

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.106/RPR/2024

निर्धारण वर्ष / Assessment Year : 2011-12

Anil Kumar Dubey
C/151, Anurag Bhawan,
Shailendra Nagar, Raipur (C.G.)-492 001
PAN: AGKPD5269L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Anil Kumar Dubey, Assessee
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.08.2024

घोषणा की तारीख / Date of Pronouncement : 23.08.2024

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 25.01.2024, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.144 of the Income-tax Act, 1961 (in short 'the Act') dated 29.11.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

"GROUND NO. I

1. That the Notice issued u/s. 148 of the Act and the ex-parte Assessment Order framed under section 147 r.w.s. 144 of the Act by the learned Income-Tax Officer, Ward-3(2), Raipur ('the Ld.AO') is void ab initio, invalid, illegal and bad in law hence, deserves to be quashed and declared a nullity and hence, it is earnestly prayed that the Assessment Order passed u/s.147 r.w.s. 144 may please be quashed and cancelled in limine.

GROUND NO. II

2. That the Appellate Order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi ('the Ld.CIT(A)') under section 250 of the Income Tax Act, 1961 ('the Act') is highly unjustified, bad in law, without providing reasonable opportunity of being heard, against the principles of natural justice and not in accordance with the provisions of law.. Further, the Ld.CIT(A) even did not consider the submission filed by the appellant. It is prayed that the Appellate Order passed under section 250 of the Act may please be cancelled/set-aside on this ground alone.

GROUND NO. III

3. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming an addition of

Rs.12,55,000/- made by the Ld.AO on account of cash deposit in the savings bank account which is highly unjustified, unwarranted, unsustainable, not proper on facts, based on presumptions & surmises and not in accordance with the provisions of law. Hence, it is earnestly prayed that the addition of Rs.12,55,000/- may please be deleted.

GROUND NO. IV

4. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming the addition of Rs.2,93,680/- made by the Ld.AO on account of purported receipt of interest income which is highly unjustified, unwarranted, unsustainable, not proper on facts, based on presumptions & surmises and not in accordance with the provisions of law. Hence, it is earnestly prayed that the addition of Rs.2,50,000/- may please be deleted.

GROUND NO. VI

5. That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of Appeal at the time of hearing of the appeal."

2. At the very outset, it was submitted by the assessee that the appeal is delayed by 1 day. Elaborating the reasons leading to the delay, the assessee has filed a letter dated 21.08.2024. Considering the reasons leading to the said delay, which is not found to be inordinate, I condone the same.

3. Succinctly stated, the A.O based on AIR information that though the assessee during the subject year had made cash deposit of Rs.12,55,000/- and entered into a transaction of Rs.2,93,680/- but had not filed his return of income for the subject year, i.e. A.Y.2011-12, initiated proceedings u/s. 147 of the Act. Notice u/s. 148 of the Act dated 29.03.2018 was issued to the assessee.

4. As the assessee had failed to both comply with the notice u/s. 148 of the Act dated 29.03.2018 and the notices issued by the A.O, the latter was constrained to proceed with and frame the assessment vide an ex-parte order. The A.O considering the fact that the assessee had failed to come forth with any explanation as regards the source of cash deposits of Rs.12,55,000/-, made an addition of the same as his unexplained income. Also, the A.O in absence of any explanation qua the impugned transaction of the assessee with persons located in notified judicial area made an addition of Rs.2,93,680/- to his income. Accordingly, the A.O vide his order passed u/s. 147 r.w.s. 144 of the Act, dated 29.11.2018, determined the income of the assessee at Rs.15,48,680/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. As the assessee failed to participate in the course of the appellate proceedings before the CIT(Appeals), The CIT(Appeals) was constrained to proceed with and dispose the appeal after considering the submissions that were uploaded by the assessee in his e-portal account. The CIT(Appeals) after deliberating at length on the issue involved in the present appeal in the backdrop of the material available on record and submissions of the assessee, upheld the respective additions made by the A.O.

