

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. 151/RPR/2023

निर्धारण वर्ष / Assessment Year : 2014-15

Ram Chand Panjwani
M/s. Gurunanak Rice Mill,
Vill : Tulshi, P.O. Tilda,
Neora, Raipur (C.G.)
PAN : AFBPP5595D

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 02.11.2023

घोषणा की तारीख / Date of Pronouncement : 06.11.2023

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 19.10.2022 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 24.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts & circumstances of the case and in law, ld. AO & ld. CIT(A) has erred in treating the purchases of Rs.82,75,000 from 4 parties as 'bogus purchases'; disallowing of Rs.20,68,750, which is 25% of Rs.82,75,000; arbitrary/ baseless estimation of 25% is on mere presumption, surmises and without having any basis/ supporting corroborative evidence/ material brought on record, is invalid & is liable to be deleted.

2. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

2. Succinctly stated, the assessee who is engaged in the business of rice milling and trading of paddy, rice, broken rice etc. had e-filed his return of income on 13.02.2015 declaring an income of Rs.8,02,440/-. During the course of assessment proceedings, it was observed by the A.O that the assessee had claimed to have purchased paddy/broken rice from the following four local parties:

S. No.	Name of the party	Total Purchase
1.	M/s. Agrawal Agro, Raipur	12,15,000/-
2.	M/s. Shrikhand Agro, Raipur	10,95,000/-
3.	M/s. Shri Annapurna Foods, Raipur	15,50,000/-
4.	M/s. Shri Shyamji Rice Agrotech, Raipur	44,15,000/-
	Total	82,75,000/-

3. A survey operation u/s.133A of the Act was conducted at the business premises of Shri Sanjay Sharma, Hanuman market, Raipur and Shri Kamlesh Kesharwani, commission Agent, Ramsagarpara, Raipur on 15.03.2016, which revealed that certain rice millers would procure bogus bills from brokers/entry operators without any actual purchase of goods. It was observed by the A.O that substantial incriminating material evidencing the aforesaid facts were found in the course of the aforesaid proceedings. The A.O also noticed that survey action was carried out in the case of Nagarik Sahakari Bank, Raipur where some of the brokers/entry operators maintained their bank accounts. It was further observed by the A.O that brokers/entry operators had in their respective statements that were recorded on oath u/s.131 of the Act had admitted of having provided bogus bills to rice traders and millers without any actual supply of goods. Also, it was noticed by the A.O that certain rice millers had in their statements that were recorded on oath admitted of being involved in the nefarious activities of providing bogus bills without any corresponding sales of goods. After deliberating at length on the modus-

operandi that was adopted by the brokers/entry operators and certain rice millers who had admitted of their involvement in providing/facilitating bogus bills in lieu of commission, and referring to their statements which were recorded u/s.131 of the Act a/w. those recorded in the course of their cross examination by rice millers who were alleged by them as beneficiary, it was observed by the A.O that brokers namely, Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamelsh Kesharwani, Shri Ghanshuam Rijwani and Shri Narad Sahu had stated on oath that they had provided bogus entries or bogus bills to various rice millers. It was also observed by the A.O that the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties on the basis of supporting documentary evidences, viz. delivery challans.

4. Considering the fact that the 4 parties from whom the assessee had claimed to have made purchases of Rs.82,75,000/- were in the course of investigation found to be bogus firms, the A.O called upon the assessee to substantiate the authenticity of the impugned purchase transactions on the basis of supporting documentary evidence. In reply the assessee in his attempt to substantiate the authenticity of the aforesaid purchase transactions submitted before the A.O that he had made genuine purchases and sales during the year, which were duly recorded in his books of account. At the same time, the assessee in order to purchase peace of mind offered for tax 10% of the purchases of Rs.28.25 lacs i.e. Rs.3,27,500/-. However, A.O did not find favour with the aforesaid explanation of the assessee. The A.O observed that the invoices of the aforesaid suppliers were

not supported by delivery challan. Also the A.O noticed that the modes of inward transport and mandi passage, Anuga etc. were not available with the assessee. Accordingly, the A.O was of the view that as the assessee as in a case where bogus purchase bills were procured, had failed to support his claim of having made genuine purchases from the aforementioned 4 parties by producing delivery challans and also the mode of inward transport, Mandi passage and Anugya etc., therefore, his claim of having made genuine purchases did not merit acceptance. As the assessee had failed to substantiate the authenticity of the purchases claimed to have been made from the aforementioned four parties, therefore, the A.O held the same as bogus purchases. The A.O in the totality of the facts involved in the case held the entire purchase of Rs.82,75,000/- as bogus.

5. After treating the impugned purchases in question as bogus the A.O rejected the books of accounts of the assessee u/s.145(3) of the Act. The A.O by relying on the order of the ITAT, Ahmadabad in the case of Vijay Proteins Vs. ACIT, (1996) 58 ITD 428 (Ahd.), and impliedly being of the view that the assessee had purchased the goods in question not from the aforementioned tainted parties from whom only bills were procured for routing the same through his books of account, but had procured such goods at a discounted value from the open/grey market, thus, disallowed 25% of the value of bogus purchases and made a consequential addition of Rs.20,68,750/- to the assessee's returned income. Apart from that the A.O had also made two additions viz. (i) Rs.1,00,000/- on account of freight expenses and hamali expenses as against claimed by the assessee of

Rs.15,35,186/- and Rs.32,18,969/- respectively; and (ii) Rs.50,000/- on account of wages expenses as against claimed by the assessee at Rs.10,43,582/-. On the basis of his aforesaid deliberations the A.O vide his order passed u/s.143(3), dated 24.12.2016 determined the income of the assessee at Rs.30,21,190/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who dismissed the appeal of the assessee in limine. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

“5. Decision :-

During the appeal proceedings, the assessee was provided an opportunity of being heard on 01.03.2021, 26.11.2021, 06.01.2022 and 06.05.2022, however, no details are filed despite the fact that notices were duly served. The approach of the assessee amply shows that it is not interested in prosecuting the appeal. Therefore, having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed.

