

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

(ITA No. 243/RPR/2024)  
(Assessment Year: 2012-13)

Anoop Kumar Panthi, Shop No. 29-30, Old Medical Complex, G.E. Road, Raipur, C.G.	V s	ITO, Ward-3(4), Central Revenue Building, Civil Lines, Raipur, C.G.
<b>PAN: AKDPP1816A</b>		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G.S. Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	21.08.2024
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	27.08.2024

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), NFAC, Delhi, (in short "CIT(A)"), vide order dated 30.09.2022 u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the Assessment Year 2012-13, which in turn arises from the order of Income Tax Officer, Ward-3(4), Raipur, (in short "The AO"), u/s 147 r.w.s. 143(3) of the Act, dated 13.12.2019.

2. The grounds of appeal raised by the assessee are as under:

1. That under the facts & the law, the initiation of proceedings u/s 147/148 is not as per law and therefore the assessment order deserves to be annulled.
  2. That under the facts & the law, the learned CIT (A) erred in passing the order ex-parte without allowing opportunity to the appellant as no Notice was received by the appellant in hard copy about fixation of the hearing, though the appellant opted for communication not be sent on email. Appellant also does not have knowledge of such fixation by email. Prayed that order passed by the learned CIT (A), NFAC, Delhi is against the natural justice, without allowing opportunity to the appellant and therefore be set-aside or addition be deleted.
  3. That under facts & law, without prejudice to Ground No. 1, the learned CIT(A), NFAC, Delhi further erred in passing the order ex-parte without considering the merits of the case. Therefore, prayed that the above order is not as per law, the addition so made be deleted.
  4. That under facts & law, the learned AO erred in making addition of Rs.60,19,944/- being cash sales deposited into bank, out of total sales of Rs.5.80 crores, the cash sales amounted to Rs.1.33 crores and the confirmation for Rs.60,19,944/- could not be filed as could not be obtained from the buyers, the learned AO erred in making addition Rs.60,19,944/- which the learned CIT (A) erred in confirming the same. Prayed to delete the addition of Rs.60,19,944/- .
  5. That under facts & law, the learned CIT (A) further erred in confirming the addition of Rs.23,7S,000/- made by AO on account of unsecured loan, lenders who are close family members & are genuine. Prayed to delete the addition of Rs.23,78,000/-
3. Briefly stated, assessee is an individual, engaged in the wholesale trading of Pharmaceuticals in Cash and Credits. Assessee's case was selected for re-opening, as the assessee had deposited cash amounting to Rs. 1,53,18,200/- and had received Rs. 24,46,000/- as unsecured loans during the relevant year under consideration. In response, the assessee filed his return of income for A. Y. 2012-13 on 10.03.2013 showing his total income of Rs.

5,19,500/-. Thereafter, a notice u/s 143(2) of the Act was issued on 10.06.2019. Later on, a notice u/s 142(1) of the Act was issued on 10.06.2019, whereby the assessee was asked to furnish his computation of income, details of bank accounts & cash deposits made therein, details of unsecured loans etc. When the assessee did not reply to this notice, a penalty show-cause notice u/s 274 r.w. 271(1)(b) of the Act was issued on 04.07.2019. On 04.07.2019, the assessee filed his reply and submitted certain details.

4. Further, the assessee was issued another notice u/s 142(1) of the Act dated 13.08.2019 in response to which the assessee has furnished legible copies of the debtors and creditors, but have requested further time for other details like ITRs, Bank Account Statement etc. of the persons who had advanced unsecured loans. On 14.09.2019, the assessee attended the office of Ld. AO personally and submitted a list of parties from whom he had received CASH in lieu of SALE. The list consisting of 109 entities and the total amount shown was Rs. 1,33,47,282/-. Further, the assessee was issued another notice u/s 142(1) of the Act dated 14.09.2019 and the assessee was asked to furnish original evidence for expenses debited in P & L A/c, so on so forth certain more information have been requested from the assessee. After examination of various details furnished by the assessee, the Ld. AO was not convinced with the explanations *qua* the cash receipts from various parties for Rs. 60,19,944/-

out of Rs. 99,20,350/-, therefore, he treated the said amount as unexplained cash credit in the books of the assessee and proposed the addition u/s 68 of the Act. Another addition was proposed u/s 68 for Rs. 23,78,000/- as the assessee has advanced certain loans after depositing of cash for which no satisfactory explanation could be offered from the assessee. After such observations total additions of Rs. 83,97,944/- have been made and the assessed income of the assessee has been determined at Rs. 89,17,444/-.

5. Aggrieved with the aforesaid additions, assessee carried the matter before the Ld. CIT(A), however, the assessee was unable to attend the proceedings before the First Appellate Authority, therefore, Ld. CIT(A) had passed an ex parte order by partly allowing the appeal of the assessee. Herein, it is observed that the order passed by the Ld. CIT(A) was found to be misplaced so far as grounds of appeal considered, are not the grounds of appeal which were pursued by the assessee, neither the final decision bears any nexus with the grievance raised by the assessee.