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

7. Shri Anil Kumar Dubey, the assessee personally appeared and represented his case before me. The assessee at the threshold submitted that the A.O had grossly erred in law and facts of the case in making the impugned addition and framing a high pitched assessment in his case at Rs.15,48,680/-. Elaborating further, the assessee submitted that the amount of cash deposits of Rs.12,55,000/- in his savings bank account No.1232724943 with Central Bank of India, Branch: Chhattisgarh College, Raipur was sourced out of the amount that was received by him from his brother, viz. Shri Vinod Kumar Dubey (since deceased). The assessee had placed on record copy of the savings bank account No.935310110000198 that was jointly held in the name of Shri Vinod Kumar Dubey and Shri Anil Kumar Dubey (assessee). It was, thus, averred by the assessee that as the subject cash deposits were made out of duly explained sources, therefore, both the lower authorities had grossly erred in treating the same as his unexplained income for the year under consideration. However, the assessee on being confronted with the fact that no cash withdrawals were discernible from the aforesaid joint savings bank account, i.e. A/c No. 935310110000198, failed to rebut the same.

8. Apropos the addition of Rs.2,93,680/- that was made by the A.O with respect to a transaction carried out by him with persons located in notified judicial area, it was the assessee's case that he had not entered into any such transaction.

9. Also, the assessee had assailed the validity of the jurisdiction that was assumed by the A.O for initiating proceedings u/s. 147 of the Act. The assessee in support of his aforesaid contention had relied on the order of the ITAT, "SMC" Bench, Ahmedabad in the case of Dineshkumar Dalsanghbhai Chaudhary Vs. ITO, Ward-4, Banaskatha, ITA No.452/Ahd/2019.

10. Per contra, the Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee had failed to produce any evidence as regards the source of cash deposits of Rs.12,55,000/- made in his bank account, therefore, both the lower authorities had rightly held that the same was sourced out of his unexplained income. As regards the addition of Rs.2,93,680/-, it was submitted by the Ld. DR that the same was based on information discernible from Form 26AS of the assessee. However on a specific query by the bench as to what transaction the assessee had carried out with persons located in notified judicial area as was pointed

out in the assessment order by the A.O, the Ld. DR failed to answer the same.

11. I have heard the assessee and the Ld. DR, perused the orders of the lower authorities and the material available on record as well as considered the judicial pronouncement that has been pressed into service by the assessee.

12. Admittedly, it is a matter of fact borne from record that the assessee had made cash deposits of Rs.12,55,000/- in his savings bank account No.1232724943 with Central Bank of India, Branch: Chhattisgarh College, Raipur during the subject year in two tranches, viz. (i) on 22.01.2011 : Rs.7,50,000/-; and (ii) on 24.01.2011 : Rs.5,00,000/-. As is discernible from the records, the assessee had neither participated in assessment proceedings nor put up an appearance in the course of proceedings before the first appellate authority. As the assessee had not only failed to lead any evidence as regards the source of cash deposits of Rs.12,55,000/- in his bank account, therefore, both the lower authorities had held that the same was sourced from his unexplained income. The assessee in the course of proceedings before me had stated that the subject cash deposits were sourced from the amount that was received by him from his brother, Shri Vinod Kumar Dubey. However, the assessee had failed to lead any evidence in support of his aforesaid contention.

13. I have thoughtfully considered the observations of the lower authorities in the backdrop of the contentions advanced by the assessee before me. On a perusal of the joint held bank account held by the assessee alongwith his brother, Shri Vinod Kumar Dubey (supra) during the year under consideration, there is only a cash withdrawal of Rs.5000/- on 29.01.2011. As the assessee had failed to place on record any material which would fortify his contention that the subject cash deposits were sourced from the amount that was received by him from his brother, viz. Shri Vinod Kumar Dubey (supra), I am unable to persuade myself to accept the same. Accordingly, I, thus, find no infirmity in the view taken by the lower authorities who had rightly made/sustained the addition of Rs.12,55,000/-, and thus, upheld the same. Thus, the **Ground of appeal No.3(III)** raised by the assessee is dismissed in terms of the aforesaid observations.

14. Apropos the addition of Rs.2,93,680/-, I find substance in the assessee's claim that the A.O had made the said addition in thin-air i.e, without placing on record any supporting material. Although the Ld. DR had stated that as per Form 26AS, the assessee had entered into a transaction with a person in a notified area, and pursuant thereto, had made an addition, but he had failed to refer to in the assessment order the details of the impugned transaction. Also, I find that the CIT(Appeals) had merely endorsed the observation of the A.O and not pointed out to any

material based on which the assessee was saddled with the said addition. Accordingly, I am of the view that the addition of Rs.2,93,680/- requires to be revisited by the A.O. Accordingly, the matter to the said extent is restored to the file of the A.O with a direction to re-adjudicate the same afresh after affording a reasonable opportunity of being heard to the assessee. Thus, the **Ground of appeal No.4 (IV)** raised by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

15. Apropos the challenge thrown by the assessee qua the validity of the jurisdiction that was assumed by the A.O for initiating proceedings u/s. 147 of the Act, I am unable to concur with the same. As it is the case of an assessee who had though made cash deposits of Rs.12,55,000/- in his savings bank account but had not filed any return of income for the subject year, i.e. A.Y.2011-12, therefore, there was material before the A.O for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. As observed by the Hon'ble Apex Court in the case of **Raymond Woollen Mills Ltd. Vs. Income-Tax Officer And Ors. (1999) 236 ITR 34 (SC)**, what is required for validly initiating proceedings u/s.147 of the Act is the availability of some material on the basis of which the department could reopen the case and the sufficiency and correctness of the said material is not a thing to be considered at the stage of reopening. Accordingly, in the backdrop of the judgment of the Hon'ble Apex Court in Raymond Woolen Mills Ltd. (supra), the challenge

thrown by the assessee to the validity of the jurisdiction assumed by the A.O u/s 147 of the Act, being devoid and bereft of any merit is rejected. Thus, the **Ground of appeal No.1 (I)** raised by the assessee is dismissed in terms of the aforesaid observations.

16. Although it is the claim of the assessee that the CIT(Appeals) had grossly erred in law and facts of the case in dismissing the appeal without providing any reasonable opportunity of being heard to the assessee, I am unable to concur with the same. The assessee had in the course of the proceedings before the first appellate authority uploaded his written submissions, which reads as under:

"An amount of Rs. 1548680/- has been said as a taxable income of myself as per the notices issued and hence Rs 912360/- was demanded for income tax, interest and penalty. My elder brother, Late . Mr. Vinod Kumar Dubey, PAN: AERPD1591E, has given me Rs. 20,00,000 through bank Cheque No.120003 dated 24/01/2011 of bank of India, Telibandha Branch, Raipur, therefore this income should not be treated as my personal income as the cheque amount belongs to my Late brother, therefore, please close the matter and issue refund of Rs.182500/- deposited on 07/02/2019, (Challan No.:21698 BSR Code: 0013283) at the time of filing appeal. The Copy of bank statement is being attached."

As the CIT(Appeals) in the course of the appellate proceedings had taken cognizance of the assessee's written submissions, therefore, there is no substance in the assessee's claim that his appeal had been disposed off in violation of principles of natural justice. Accordingly, the **Ground of**

appeal No.2(II) raised by the assessee is dismissed in terms of the aforesaid observations.

17. **Ground of appeal No.5(V)** being general in nature is dismissed as not pressed.

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

Order pronounced in the open court on 23rd day of August, 2024.

Sd/-

(रवीश सूद / **RAVISH SOOD**)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd August, 2024

*****SB, Sr. PS

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 //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.