

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**

**(ITA No. 199/RPR/2022)**  
(Assessment Year:2017-18)

The Indian Missionary Movement Gali No. 1, Kawardha, Kabirdham 491995, Chhattisgarh, India	V s	Income Tax Office, Ward-Kawardha, Kawardha
<b>PAN: AACTT1939M</b>		
<b>(अपीलार्थी/Appellant)</b>	· ·	<b>(प्रत्यर्थी / Respondent)</b>
निर्धारिती की ओर से /Assessee by	:	Shri Tanmay Jain & R.B. Doshi, CA's
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19.10.2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	23.11.2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM:**

The present appeal is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 08.08.2022 for the assessment year 2017-18, which has arose out of the order of Ld. AO u/s 144 of the I.T. Act, 1961.

2. The grounds of appeal raised by the assessee are as under:
  1. In the facts of the case, the addition of Rs. 15,34,950/- made by the AO invoking provisions of sec. 69A and confirmed by Ld. CIT(A) is itself illegal, arbitrary, and not justified. Provisions of sec. 69A are not applicable in the case of appellant.

2. Ld. CIT(A) erred in dismissing the appeal of appellant without issuing any notice to the email address of the appellant. The appellant was unaware of the fact of issuance of notices and therefore, dismissal of appeal is in violation of principles of natural justice.
3. Ld. CIT(A) erred in summarily dismissing the appeal without properly discussing the explanation/ evidence furnished by appellant in contravention to principles of natural justice. The order impugned in appeal is nonspeaking and liable to be set aside.
4. The appellant reserves the right to add, amend or modify any of the grounds of appeal.

3. At the very beginning of the hearing in the present case, the registry has pointed out that the appeal has been filed with a delay of 13 days. Ld. AR of the assessee, explaining the reason for delay has submitted that an application requesting the condonation of delay together with an affidavit was filed by the assessee a/w appeal memo. On perusal of the said request for condonation of delay, it has been observed that the assessee was unable to discuss the matter with his counsel as the earlier counsel of the assessee was stuck up in time barring tax audit work and filing of returns. Assessee has appointed a new counsel and therefore, causing a delay of 13 days in preparing and filing the appeal before the tribunal. Considering the request of the assessee and reasonableness of explanations furnished before us, the delay on account of sufficient cause

in filing of appeal has been condoned as per provisions of section 253(5) of the Income Tax Act.

4. The brief facts of the case are that the assessee is an educational institution, which has failed in furnishing the income tax return for the assessment year 2017-18. On the basis of data analytics and information gathered during the phase of online verification under “Operation Clean Money”, the Income Tax Department gathered a list of assessee’s who had deposited substantial cash in bank account during the demonetisation period (09.11.2016-30.12.2016), but have not filed income tax return for the assessment year 2017-18. The data reveals that the assessee has also deposited substantial cash in its bank account during the demonetisation period. The case of the assessee was picked-up for scrutiny assessment, notice u/s 142(1) dated 09.02.2018 was issued. During the course of e-proceedings, various statutory notices were issued, but the assessee remained non-compliant. On the basis of such non-compliance on the part of assessee, Ld. AO had prepared a table of such notices was furnished by the Ld.AO in the assessment order the same is extracted as under:

Sl. No.	Date of notice	Date of hearing
1	10.06.2020	15.06.2020 AT 01:15 PM
2	26.12.2020	05.01.2021 AT 12.02 PM
3	09.11.2021	24.11.2021 AT 11.00 AM
4	15.03.2022	23.03.2022 AT 11.00 AM
5	25.05.2022	09.06.2022 AT 11.00 AM
6	25.07.2022	05.08.2022 AT 11.00 AM

In view of sufficient opportunities offered to the assessee but complete failure on the part of assessee has led the Assessing Officer to complete the assessment under (best judgment assessment) within the provision of section 144(1)(b), on the basis of available material in the form of bank statement of the assessee obtained by issuing notices u/s 133(6) of the Income Tax Act, 1961.

5. With respect to a question issued by the department dated 31.08.2019, a reply was filed by the assessee addressed to JCIT Range-2 and the same was placed on records. In reply, the president of the assessee society Shri Poster Jose Thomas stated that, the assessee is registered samiti and is running a school in the name of 'The Holy Kingdom Higher Secondary School' at Kawardha. Regarding cash deposit in Bank A/c 141200301110004, it is submitted that, the impugned deposits were fee deposited by the student of the school. It is further submitted that as per provision of Section 10(23C)(iiiad) of the Income Tax Act in computing the total income of previous year of any person on behalf of any university or other educational institutions existing solely for educational purposes and not for purposes of profit if the aggregate annual receipt of such university or educational institution do not exceed the amount of Rs. 1 crore, it is explained that Assessee's organization is not required to take registration u/s 12A being their gross receipts was less than Rs. 1 crore.

