in his bank account, the A.O issued notice u/s.148 of the Act dated 23.03.2018. As the assessee did not comply with the aforesaid notice, the A.O proceeded with the assessment on an ex-parte basis.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had made time deposits of Rs.63,09,986/- with Indian Bank,

Branch : Bhubaneshwar. Also, the A.O observed that the assessee had made cash deposits of Rs.67,14,000/- in his bank account with Indian Bank, Chennai Unit, Bhubaneshwar. As the assessee had failed to come forth with any explanation as regards the nature and source of the aforesaid cash deposits/time deposits, therefore, the A.O held the entire amount of Rs.1,30,23,986/- as his investment from unexplained sources. Accordingly, the A.O vide his order passed u/s. 144 r.w.s. 147 dated 08.10.2018 determined the income of the assessee at Rs.1,30,23,986/-.

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

“10.1 In the instant case, the appellant had made time deposit of Rs. 63,09,986/- and also deposited cash in the bank accounts stated above of Rs.67,14,000/- and did not file return of income. The appellant is found to be the owner of the money and the appellant didn't offer any acceptable and cogent explanation regarding the source of such money found in her bank account. As the return of income is not filed for the year under consideration, therefore, the income earned has not been offered and taxes due are not paid. Thus, the time deposit/cash deposits found in the bank statement of the appellant are treated as unexplained.

10.4 To sum up the above, the analysis of the cash deposited and other credit added in the appellant income is as under:

- The appellant failed to furnish the return of income either u/s 139 or any other provision as envisaged in the Act.
- The appellant invested Rs. Cash/time deposit of Rs.1,30,23,986/- in the bank accounts maintained by the appellant.
- The appellant found to be the owner of the money as bank accounts are of appellant.

- The nature and source of the cash deposited found in the bank statement are not identifiable.
- The income earned by the appellant is not offered for taxation purposes and taxes due thereon are not paid.
- The appellant failed to offer any explanation during assessment proceedings as well as appellate proceedings, therefore, the cash deposit and time deposits appearing in the bank remained unexplained.

Therefore, in the prevailing circumstances of the case, I find no infirmity in the action of the AO of adding unexplained money of Rs.1,30,23,986/- In this view of the matter, the addition of Rs.1,30,23,986/- by the AO is hereby upheld. Consequently, the Ground No. 2 is dismissed.

11. In Ground No.3 the appellant has stated that any other relief which the Hon. Court may deem fit may be granted to the appellant. Ground being vague and general in nature, requires no separate adjudication as such, the same is dismissed.

12. Through Ground No. 4 the appellant craved leave to urge, add, amend, alter, enlarge, modify, substitute, delete any of the ground/grounds and to adduce fresh evidence at the time of hearing. No such option has been exercised. Hence, this ground of appeal is also dismissed.

13. Before parting, it is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision as contained in the assessment order, as mentioned earlier, the additions/disallowances made by the AO is sustained in terms of the observations herein-above.

14. In the result, the appeal of the appellant is dismissed.”

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

6. 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.

7. Shri Bikram Jain, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal submitted that the CIT(Appeals) had grossly erred in upholding the addition of Rs.1,30,23,986/- made by the A.O, despite the fact that the assessment order was rectified by the A.O vide order u/s.154 of the Act dated 21.02.2019, and the assessed income was scaled down to Rs.36,04,000/-. Elaborating on his contention, the Ld. AR submitted that the aforesaid order passed by the A.O u/s. 154 dated 21.02.2019 was duly brought to the notice of the CIT(Appeals) in the course of appellate proceedings. The Ld. AR in order to fortify his aforesaid claim, had drawn our attention to the response/letter dated 10.08.2023 wherein the order of the A.O u/s.154 was uploaded on the portal of the CIT(Appeals) vide response to Notice ID : 100065501032 (copy placed on record). The Ld. AR referring to the aforementioned response/reply took us through the remarks in the said response, wherein, it was stated by the assessee that the addition of Rs.94,19,986/- (out of Rs.1,30,23,9896/-) had been vacated by the A.O vide order u/s. 154 of the Act dated 21.02.2019. Backed by the aforesaid facts, it was submitted by the Ld. AR that as the A.O vide order passed u/s.154 dated 21.02.2019 had scaled down the assessed income to Rs.36,04,000/-, therefore, the order of the CIT(Appeals) be brought in conformity with the same.

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

9. We have thoughtfully considered the issue in hand in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. Ostensibly, the A.O vide his order passed u/s.154 of the Act dated 21.02.2019 had scaled down the original assessed income of Rs.1,30,23,986/- (supra) to Rs.36,04,000/- (supra). Also, it is a matter of fact borne from record that the assessee had vide his response/reply dated 10.08.2023 (supra) (copy placed on record) had brought the aforesaid order of the A.O u/s. 154 of the Act to the notice of the CIT(Appeals). In fact, a perusal of the response/remarks in the aforesaid reply dated 10.08.2023 reveals that the assessee after referring to the order of the A.O u/s.154 dated 21.02.2019 had specifically stated that the addition of Rs.94,19,986/- (out of Rs.1,30,23,9896/-) had been vacated by the A.O. However, we find that the CIT(Appeals) despite being well informed of the aforesaid material fact, had failed to take cognizance of the same and had upheld the assessment framed by the A.O u/s. 144 r.w.s. 147 of the Act, dated 08.10.2018 determining the income of the assessee at Rs.1,30,23,986/-.

10. As the CIT(Appeals) had inadvertently omitted to consider the order passed by the A.O u/s.154 dated 21.02.2019, therefore, in all fairness we restore the matter to his file with a direction to re-adjudicate the appeal after considering the same. Needless to say, the CIT(Appeals) in the course of the set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee.

11. As the Ld. AR had not come forth with any contentions as regards the sustainability of the balance addition of Rs.36,04,000/- (supra) pursuant to the order passed by the A.O

u/s. 144 r.w.s. 147 of the Act dated 08.10.2018 r.w.s. 154 of the Act (as claimed by him), therefore, we refrain from adverting to and dealing with the same. Thus, the **Grounds of appeal No. 1 & 2** raised by the assessee are disposed off in terms of our aforesaid observations.

12. **Ground of appeal No.3** being general in nature, is dismissed as not pressed.

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

Order pronounced in open court on 31st day of October, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 31st 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.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.