6. Dissatisfied with the aforesaid order of Ld. CIT(A), the assessee has preferred the present appeal before us.

7. At the outset, registry has pointed out that the appeal in present case is barred by limitation, had filed with a delay of 542 days. In order to explain the delay involved in the present case, Ld. AR of the assessee have submitted an application for condonation of delay which for the sake of clarity have been extracted as under:

**Before the Hon'ble Members, Income Tax Appellate  
Tribunal, Raipur Bench, Raipur**

Hon'ble Sirs,

Reg: -Anoop Kumar Panthi, Raipur (C.G.)  
- Appeal No. **ITA/243/RPR/2023**- Assessment Year **2012-13**

Sub: **Prayer for condonation of delay**

*In the above matter, it is respectfully submitted before the Hon'ble Bench as under for kind and favourable consideration:*

**Brief facts:**

1. That the Order of Ld. CIT (Appeals), NFAC, Delhi is dated 30.09.2022 under Faceless Scheme.
2. That Appeal against the above Order has been filed before the Hon'ble Bench on 24.04.2024.

*As per Defect Memo issued by the Registry the delay is mentioned as 542 days.*

3. **Reasons for delay:-**

- 1) The Appellant is aged about 55 years and studied upto 12<sup>th</sup> class. He is not conversant with the newly introduced electronic system and Faceless system of

*CBDT. Because of above limitation, the Appellant while filing Form No. 35 i.e., Appeal Memo, in the Column "Whether notices / communication may be sent on email" mentioned as "No".*

*2) The above Order of the Ld. CJT (Appeals) dated 30.09.2022 could not come to knowledge of the Appellant. This Order was not served upon the Appellant in hard copy. Appellant was, therefore, under the bonafide belief that the Appeal is yet to be heard.*

*3) The Ld. Assessing Officer issued Show Cause Notice for levy of penalty u/s 271(l)(c) dated 18.03.2024 fixing the hearing after 2 days i.e., on 20.03.2024 wherein it was mentioned that the Ld. CIT (Appeals) has decided Appeal in quantum. Copy of Notice is enclosed at Page No. 1 & 2. Only then, the Appellant came to know that the Ld. CIT (Appeals) has passed the Order in quantum in above Appeal. This was known on 18.03.2024. Therefore, an application was filed on 19.03.2024 before the AO to keep the penalty proceedings pending as the Assessee will file Appeal before ITAT. Copy of acknowledgement of filing of the said application is enclosed at Page No. 3.*

*4) Thus, treating the date of service of Order as 18.03.2024, the Appeal should have been filed within 60 days which ends on 17.05.2024. The Appeal could be filed on 24.05.2024, thus it is late by 7 days.*

*5) The Appellant is patient of high Blood Pressure. He also suffered other health problems of Vertigo in the 3<sup>rd</sup> week of March, 2024. Due to this, there was forgetfulness, feeling unstable, uneasiness, not having concentration, etc. He was under medication. A Certificate from doctor is enclosed at Page No. 4.*

*4. Considering the above facts and circumstances of the case, it is prayed that the delay of 6 days kindly be condoned.*

*5. An Affidavit in support of above is enclosed herewith.*

*6. **Merits of the case:***

*The cash sales, which is the regular feature in this line of business, to the tune of Rs. 60,19,944/- was added though books of accounts and sales were accepted and, apart from above, the credit in the accounts of close relatives for Rs. 23,78,000/- was also added u/s 68. Submitted respectfully that all transactions are supported and the supportings are being filed before your honour. Great injustice has been done to the Appellant as under the facts and circumstances of the case and the law, no addition should have been made.*

*Prayed to condone the delay,*

8. Based on aforesaid application, it was the submission of Ld. AR that the order of Ld. CIT(A) dated 30.09.2022 could not come to the knowledge of assessee as the same was never served in the form of hard copy. It is the submission that the assessee was under bonafide belief, based on his preference 'No' opted in Form No. 35 before the Ld. CIT(A) for the column "*whether notices/communications may be sent on email?*". It is the submission that when the show cause notice for the levy of penalty u/s 271(1)(c) dated 18.03.2024 was received on 20.03.2024 with a mention that the Ld. CIT(A) has decided the appeal of assessee on quantum, thereafter the assessee, who was a patient of High Blood Pressure, suffering with other health issues like Vertigo could file the appeal on 24.05.2024 with a delay of 07 days, whereas the appeal should have been filed on or before 17.05.2024 (calculated from the date of service of order on 18.03.2024). In view of aforesaid facts and circumstances, it was the prayer that delay in filing of appeal may please be condone. On the issue of delay Ld. Sr. DR have placed her objection that as per face less scheme

it is the obligation on the assessee to keep a watch on online line communications, thus the excuses put forth by the Ld. AR are to be rejected. After hearing both the parties considering the option opted by the assessee to receive the communications other than by way of email in Form no. 35, which was not adhered to by the office of Ld. CIT(A), the assessee was under bonafide belief that he will receive a communication in the form of hard copy which was never served upon the assessee neither it was the claim of the department. Under such facts and circumstances, we are of the considered view that the delay in filing of appeal was not intentional, nor due to assessee's negligent conduct, therefore, we condone the delay involved in the present case and allow the appeal to be heard.

9. At the inception of hearing the grounds of appeal, it was the submission of Ld. AR that the order passed by Ld. CIT(A) was an exparte order, also as discernible from the record that the assessee have opted for communications other than by way of email, however, no communications have reached to the assessee when a matter was fixed for compliances, therefore, the assessee was unable to respond and make necessary compliances to the said notices issued by Ld. CIT(A). It is the submission that the order of Ld. CIT(A) was totally erroneous, illogical and without application of mind. Apparently, Ld. CIT(A) have picked up the grounds of appeal from some other case, whereas the grounds of

appeal of the assessee assailed in Form no. 35 are not touched or considered for adjudication. For better consideration of the facts the grounds of appeal taken up by the Ld. CIT(A), are extracted as under:

2. *As per Form No. 35, the grounds of appeal filed by the appellant are reproduced below:*

1. *“The Ld. AO of CPC has made addition of Rs. 757015 without considering the fact and taxed twice the same income of other head is bad in law and fact.*
2. *The Ld. AO CPC has made disallowance of Rs. 41338 payment made to relative without considering the fact is bad in law and fact.”*

10. The grounds of appeal raised by the assessee in Form no. 35 which are to be considered but left the attention of Ld. CIT(A) are reproduced, as under:

<i>Grounds of Appeal (each ground not exceeding 100 words)</i>		
<i>Relevant section (s) of IT/Act</i>	<i>Issue</i>	<i>Ground of Appeal</i>
68	<i>Addition of Rs. 60199944 u/s 68</i>	<i>Addition of Rs. 6019944 on account of unexplained cash sale is bad in law and fact and natural justice</i>
68	<i>Addition u/s 68 of Rs. 2378000 on account of Unsecured loan</i>	<i>Addition of Rs. 2378000 on account of unsecured loan as un explained is bad in law and fact through the copy of return of lenders have been filed</i>
246	<i>Ground to add, amend or withdraw</i>	<i>The assessee Reserves his Right to add amend or withdraw any of the ground at the time of hearing</i>

246	<i>Prayer</i>	<i>It is prayed that the addition made by Ld. AO u/s 68 at Rs. 6019944 and Rs. 2378000 be kindly deleted and due relief be granted accordingly.</i>
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11. With the aforesaid submission, it was the prayer by Ld. AR that the order passed by Ld. CIT(A) has no link with the controversies raised by the assessee against the additions made by the Ld. AO, the order was against the principle of natural justice which was passed without affording reasonable opportunity of being heard to the assessee, therefore, the same needs to be set aside and additions made are to be deleted. Alternatively, as the issue raised by the assessee have not been dealt with by the Ld. CIT(A) the matter in the interest of justice should be restored back to his file for adjudication afresh with reasonable opportunities of being heard to the assessee.

12. Ld. Sr. DR on behalf of the revenue on the other hand have vehemently supported the order of the Ld. AO, have submitted that the assessee was failed to furnish all the necessary evidence before the Ld. AO, also the assessee was not available before the Ld. CIT(A) on 08 occasions when the assessee was provided with ample opportunities to substantiate against the additions made u/s 68 by the Ld. AO. Therefore, it was the request that additions made by the Ld. AO in absence of any plausible explanation by the assessee deserves to be

sustained. Regarding decision of Ld. CIT(A) which was with respect to grounds of appeal and the facts alien to the present case, it was fairly admitted that the matter in all fairness can be restored back to the files of Ld. CIT(A) for fresh adjudication.

13. We have considered the rival contentions and perused the orders of authorities below. Ostensibly, on perusal of the order passed by Ld. CIT(A) 30.09.2022 the grounds of appeal taken up for the consideration and adjudication are observed to be, different from the issues which were assailed by the assessee in his Form 35 before the Ld. CIT(A), neither the grounds of appeal adjudicated has any nexus with the additions made in the assessment framed in the case of the assessee. Such factual position speaks that the order of Ld. CIT(A) was misplaced, misconceived and inappropriate. Assessee's failure to put up or furnish necessary compliances before the Ld. CIT(A) is also substantiated by the fact that assessee has opted to receive notices/ communications other than by way of email, but such option provided to the assessee and exercised by him was not honoured by the revenue. The assessee was under bonafide belief to receive the notices in physical mode, therefore, in all fairness in the interest of justice and as fairly admitted by both the parties, without adhering to the grounds / additional grounds raised by the assessee on merits, we are of the thoughtful opinion that the present matter

needs to be restored back to the file of Ld. CIT(A) for fresh adjudication of the issues therein and we direct to do so. Needless to say, reasonable opportunity of being heard as per law shall be provided to the assessee in set aside appellate proceedings. The assessee is directed to assist vigilantly in the proceedings, failing which the Ld. CIT(A) shall be at liberty to decide the issue in accordance with law.

14. In result, the present appeal of the assessee is **partly allowed** for statistical purposes.

Order pronounced in the open court on 27/08/2024.

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

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 27/08/2024

*Vaibhav Shrivastav*

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

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

// सत्यापित प्रति True copy //

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

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**  
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur