

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. 201/RPR/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Uma Shankar Jaiswal
Ward No.59, Bazaar Para,
Sarai Pali, Mahasamund (C.G.)-493 558
PAN: AVRPJ3715B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Mahasamund (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
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 ADDL/JCIT(A)-7, National Faceless Appeal Center (NFAC), Mumbai, dated 14.03.2024, 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 28.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal

- "1. Ld. ADDI./JCIT(A) erred in not deciding appeal on merits.
2. Ld. ADDI./JCIT(A) erred in deciding appeal without service of notice.
3. Ld. Addl./JCIT(A) erred in confirming addition of Rs.8,59,552/- made by AO by estimating income of appellant at Rs.11,40,552/-, applying provisions of sec. 44AD, in place of Rs. 2,81,000/- disclosed by appellant. Ld. Addl./JCIT(A) erred in upholding action of AO of treating cash deposits of Rs.1,42,56,900/- in the bank account of appellant as trading receipts and estimating net profit @ 8% on such deposits. The addition made by AO and confirmed by Ld. Addl./JCIT(A) is arbitrary, illegal and not justified.
4. The appellant reserves the right to amend, modify or add any of the ground/s of appeal."

2. Succinctly stated, the assessee had e-filed his return of income for A.Y.2016-17 on 20.03.2017, declaring an income of Rs.2,69,940/-. Thereafter, 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 his order passed u/s. 143(3) of the Act dated 28.12.2018, wherein, the income of the assessee was determined at Rs.11,29,490/-, i.e. after making disallowance of assessee's claim for deduction of expenses of Rs.8,59,552/-.

4. 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 proceedings before the first appellate authority, therefore, the latter was constrained to proceed with and in absence of any submissions having been filed by the assessee, dismissed the appeal.

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 and 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 contention.

7. Shri R.B. Doshi, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold submitted that though the assessee in the memorandum of appeal filed before the CIT(Appeals) in Form 35 had specifically opted out of receipt of notices/communication from his office through email but despite that no hard/physical copy of any notice

intimating fixation of appeal was ever served upon the assessee. Also, the Ld. AR in support of his contention, had filed an "affidavit" dated 20.08.2024 of the assessee, wherein it is stated that no hard/physical copy of any notice intimating fixation of appeal was ever served upon him. Elaborating on his contention, the Ld. AR had taken me through the order of the CIT(Appeals) which reveals that despite the fact that hearing of appeal was fixed on five occasions but there was no compliance on the part of the assessee which reads as under:

Notice issued under section	Date of issue of notice	Date of compliance	Remarks
250	20/05/2020	27/05/2020	No compliance
250	18/01/2021	02/02/2021	No compliance
250	03/11/2022	14/11/2022	No compliance
250	31/05/2023	15/06/2023	No compliance
250	01/03/2024	05/03/2024	No compliance

Apart from that, the Ld. AR submitted that as the CIT(Appeals) had failed to deal with the issues, based on which, the assessment order was assailed before him, therefore, the order so passed by him was not sustainable on the said count itself.

8. 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 adopted a lackadaisical approach in the course of proceedings before the first appellate authority, therefore, he was rightly visited with dismissal of the appeal vide an ex-parte order. The Ld. DR further submitted that in the appellate proceedings carried out by the CIT(Appeals)/NFAC, the notices/communications intimating the fixation of the appeal are served upon the appellant only through email.

9. I have thoughtfully considered the contentions advanced by the Ld. authorized representatives of both the parties in the backdrop of the orders of the lower authorities. Admittedly, it is a matter of fact borne from record that the assessee in the memorandum of appeal filed before the CIT(Appeals) in Form 35 had specifically opted out of receipt of notices/communication from his office through email. For the sake of clarity, the relevant extract of Form 35 filed by the assessee appellant is culled out as under:

FORM NO. 35 [See rule 45] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)	Acknowledgement Number 411370371220119	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
	UMA	SHANKAR	JAISWAL	AVRPJ3715B	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	WARD NO. 59				
	Area/ Locality	Town/ City/ District		State	Country
	BAZAAR PARA	SARAIPALI		CHHATISHGARH	INDIA
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?
493558	- 9926115856	-	caarihantpatni@gmail.com	No	

As stated by the Ld. AR the assessee though had specifically opted out of receipt of notices/communication from the CIT(Appeals) through email, but on no occasion, any hard/physical copy of any notice intimating fixation of appeal was ever served upon him. The Ld. DR on being confronted with the aforesaid factual position admitted the same. Although, the assessee had opted out of service of all notices/communications through email, I find that on all the five occasions when the appeal was fixed for hearing before the CIT(Appeals), notices were allegedly served through ITBA/email. I find substance in the claim of the Ld. AR that the assessee for no fault on his part had remained divested of an opportunity for putting up his case in the course of the proceedings before the first appellate authority. I am of the view that now when the assessee had specifically opted out from service of notices /communications from the office of the CIT(Appeals) through email, therefore, there was no justification on the latter's part to have allegedly served the notices intimating fixation of the appeal through ITBA/email. As failure on the part of the assessee to participate in the proceedings before the first appellate authority had occasioned for no fault on his part, but for the lapse on the part of the office of the CIT(Appeals) in validly putting him to notice, therefore, in my view, the summarily dismissal of the appeal at his back is in violation of the principles of natural justice.

10. Apropos, the Ld. DR's claim that service of notices/communications by the CIT(Appeals)/NFAC is only carried out by dropping the notice/communications/orders in the email address provided by the assessee, I am unable to persuade myself to subscribe to the same. If that would have so then there was no need to provide for an option to the appellant to receive the notices/communications through e-mail or by any other mode. As the memorandum of appeal in Form 35 specifically provides an option as to whether or not notices/communications (which includes notices intimating fixation of appeal) are to be sent on email address, therefore, I am unable to comprehend as to on what basis it is claimed by the Ld. DR that the assessee who had opted out of service of all notices/communications through email was validly served with the notices intimating the fixation of the appeal by dropping the said notices in his email account. As regards the email account provided by the assessee in the memorandum of appeal, i.e. personal information/Column 17, the same is only for the purpose of seeking details as sought for in the said columns. Be that as it may, now when the assessee had in the memorandum of appeal in form 35 specifically opted out of service of all notices /communications from the CIT(Appeals)'s office through email, therefore, I am afraid that the Ld. DR's contention that the assessee was validly put to notice vide the notices dropped in his e-mail account does not merit acceptance.

11. Accordingly, I am of a firm conviction that the matter in all fairness requires to be restored to the file of the CIT(Appeals) with a specific direction to re-adjudicate the same. Needless to say, the CIT(Appeals) shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim/contentions before the CIT(Appeals) based on fresh documentary evidence, if any. Thus, the **Grounds of appeal Nos. 1, 2 & 3** raised by the assessee are allowed for statistical purposes in terms of the aforesaid observations.

12. As I have restored the appeal to the file of the CIT(Appeals) for fresh adjudication, therefore, I refrain from adverting to the merits of the case, which, thus, are left open.

13. **Ground of appeal No.4** being general in nature is dismissed as not pressed.

14. In the result, appeal of the assessee is 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.