6. Thus the appeal is dismissed.”

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

8. The Ld. Departmental Representative (for short ‘DR’) took a strong exception as regards the maintainability of the appeal for the reason that the same involves an inordinate delay of 137 days.

9. Apropos the delay involved in filing of the present appeal, the Ld. Authorized Representative (for short ‘AR’) for the assessee submitted that the same had occasioned for the reason that the assessee had inadvertently failed to open his e-

mail A/c, wherein the order of the CIT(Appeals), NFAC dated 19.10.2022 was dropped by NFAC. The Ld. AR in support of his aforesaid contention had drawn my attention to an "affidavit" dated 31.05.2023 of the assessee. Elaborating further, it was submitted by the Ld. AR that the assessee had learnt about the order of the CIT(Appeals), NFAC from his Chartered Accountant. It was, thus, submitted by the Ld. AR that as the delay in filing of the present appeal had occasioned for bonafide reasons and not due to any purposive or malafide intent, therefore, the same in all fairness merits to be condoned.

10. I have given a thoughtful consideration on the reasons leading to the delay in filing of the present appeal and am unable to persuade myself to subscribe to the same. Ostensibly, the assessee in the course of the proceedings before the CIT(Appeals) had despite having been afforded sufficient opportunity failed to put up an appearance before him on four occasions when the matter was fixed for hearing, i.e., 01.03.2021, 26.11.2021, 06.01.2022 and 06.05.2022. Also, no details in support of the grounds on the basis of which the impugned order was assailed before the first appellate authority were filed in the course of proceeding before him. On a perusal of the records, I find that the assessee in the course of proceedings before the CIT(Appeals) had adopted a lackadaisical approach and did not participate in the proceedings before the him. It is also evident from record that the assessee had filed the present appeal with a delay of 137 days, which reveals his callous conduct to participate in the process of law. Apropos the explanation given by the assessee for the aforesaid delay in filing of the present

appeal, the same in the backdrop of his irresponsible approach that was adopted by him in the course of proceedings before the CIT(Appeals) does not inspire any confidence.

11. In the totality of the facts leading to the delay in filing of the present appeal r.w the conduct of the assessee appellant before the lower authorities and also before me, I would mince no words in observing that the same does not merit acceptance. In fact, if I condone the inordinate delay involved in the present case where the assessee had not only delayed filing of the present appeal even before me, but also not participated in the appellate proceedings, then, it would send a wrong message and would lay down a wrong precedent for the times to come. I am of a strong conviction that as the assessee had on account of his callous conduct and a lackadaisical approach delayed the filing of the present appeal by a substantial period of 137 days, therefore, the application filed by him seeking condonation of the delay therein involved does not merit acceptance and is liable to be rejected at the threshold.

12. The co-ordinate bench of the Tribunal in the case of **M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007 for A.Y.1999-2000, dated 23.03.2020**, had held that where an application for condonation of delay has been moved bonafide, then, the Court would normally condone the delay, but where the delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant.

Reverting to the facts of the present case, I have already examined the reasons that had led to the inordinate delay, which has not been explained by the assessee to have occasioned due to bonafide reasons. As observed by me hereinabove, as the assessee had remained negligent regarding the process of law even before the first appellate authority by not participating in the proceedings before him and had filed the appeal before me after 137 days, therefore, there appears to be no reason to adopt a liberal view and condone the inordinate delay therein involved. Also, I may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other party. The delay in filing of the appeal cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

13. I may herein observe that in the case of **State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749**, the **Hon'ble Apex Court** had held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by me hereinabove, as the assessee appellant in the present case is habitually acting in defiance of law, therefore, there can be no reason to allow his application and

condone the substantial delay of 137 days involved in preferring the captioned appeal.

14. Also, I may herein draw support from a Third Member decision of a **co-ordinate Bench of the Tribunal**, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai)**, wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

“A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach.”

In the present case, the delay of 137 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee that the same had occasioned on account of failure on his part to check his email account where the order of the CIT(Appeals), NFAC was dropped. In fact, the conduct of the assessee before the lower appellate authority clearly evidences his disregard for the process of law, which, I find, he had carried forward before me by preferring the appeal beyond a period of 137 days after the lapse of the stipulated time period.

15. Also, as observed by the **Hon'ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that seeker of justice must come with clean hands, therefore, now when in the present appeal the assessee appellant had failed to come forth with any good and sufficient

reason that would justify condonation of the substantial delay involved in preferring of the captioned appeal, therefore, I decline to condone the delay of 137 days and, thus, without adverting to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation.

16. In the result, appeal of the assessee is dismissed in terms of my aforesaid observations.

Order pronounced in open court on 06th day of November , 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 06th November, 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.