

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. 297/RPR/2023

निर्धारण वर्ष / Assessment Year : 2013-14

Anil Kumar Agrawal
C/o. Sky Automobiles, G.E. Road,
Mohaba Bazar, Raipur (C.G.)
PAN : ABJPA1787C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
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 : 02.11.2023

घोषणा की तारीख / Date of Pronouncement : 07.11.2023

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 24.07.2023 in Appeal No: CIT(A), Raipur-1/12778/2016-17, 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 28.03.2016 for the assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Ld. CIT (A) NFAC has erred in passing order without giving reasonable opportunity of being heard to the assessee, irrespective of the fact that the assessee has filed a request letter for adjournment of case. Therefore, the order passed by Ld. CIT(A) NFAC is against the principle of natural justice and deserves to be set aside.

2. On the facts and in circumstances of the case, the Learned CIT(A), NFAC has erred in sustaining the order of the A.O. wherein the A.O. has erred in adding a sum of Rs.15,30,499/- being suppressed receipt when compared to receipt shown in Form 26AS and has also erred in further disallowing Rs.7,64,915/- being the debtor on account of work done but not shown in trading account. The aggregate addition of Rs.22,95,414/- made by the A.O. and sustained by the CIT-Appeal (NFAC) is unjustified, unwarranted and uncalled for.

3. On the facts and in the circumstances of the case, the Ld. CIT (A) NFAC has erred in sustaining the order of the A.O, wherein the A.O. has erred in making addition of Rs.7,650/- being income suppressed on account of technical & professional charges received and has also erred in adding suppressed interest income of Rs.26,872/-. The aggregate addition of Rs.34,522/- made by the A.O. and sustained by the CIT-Appeal is unjustified, unwarranted and uncalled for.

4 On the facts and in the circumstances of the case, the Ld. CIT (A) NFAC has erred in sustaining the order of the A.O. wherein the A.O. has erred in making an addition u/s 68 of Rs.14,50,000/- being unexplained cash credit on account of capital introduction by the assessee. The addition made by the

A.O. and sustained by the CIT Appeal (NFAC) is unjustified, unwarranted and uncalled for.

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

2. Succinctly stated, the assessee, who derives income from various streams, had e-filed his return of income for A.Y.2013-14 on 28.03.2014, declaring an income of Rs.5,95,730/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. Assessment was, thereafter, framed by the A.O vide order u/s. 143(3) dated 28.03.2016, wherein the income of the assessee was determined at Rs.56,25,190/- after inter alia, making following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Disallowance out of freight inward /loading and unloading expenses (on ad-hoc basis)	Rs.6,00,000/-
2.	Addition towards suppressed receipts of the assessee	Rs.22,95,414/-
3.	Disallowance of assessee's claim for deduction of interest expenditure	Rs.6,49,528/-
4.	Addition of unaccounted professional /technical charges/interest income	Rs.34,522/-
5.	Addition u/s.68 of the Act on accretion of the assessee's capital account	Rs.14,50,000/-

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), who vide his order dated 24.07.2023 in Appeal No. CIT(A), Raipur-1/12778/2016-17 partly allowed the same. Ostensibly, the CIT(Appeals), while disposing of the assessee's appeal, had sustained the additions/disallowances, viz., (i). addition of suppressed receipts of the assessee: Rs.22,95,414/-; (ii). addition of the unaccounted professional and technical charges and suppressed interest income: Rs.34,522/; and (iii) addition in the assessee's capital account (as proprietor): Rs.14,50,000/-, while for vacated the balance additions/disallowances. For the sake of clarity, the relevant observations of the CIT(Appeals) on the multi-facet issues as were assailed by the assessee before him are culled out as follows:

4. Decision:

Grounds are summarised issue wise:

1. Lump sum disallowance on account of freight inward & loading unloading expenses:

The Assessing Officer has disallowed a Lump sum adhoc amount of Rs.6,00,000/- out of the expenses claimed towards freight inward, loading and unloading expenses stating that the vouchers do not contain proper details of transporters, places, quantity, rate etc. The Assessing Officer has not drawn the basis to arrive at such conclusion and has not found any invalid/inadmissible documentary evidences. The Assessing Officer is duty bound to bring out detailed facts on record before modifying the taxable income. Adequate materials should have been gathered and placed on record to established that it warrants upwards modification of the taxable profit. Based on the facts available on record, it is observed that the Assessing Officer had not pointed out any non genuine entries in the books of accounts of the assessee and has not established that any particular expenditure has not been wholly and exclusively incurred for the purpose of business. Further the A.O has not found any expenditure to be bogus or fictitious. Hence, the addition made by the Assessing Officer is deleted and ground of appeal on this issue stand allowed.

2. Addition on account of concealed receipts:

The Assessing Officer has added an amount of Rs.22,95,414/- by holding as follows:

"6. In the trading account the total receipts of Rs.1,17,69,155/- has been shown. On perusal of the TDS/TCS source details given in the computation and also in the details of 26-AS it is found that the following payments have been made to the assessee and TDS has been deducted there from u/s 194-C.

	Amount paid	TDS deducted
a) Devi Iron & Power Pvt Ltd	288347/-	2883/-
b) Vandana Global Ltd	13011307/-	125377/-
Total	13299654/-	

Further on going through the details of sundry debtors it is found that amount of Rs.7,64,915/- is shown receivable from in Gagan Resources P. Ltd, Raipur. This

amount receivable is also out of the works done by the assessee but in the trading account not shown. Thus the total receipts of the assessee for the A.Y. 2013-14 is Rs.1,40,64,569/- (1,32,99,654+7,64,915). The assessee has shown the receipts only Rs.1,17,69,155/-. Thus the assessee has concealed the receipts of Rs.22,95,414/-. As the assessee has debited all the direct and indirect expenses and audited by the C.A. the concealed receipts of Rs.22,95,141/- is added to the total income of the assessee."

The assessee was given opportunity on various dates to justify the ground of appeal in this regard and no submission has been made. Hence, I do not have any other option other than to finalise the appeal based on details available on record. The Assessing Officer has imported details from 26AS of the assessee for the relevant financial year and has categorically established that the assessee has made a receipt of Rs.1,32,99,654/- from M/s Devi Iron & Power Pvt Ltd and Vandana Global Ltd. Further the Assessing Officer has considered the receivables from Gagan Resources Pvt Ltd. and then concluded that the assessee has conceal the receipts of Rs.22,95,414/- and added to the total taxable income of the assessee. In absence of any other submission by the assessee, I am of the view that action of the Assessing Officer needs to be upheld and ground of appeal filed by the assessee is dismissed.

3. Disallowance of interest expense:

The Assessing officer has Disallowed an interest of Rs.6,49,528/- holding that the assessee has not explained the utilisation and investment of the amounts of loan taken personally. Action of the Assessing officer is not acceptable for the reason that the assessee has filed confirmation of the parties and also filed interest account- both interest paid and received personally. The Assessing officer has not brought any adverse findings in spite of the fact that the details were made available by the assessee to the Assessing Officer. Without any iota of material against the assessee simply disallowing the interest payment is not in accordance with the provisions of the Act. Hence the Assessing officer is directed to delete the addition made on this issue to the extent of Rs.6,49,528/- and ground of appeal filed by assessee is allowed.

4. Addition on account of undisclosed income:

The Assessing officer has made an addition of Rs.34,522/- by holding as follows:

"8. On going through the TDS /TCS details given in computation of income and 26AS following other payments and TDS are appeared.

<i>By</i>	<i>Amount paid</i>	<i>TDS</i>
<i>1. Royal Sunderam Alliance Insurance Company Ltd</i>	<i>7650/-</i>	<i>765/- u/s</i>

194-J

2 Regional Accounts Officer CSPDCL

52127/-

5213/-

In the computation or trading account the assessee has not shown any income from technical and professional charges of Rs.7650/-. In the P&L a/c the assessee has shown interest income of only Rs.25,255/-. Therefore the amount of Rs.7650/- and difference amount of interest income Rs.26,872/- in total Rs.34,522/- is added to the total income of the assessee."

Action of the Assessing officer is based on TDS/TCS details available on record and the Assessing Officer has made this addition after due reconciliation with the details available in the in the profit and loss account. Hence, action of the Assessing officer is upheld and ground of appeal filed by the assessee is dismissed.

5. Unexplained cash credit under section 68:

During the course of scrutiny proceedings the Assessing officer made an addition of Rs.14,50,000/- u/s 68 of the IT Act by treating increase in capital account of the proprietor. The assessee has not adduced any evidence to explain the genuineness of such credit and he has not explained the sources of the sale. In this connection provision of section 68 of the IT Act needs to be referred and the same reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

This provision says that any sum that is credited in the books and if the assessee fails to offer any explanation satisfactorily the same is assessable as unexplained cash credit u/s 68 of the IT Act and the Assessing Officer has strictly followed the Act and made this addition of Rs.14,50,000/-. In such situation action of the Assessing Officer is justifiable and the same is upheld. Ground of appeal filed by the assessee is dismissed.

6. General in nature not adjudicated separately.

5. In the end result, the appeal is **Partly allowed**.

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

6. I 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, the Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal took me through the set of circumstances, due to which the assessee's appeal was disposed of by the CIT(Appeals) on an ex-parte basis. Elaborating on his aforesaid contention, the Ld. AR submitted that the assessee, in view of the CBDT Circular No. 20/2016, dated 26 May 2016, which required that all appeals be filed electronically, had filed an appeal against the order passed by the A.O u/s. 143(3) dated 28.03.2016, i.e., one in manual mode on 27.04.2016 and, thereafter, in electronic mode on 15.06.2016. Carrying his contention further, Ld. AR submitted that, inadvertently, two appeal numbers were allotted a/w. fixation of both appeals against the same order passed u/s.143(3) dated 28.03.2016. The Ld. A.R drew my attention to the appeal numbers that were given to the aforementioned appeals, as follows:

(i). Appeal No: CIT(A), Raipur-1/10496/2016-17, i.e., Appeal filed on 15.06.2016 (Electronically filed)

(ii) Appeal No: CIT(A), Raipur-1/12778/2016-17, i.e., Appeal filed on 27.04.2016 (Manually filed)

8. The Ld. AR submitted that both the appeals were fixed by the CIT(Appeals) for 17.07.2023 vide notice dated 11.07.2023, Pages 6 & 10 of APB. The Ld. AR further submitted that the assessee remaining under a bonafide belief that both the appeals filed by him, i.e., manually and electronically, were merged into one and, thus, for the said reason, had inadvertently filed an adjournment only with respect to the appeal which was filed electronically, i.e., CIT(A), Raipur-1/10496/2016-17 and omitted to file any adjournment with respect to other notice bearing DIN 1054282510 fixing the other appeal that was manually filed, i.e., Appeal No: CIT(A), Raipur-1/12778/2016-17. Carrying his contention further, the Ld. AR submitted that the CIT(Appeals) though disposed off the Appeal No: CIT(A), Raipur-1/12778/2016-17 (that was manually filed) vide an ex-parte order dated 24.07.2023 and partly allowed the same, but dismissed the other appeal, i.e., CIT(A), Raipur-1/10496/2016-17 (electronically filed) on the same date by stating that now when the assessee's appeal No. CIT(A), Raipur-1/10496/2016-17 (supra) was disposed of on merits; thus, the said appeal was rendered as infructuous, Page 3-4 of APB.

9. Adverting to the impugned order, i.e., the order that was passed by the CIT(Appeals) while disposing of the assessee's appeal, i.e., Appeal No:

CIT(A), Raipur-1/12778/2016-17 (manually filed) which was partly allowed by him on the basis of an ex-parte order, the Ld. AR submitted that the said order had been passed without considering the assessee's request letter for adjournment dated 17.07.2023, which was effectively a request for adjournment of the appeal for the A.Y 2013-14. On a specific query by the Bench as to on what basis two appeals were filed by the assessee with the CIT(Appeals) against the same impugned order, i.e., the assessment order passed by the A.O u/s. 143(3) dated 28.03.2016, the assessee candidly submitted that the same had occasioned due to a bona fide mistake on his part in misconstruing the CBDT Circular No. 20/2016, dated 26th May 2016. Elaborating further, the Ld. AR submitted that though the assessee had manually filed his appeal against the order passed u/s.143(3), dated 28.03.2016 on 27.04.2016, but it was pursuant to the CBDT Circular No.20/2016 dated 26th May 2016, which required filing of all the appeals electronically that he had again filed the same electronically on 15.06.2016. The Ld. AR, in order to support his claim that the filing of two appeals against the impugned order u/s. 143(3) dated 28.03.2016 was prompted by a bonafide mistake, submitted that after having realized his aforesaid mistake, the assessee had brought the said fact to the notice of the CIT(Appeals). The Ld. AR had drawn my attention to the letter that was uploaded on the portal of the

CIT(Appeals) wherein the assessee had brought the aforesaid fact to the notice of the CIT(Appeals), as under:

e-Filing Anywhere Anytime
 Income Tax Department, Government of India
 1 4 : 5 4
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Dashboard > Pending Actions > e-Proceedings > View Notices > View Response

View Response to Notice ID 100029897789 *CIT Appeal no - 1/10496/2016-13*

Proceeding Name First Appeal Proceedings	PAN ABJPA1787C	Assessee Name ANIL KUMAR AGARWAL	Financial Year 2012-13
Assessment Year 2013-14	Document reference ID ITBA/NFAC/S/25/2020-21/1029542393(1)	Notice Section -	Served on -

Description
[ITBA]Deficiency Letter

Responses

Response/Remarks	Response Submitted On	Response Type	Response Filed By
Honorable Sir, the appellant has filed a appeal within time. The order was passed on 29.03.2016 and served to the appellant on 01.04.2016. The appellant has filed an appeal manually on 27.04.2016. The appellant has again filed the same appeal electronically on 15.06.2016 as per the instruction of the C.BDT to file appeal electronically. The appellant has attached the copy of Form-35 which was manually as enclosure while filling electronically. So the appeal filed by the appellant is within time so the appellant has not filed application for condonation of delay. Copy of Form-35 manually filed is enclosed herewith.	07-Jan-2021	Partial	Self
Attachments Others anil agrawal.pdf (806 KB)			

[Back](#)

10. Also, the Ld. AR, in order to fortify his aforesaid claim, had drawn support from the observations recorded by the CIT(Appeal), Raipur, while disposing off the assessee's appeal, i.e., Appeal No: CIT(A), Raipur-1/10496/2016-17 (supra) that was electronically filed on 15.06.2016. The Ld. AR submitted that the CIT(Appeals), while disposing off the aforementioned appeal that was electronically filed, had categorically taken cognizance of the fact that was brought to his notice by the assessee that he had after filing the appeal manually filed one more appeal for the same assessment year electronically. For the sake of clarity, the observation recorded by the CIT(Appeals) in his order passed while disposing of the assessee's appeal, i.e., CIT(A), Raipur-1/10496/2016-17(supra) (electronically filed), dated 28.03.2016 is culled out as under:

“Decision:

The assessee has stated that it has filed one more appeal for the same Assessment Year electronically after filing the same manually. The appeal has been decided on merits while disposing the Appeal No. CIT(A), Raipur-1/12778/2016-17 and hence the current appeal is considered as infructuous and the same is dismissed for statistical purpose.”

The Ld. AR, on the basis of the aforesaid facts, submitted that as he had remained under a bonafide belief that as he had intimated the CIT(Appeals) of having filed the appeal against the impugned order of the A.O u/s 143(3), dated 28.03.2016, both manually and electronically, therefore, the latter vide

both his Notice(s) dated 11.07.2023 (supra) was proceeding with only one appeal which effectively remained in existence.

11. The Ld. AR, in the backdrop of the aforesaid facts, submitted that as his request for adjournment of the appeal, which was fixed on 17.07.2023 (supra), had remained omitted to be considered because of the aforesaid technical issue, which, though, had arisen on account of a bonafide mistake on his part, therefore, he had remained divested of an opportunity to explain and defend his case and had been visited with an ex-parte order wherein certain additions/disallowances made by the A.O had been upheld/sustained by the CIT(Appeals). The Ld. AR submitted that in light of the aforesaid facts, in all fairness, the matter be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee.

12. Per Contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the CIT(Appeals). He submitted that as the assessee had failed to file any application for adjournment before the CIT(Appeals) in Appeal No: CIT(A), Raipur-1/12778/2016-17 (manually filed) on 27.04.2016; therefore, no infirmity did arise from the order of the first appellate authority who had in all fairness, disposed of the same after considering the facts in the backdrop of the material available on his record.

13. I have thoughtfully considered the facts involved in the present appeal, which resulted in the passing of the order by the CIT(Appeals) in Appeal No: CIT(A), Raipur-1/12778/2016-17 (manually filed) dated 24.07.2023, i.e., while disposing off the appeal that was manually filed on 27.04.2016. Before proceeding any further, it would be relevant to point out that shifting of the filing of the appeals before the first appellate authority, i.e., CIT(Appeals), from the conservative manual mode that was in existence for decades, i.e., since inception, to electronic mode, was at the relevant point of time in its nascent stage. Admittedly, the assessee had assailed the order passed by the A.O u/s. 143(3) dated 28.03.2016 by manually filing the appeal with the CIT(Appeals), Raipur vide appeal No. CIT(A), Raipur-1/12778/2016-17 (manually filed) on 27.04.2016. Considering the CBDT Circular No.20/2016, dated 26 May 2016, which required that all appeals be filed electronically, it is stated by the Ld. A.R. that inadvertently, the assessee had once again assailed the impugned order u/s. 143(3) dated 28.03.2016 by filing the appeal electronically on 15.06.2016 vide appeal No. CIT(A), Raipur-1/10496/2016-17(supra). For the sake of clarity, the CBDT Circular No.20/2016, dated 26th May 2016, pursuant to which the assessee taxpayers were obligated to e-file their appeals, is culled out as under:

Circular No. 20/2016

F.No.279/Misc/M-54/2016/ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated: 26th May, 2016

Subject: E-filing of appeals: Extension of time limit - reg.

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

2. The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15.05.2016 can be filed up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

3. In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15.06.2016. Such e-appeals would also be treated as appeals filed within time.

Sadhana Panwar
 26/5/16
 (Sadhana Panwar)
 DCIT (OSD) (ITJ),
 CBDT, New Delhi.

Copy to:

1. The Chairman, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Pr. Director General of Income-Tax, NADT, Nagpur.

5. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
6. The Pr. DGIT (Vigilance), New Delhi.
7. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list.
8. The Comptroller and Auditor General of India.
9. The ADG-4 (Systems) for uploading on ITD website.
10. Data Base Cell for uploading on irsofficersonline.
11. Guard file.

Sadhana Panwar
26/5/16
(Sadhana Panwar)
DCIT (OSD) (ITJ),
CBDT, New Delhi.

14. As stated by the Ld. AR, and rightly so, I find that the assessee, after filing two appeals against the same order u/s. 143(3), dated 28.03.2016, i.e., manually and electronically, had brought the said fact to the notice of the CIT(Appeals). The aforesaid claim of the assessee is substantiated by a perusal of the response/letter that was uploaded by him on the portal of the CIT(Appeals) (copy placed on record). Also, the claim of the assessee that the CIT(Appeals) was intimated about filing two appeals against the same order u/s. 143(3), dated 28.03.2016, is fortified by the observation recorded by the CIT(Appeals) while disposing of the appeal that was electronically filed by the assessee with him on 15.06.2016, i.e., Appeal No: CIT(A), Raipur-1/10496/2016-17 (supra).

15. Admittedly, it is a matter of fact borne from the record that the assessee was in receipt of notice(s) dated 11.07.2023 from the NFAC, Delhi, wherein he was intimated that his appeal for the year under consideration, i.e., A.Y 2013-14 was fixed for hearing before the CIT(Appeals) on 17.07.2023, Page 6-7 & 10-11 of APB. As both the aforesaid notices were dated 11.07.2023 (supra), wherein the assessee was intimated about the fixation of his appeal for A.Y.2013-14 on 17.07.2023, I find substance in the claim of the Ld. AR that the assessee had remained under a bonafide belief that both the appeals filed by him, i.e., manually and electronically, were merged into one, and, thus, effectively, his appeal for A.Y. 2013-14 was fixed for hearing on 17.07.2023.

16. At this stage, I may reiterate that the fact that the assessee had filed two appeals against the same order u/s. 143(3) dated 28.03.2016 was brought by him to the notice of the CIT(Appeals) vide a letter that was uploaded on his portal on 07.01.2021, and, thus, for the said reason he had remained under a bona fide belief that both the said two appeals had been merged and only one effective appeal did survive.

17. Considering the aforesaid facts, I find substance in the claim of the Ld. AR that at the time of filing of a request for adjournment of his appeal for the year under consideration, i.e., A.Y.2013-14, which was fixed for hearing on 17.07.2023, the assessee had lost sight of the fact that the notices dated

11.07.2023 (supra) were issued in the context of two appeals which were distinctively numbered, i.e., filed manually and electronically by him for the same year. Although I would mince no words in observing that the assessee ought to have remained vigilant but at the same time, I cannot remain oblivion of the fact that the inadvertent bonafide omission on his part to infer the correct position cannot be ruled out. My aforesaid view is all the more fortified by the fact that the assessee by no means would have gained by purposively not filing an application for adjournment as regards the appeal under consideration, i.e., Appeal No: CIT(A), Raipur-1/12778/2016-17 (manually filed on 27.04.2016) As the assessee had uploaded the response/letter requesting for an adjournment of hearing of his appeal for 17.07.2023, i.e., Appeal No. CIT(A), Raipur-1/10496/2016-17 (supra). (electronically filed on 15.06.2016) but lost sight of the fact that the other one, which was manually filed, despite his intimation, had not been merged and, thus, separately existed, marked as appeal No. CIT(A), Raipur-1/12778/2016-17 (manually filed), thus, for the said reason, had not filed a separate letter of adjournment for the said appeal.

18. Be that as it may, in the totality of the facts involved in the present appeal, I am of the view that there exists a bonafide reason due to which the assessee had inadvertently omitted to file an application for adjournment with

respect to the appeal which was filed manually, i.e., Appeal No. CIT(A), Raipur-1/12778/2016-17, for the reason that he was under a bonafide belief that both the two appeals had merged into one and did not exist separately. Considering the aforesaid facts, I am of the view that as the assessee had remained divested of his statutory right to put up his defense as regards the additions/disallowances made by the A.O, thus, in all fairness and interest of justice, the matter requires to be revisited by the CIT(Appeals). Accordingly, I set aside the order passed by the CIT(Appeals) in appeal No. CIT(A), Raipur-1/12778/2016-17 (manually filed), and direct him to merge both the appeals, i.e., filed by the assessee manually and electronically, and dispose of the same after affording a reasonable opportunity of being heard to the assessee. Resultantly, the order passed by the CIT(Appeals) dated 24.07.2023 in appeal No. CIT(A), Raipur-1/12778/2016-17 (manually filed) dated 29.03.2016 is set aside in terms of my aforesaid observations.

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

Order pronounced in open court on 07th day of November, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 07th November, 2023.

**##SB

आदेश की प्रतिलिपि अग्रहित / 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.