

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.197/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2011-12**

Smt. Gita Devi  
Cross St. 24, Plot No. B-464  
Smriti Nagar, Bhilai-490 020  
PAN : ALJPD6209J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-1(4),  
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.12.2023

घोषणा की तारीख / Date of Pronouncement : 21.12.2023

**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 23.03.2023, which in turn arises from the order passed by the A.O under Sec.143(3)/147 of the Income-tax Act, 1961 (in short 'the Act') dated 20.12.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. In the facts and circumstances of the case and in law, the ld. Commissioner of Income-tax (Appeals) has erred in confirming the initiation of re-assessment proceedings u/s.147 of the Income-tax Act, 1961 which is apparently bad in law and on facts.
2. In the facts and circumstances of the case and in law, the ld. Commissioner of Income-tax (Appeals) has erred in confirming the action of the ld. Assessing Officer in making addition of Rs.5,23,674/- as intraday profit received in trading of shares.
3. In the facts and circumstances of the case and in law, the ld. Commissioner of Income-tax (Appeals) has erred in confirming the action of the ld. Assessing Officer in making addition of Rs.3,06,500/- invested with M/s. Share Khan Ltd. as unexplained cash credit u/s 68 of the Act.
4. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in deciding the appeal ex-parte without considering the application for supply of necessary documents filed by the appellant on 04.03.2023, 28.11.2022 & 05.05.2022.
5. The impugned order is bad in law and on facts.
6. The appellant reserves the right to add, alter or omit all or any of the grounds of appeal in the interest of justice.”

2. Based on information that though the assessee had acquired shares to the tune of Rs.4,94,000/- during the year under consideration but had not filed her return of income, the A.O initiated proceedings u/s. 147 of the Act. Notice u/s. 148 of the Act was issued to the assessee on 29.03.2018. In response, the assessee filed her return of income declaring a total income of Rs.1,54,016/-. Thereafter, notices u/ss. 142(1) and 143(2) were issued by the A.O. In response thereto, the assessee had filed a copy of the share transaction statement, ledger copy and bank statement.

3. During the assessment proceedings, the A.O noticed that the assessee who was engaged in share trading had acquired shares and made a transaction through M/s. Sharekhan Ltd. and earned an intra-day profit of Rs.5,23,674/-. It was also observed by the A.O that the assessee had paid an amount of Rs.3,06,500/- to M/s. Sharekhan Ltd., which, however was not verifiable from her bank statement. Accordingly, the A.O on the basis of his aforesaid observations, vide his order passed u/ss.143(3)/147 of the Act dated 20.12.2018 determined the income of the assessee at Rs.9,84,190/-, after, inter alia, making the following additions:

Sr. No.	Particulars	Amount
1.	Addition of profit received from trading of shares	Rs.5,23,674/-
2.	Addition u/s.68 of the Act	Rs.3,06,500/-

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee failed to respond to the notices issued by the CIT(Appeals), therefore, he dismissed the appeal on the basis of an ex-parte order. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

"6.1 It is pertinent to note that in order to decide this appeal in a timely manner notices/communications through ITBA portal were sent to the appellant on 19.02.2021, 03.03.2023, 09.03.2023. However, there has been no response from the appellant till date. The appellant has not submitted any written submissions. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly shows that the appellant is not interested in pursuing this appeal in any productive manner. Under these circumstances, this appeal is liable to be dismissed in terms of the ratio of the judgements of the Hon'ble Apex Court and the various High Courts.

6.2 The Hon'ble Supreme Court has held in CIT v. B. N. Bhattacharjee and Another (10 CTR 354) that " appeal does not mean merely filing of appeal but effectively pursuing it." This means that an appeal must mean an 'effective appeal' and that to "prefer an appeal" would mean effectively prosecuting an appeal. Purposefully and constructively interpreted, preferring an appeal means more than formally filing it but effectively pursuing it and if a party retreats before the contest begins, it is as good as not having entered the fray.

6.3 The Hon'ble Bombay High Court of Mumbai in the case of M/s. Chemipol v/s. Union of India, and The Commissioner of Central Excise, Mumbai(Central Excise Appeal No.62 of 2009) has clearly stated that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in the case of NandramdasDwarkadas AIR 1958 MP 260, is reproduced below:

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

6.4 The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. NallaThampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

"That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant, therefore, the court will be will without its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

6.5 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dtd. 19.12.2001) in the case of Whirlpool of India Ltd v. DCIT had dismissed appeal for non-attendance at hearings, inferring that assessee was not interested in prosecuting of appeal. Thereafter in another decision in the case of Chadha Finlease Ltd. V. ACIT(ITA No.3013/De1/2011 date of order 20.12.2011) the Hon'ble ITAT had dismissed the appeal for non-attendance at hearings.

6.6 In a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA no.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence.

6.7 It is important to add that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus non dormientibus jury subveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In this case it is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments or averments. I am therefore constrained to go through the extremely brief non-speaking grounds of appeal and statement of facts filed along with the impugned

appeal to decide the same on merits on the basis of the available material on record.

6.8 The only substantive grounds raised are against the addition of Rs.5,23,674/- as intraday profit received in trading of shares and the addition of Rs.3,06,500/- invested with M/s. Share Khan Ltd. as unexplained cash credit u/s 68 of the Act. The A.O obtained the transaction statement and share trading ledger account with share khan and found that the assessee was doing intra day trading and hence added Rs. 5,23,674/- on account of the same. Further the A.O held that the amount of Rs.3,06,500/- paid to share khan was not reflected in the bank statement. The appellant has not provided any explanation to counter the findings of the A.O. Apart from the Grounds of Appeal and the statement of facts which are only assertions no further explanation has been provided in support of her case by the appellant in these proceedings. Thus the appellant has failed to counter effectively the position adopted by the AO on the concerned issues in the assessment order. The appellant has not given any cogent arguments against the action of the A.O in adding the amount as unexplained cash credits. 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, and valid arguments/contentions advanced by the appellant in the instant appeal I am constrained to confirm the additions made by the A.O . The Grounds of Appeal are Not Allowed.

7. Resultantly, the appeal preferred by the appellant is dismissed.”

5. Shri S.R. Rao, Ld. Authorized Representative (for short 'AR') for the assessee submitted that though the assessee had in the proceedings before the CIT(Appeals) brought to his notice that as she had applied for copies of certain documents on 15.07.2021 with the A.O, which, however, were not made available to her, therefore, the appeal may be adjourned but he had summarily brushed aside the said request of the assessee and proceeded with and disposed off the appeal on an ex-parte basis. The Ld. AR had drawn my attention to the applications that were filed by the assessee with the CIT(Appeals) on 05.05.2022, 28.11.2022 and 04.03.2023 (copy placed on record). It was submitted by the Ld.

AR that as the CIT(Appeals) had proceeded with and disposed off the appeal without dealing with the aforesaid request letters of the assessee, therefore, the order so passed by him being in violation of basic principles of natural justice, could not be sustained and was liable to be set-aside. Backed by his aforesaid contention, it was submitted by the Ld. AR that in all fairness, the matter may be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the appeal after affording a reasonable opportunity of being heard to the assessee.

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 the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Admittedly, it is a matter of fact borne from record that the assessee had on three occasions i.e. on 05.05.2022, 28.11.2022 and 04.03.2023 requested the CIT(Appeals) that as she had applied for certain copies of documents with the A.O, which had yet not been received, therefore, hearing of the appeal, in all fairness, be adjourned. The aforesaid claim of the assessee is fortified on perusal of two of the aforesaid letters, to which, my attention was drawn by the Ld. AR, which reads as under:

(A) Letter filed on 05.05.2022

“Hon’ble Sir, In this connection, it is respectfully submitted that the appellant has requested to supply of documents on 15/07/2021 to prepare written submissions before the Ld. Assessing Officer but it is not yet received. It is requested to kindly arrange to do the needful in this matter and the appellant may be allowed time to make compliances to notice issued u/s. 250 of the Income Tax Act, 1961 till such time in the interest of justice. Copy of application and screen shot of mail sent are enclosed for kind perusal. Prayed accordingly.

(B) Letter filed on 04.03.2023 :-

“Respected Sir, In this connection, it is submitted that the assessee has requested to supply certain documents which is necessary for making compliances but till now it is not received. It is requested to kindly allow such time till the receipt of documents to make compliances. Copies of application is enclosed. Thanking you”

However, I find that there is no whisper in the order of the CIT(Appeals) about the aforesaid letters that were filed by the assessee seeking further time/adjournment of hearing of the appeal for plausible reasons. It is not the case that the CIT(Appeals) had considered the aforesaid applications and rejected the same. Considering the aforesaid facts, I am of the view that there is substance in the claim of the Ld. AR that the assessee at the stage of filing of an application for adjournment/seeking some further time vide her letter dated 04.03.2023, i.e., on the last occasion, remained under a bonafide belief that some further time would be afforded to her to obtain the requisite documents from the A.O so that the matter may be placed before the CIT(Appeals) in a more meaningful manner. In my view, in case the CIT(Appeals) was not persuaded to allow any further time to the assessee, then he was obligated to have clearly declined assessee’s request for adjournment dated 04.03.2023 (supra) and ought to have further proceeded with

the matter after bringing the said fact to the notice of the assessee. By not doing so, the CIT(Appeals) had divested the assessee of a fair opportunity to prosecute the matter before him. I, thus, in terms of my aforesaid observations am of the view that the matter, in all fairness and interest of justice requires to be restored to the file of the CIT(Appeals) to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate her claim on the basis of fresh documentary evidence, if any.

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

Order pronounced in open court on 21<sup>st</sup> day of December, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 21<sup>st</sup> December, 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.