6. A final show cause notice dated 05.12.2019 was issued and served upon the assessee proposing to pass best judgment assessment u/s 144 of the Act and determine the sum payable by the assessee on the basis of material evidence collected during the course of assessment proceedings. No submissions in respect to the show cause notice was filed by the assessee the assessee was completed u/s 144 and the amount of Rs. 15,34,950/- was added as deemed income u/s 69A of the Income Tax Act. Aggrieved by the order of Ld. AO, assessee preferred an appeal before the Ld. CIT(A)'s but the assessee was again acted lackadaisically continuing with its non-acquiescent behaviour before the Ld. CIT(A) also. Such conduct of the assessee is evident from the statement of opportunities offered by the CIT(A) but not availed by the assessee, the same is extracted as under:

S No	Nature of Notice	Date of Issue	Compliance, on or before	Mode service	Delivery/ Service status	Remarks
1	u/s 142(1)(i)	09/02/18	31/03/18	by e-mail & Iso by hand	Delivered	Non-compliance
2	u/s 142(1)(ii)	31/08/19	09/09/19	by e-mail & also by hand	Delivered	Non-compliance
3	Final Show cause notice	05/12/19	07/12/19	by e-mail	Delivered	Non-compliance

7. Accordingly, the appeal of the assessee, was dismissed by the Ld. CIT(A)'s, on the basis of statement of facts and other relevant material available with him, approving the observations of the Ld. AO, in absence

of neither the appearance by the assessee or by its authorized representatives, much less there was no request for sitting adjournment in response to the notices issued.

8. Dissatisfied with the decision of the Ld. CIT(A), the assessee has preferred the present appeal before us.

9. At the outset, Ld. AR on behalf of the assessee has submitted a return submission the same is extracted as under:

**The Indian Missionary Movement**

AY 2017/18

ITA no. 199/RPR/2022 (Assessee)

AO : Page 3, para no. 5, 5.1 and 6.1 of assessment order.

CIT(A): Page 4, para 4.4 of appellate order.  
Main reason: No return filed by assessee & no relevant information furnished.

**Arguments**

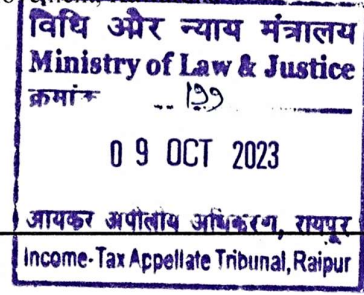
1. Appellant is a society, running school namely 'The Holy Kingdom English Medium School'. Source of deposits were the fees collection, directly deposited in bank by parents of students.
2. Three notices issued at assessment stage. 1<sup>st</sup> notice remained uncompiled. 2<sup>nd</sup> notice was received, compliance filed before JCIT and AO. 3<sup>rd</sup> notice issued at fag end of the proceedings giving too short opportunity, complied before passing order. Assessment completed without providing proper opportunity, without considering explanation of assessee.
3. Addition made on ground that appellant ought to have filed its return by disclosing source of cash deposits. ITR form does not contain any such field. Addition made on incorrect premise. (Para 5. 1- AO)

4. Finding in assessment order that appellant did not furnish explanation of source of cash deposit is incorrect. Explanation filed twice; evidences uploaded on 09.12.2019. Finding that deposit of Rs. 15,34,950/- made in demonetized currency (Rs. 500/- / Rs. 1000/-) shows non-application of mind. (Para 6.1 -AO)
  5. Notices u/s 250 sent to email address not pertaining to appellant, bonafide error of counsel while filling Form 35.
  6. In SOF, source of impugned cash deposit explained in detail. No finding on detailed SOF. No finding on improper opportunity of being heard, issuance of show cause notice at fag end of proceedings or detailed submissions filed at assessment stage. CIT(A) confirmed disallowance on irrelevant consideration.
  7. CIT(A) ought not have summarily dismissed appeal on non-appearance of appellant. The ex-parte order ought to be passed on merits, discussing the SOF and submissions of appellant.
  8. Reliance on - Vishnu Kumar Sinha (HUF) v. ACIT - ITA no. 174/RPR/2018 (ITAT Raipur).
10. Ld. AR further submitted before us a request for admission of additional evidence under rule 29 of the ITAT Rules, 1963. The same is extracted as under:

Date: 09.10.2023

**Before the Hon'ble Income Tax Appellate Tribunal, Raipur Bench, Raipur****Request for admission of additional evidences u/r 29 of ITAT Rules, 1963**

Name of the assessee : The Indian Missionary Movement, Kawardha  
 Assessment Year : 2017/18  
 Appeal No. : ITA No. 199/RPR/2022  
 Date of hearing : 19.10.2023



Respected Sirs.

1. The appellant most respectfully submits this application u/r 29 of the Income Tax (Appellate Tribunal) Rules, 1963, requesting for admission of additional evidence in the present proceedings.
2. During the earlier hearing on 17<sup>th</sup> July 2023, the Hon'ble Bench had directed the appellant to provide complete details of fees collection from students. In compliance with this directive, the appellant is furnishing the following additional evidences: -
  - i) Statement showing month wise comparison of cash deposits made in FY 2015-16 and FY 2016-17
  - ii) Statement showing details of fees collections made during 01.1.2016 to 27.12.2016.
  - iii) Extracts of bank statement of FY 2016-17, from 01 .10.2016 to 31 .12.2016
  - iv) Extracts of bank statement of FY 2015-16, from 01.10.2015 to 31.12.2015
  - v) Extracts of class wise student wise fee register for FY 2016-17
  - vi) Fee structure of school pertaining to FY 2015-16 & FY 2016-17
  - vii) Sample fee receipt used for fee collection

The appellant humbly submits that the above evidences are being filed pursuant to the specific directions given by the Hon'ble Bench, as mentioned above.

3. The appellant most humbly prays for the admission of additional evidence as submitted above and allow its consideration in the present appeal proceedings. This humble request is made in the pursuit of justice, with the utmost respect for the wisdom and discernment of Hon'ble Bench.

Thanking you.

Yours faithfully,

For, The Indian Missionary Movement,

  
(President)

CC to: Senior Departmental Representative

**For, The Indian Missionary Movement,**

**(President)**

11. Looking to a nature of additional evidence submitted before us and the reasons as explained by Ld. AR that the notices u/s 250 were sent by the office of Ld. CIT(A) to the address, which is not pertaining to the appellant, further there was an error by the counsel of the assessee while filing form 35 before the Ld. CIT(A). It is clarified that the assessee was prevented by reasonable cause on account of which the assessee was unaware about the notices issued and, therefore, could not attend the hearings fixed by the Ld. CIT(A). Ld. AR further advanced the argument that the Ld. CIT(A) ought not have summarily dismissed the appeal merely because of the non-appearance of the appellant. The ex-parte order ought to have been passed on merits discussing the detailed SOF filed a/w the memo of appeal and the submissions at assessment stage. Reliance was placed on decision of the ITAT, Raipur bench in the case of

Vishnu Kumar Sinha HUF in ITA No. 174/RPR/2018, wherein coordinate bench to the ITAT has held as under:

4. *The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. As observed by us 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 has been assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee has been disposed-off by the CIT(Appeals). In our considered 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. In fact, 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 arises from the impugned order before him. As per mandate of law, the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas (HUF) (2017) 297 CTR 614(Bom). In the aforementioned case the Hon'ble jurisdictional High Court had 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 stand 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."*

5. *We, thus, not being persuaded 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 of being heard to the assessee in the course of the de novo appellate proceedings. The grounds of appeal raised by the assessee are disposed-off in terms of our aforesaid observations.*

12. Ld. Sr DR on the other hand, has vehemently supported orders of Ld. AO and Ld. CIT(A).

13. We have considered the rival submission, perused the material available on record and the case laws preferred by the assessee. On the factual matrix of the present case, it is evident that the assessee has not furnished the necessary details before Ld. AO or Ld. CIT(A), however, certain additional evidence, which were not made available during the assessment proceedings and appellate proceedings before the authorities below, referred to supra were submitted before us, which are vital for deciding issue logically, but after examination and analysis. We, therefore, in the interest of natural justice, respectfully following the order of ITAT, Raipur, in the case of Vishnu Kumar Sinha (Supra), are of the considered opinion that for verification of the additional evidences and decide the issues on merits by the Ld. CIT(A), The matter in all fairness to the restored back to the file of Ld. CIT(A), accordingly the order of Ld. CIT(A) is set aside, and the issues are restored to the file of Ld. CIT(A) for re-adjudication of the same afresh.

14. Since, we have set aside the order of Ld. CIT(A) for non-prosecution, we refrain ourselves to deal with the merits of the case. Needless to say, that the Ld. CIT(A) shall afford a reasonable opportunity of being heard to the assessee in the course of de novo appellate proceedings. The grounds of appeal raised by the assessee are thus, disposed-off in terms of our aforesaid observations.

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

Order pronounced in the open court on 23/11/2023.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 23/11/2023

*Vaibhav Shrivastav*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur