

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. 102/RPR/2024)
(Assessment Year: 2016-17)

R. S. Dreamland Pvt. Ltd., Shop No. 1, E-2 Apartments, Near Sector 8A, Kamal Vihar, Devpuri, Raipur, 492015, Chhattisgarh	V s	DCIT Circle 3(1), Central Revenue Building, Civil Lines, Near Akashwani, Raipur, C.G.
PAN: AADCR4823N		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Praful Pendse, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR & Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	23.08.2024
घोषणा की तारीख/ Date of Pronouncement	:	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 (Appeal), [in short "Ld. CIT(A)"], NFAC, Delhi, u/s 250 of the Income Tax Act, 1961 [in short "The Act"], for the Assessment Year 2016-17, dated 23.01.2024, which in turn arises from the order under Section 144 of the Act passed by the Deputy Commissioner of Income Tax, Circle-3(1), Raipur [in short "Ld. AO"] dated 28.11.2018.

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

1. That the order of Ld. CIT(A) is bad in law as well as on facts and the entire additions sustained by the Ld. CIT(A) are bad in law and accordingly liable to be deleted.

2. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs. 3,66,35,032/- for alleged mismatch in turnover which is absolutely misconceived and the same is therefore liable to be deleted.

3. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs. 2,00,12,280/- in respect of penalty under section 269SS, when it is no more res integra that penalty proceedings are distinct and separate from assessment proceedings though they emanate from assessment proceedings therefore, liable to be deleted.

4. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs. 4,90,89,280/- in respect of penalty under section 269T, when it is no more res integra that penalty proceedings are distinct and separate from assessment proceedings though they emanate from assessment proceedings, therefore, the said additions are liable to be deleted.

5. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs. 5,10,33,244/- (Rs. 4,90,89,196/- as per CIT(A) under section 68, contrary to the provisions of income tax act, 1961.

6. In the facts and circumstances of the case the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making

addition of Rs. 64,32,971/- for alleged suppression of Turnover of products/goods under misconception of facts and the same is therefore, liable to be deleted.

7. The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal.

3. Concisely stated, the assessee is a Private Limited Company, had filed its return of income on 21.08.2017 declaring a total income of Rs. 23,35,900/-. The case of the assessee has been selected for scrutiny through "CASS", accordingly, notice u/s 143(2) of the Act was issued on 09.08.2018 by ITO Ward-3(1), Raipur. Since the case was transferred from the office of ITO, Ward-3(1) to DCIT, circle-3(1), Raipur, therefore, another notice u/s 143(2) was issued on 19.09.2018. In due course, notice u/s 142(1) of the Act was issued and the assessee was requested to submit necessary details as per annexure to the said notice, however, assessee did not comply. Further notices u/s 142(1) were issued on 17.10.2018, 24.10.2018 and 30.10.2018 but again the assessee failed to comply. Consequently, a show cause notice dated 14.11.2018 as final opportunity was issued to the assessee to file necessary replies with supporting evidence by 19.11.2018, but the assessee remains non-compliant. In absence of compliance from the assessee, Ld. AO proceeded and have completed the assessment

passed on the basis of material available on record u/s 144A of the Act and has made certain additions/ disallowances as under:

Total Returned Income	23,35,900/-
Add: -	
Addition on account of mismatch in sale of services reported in the Service tax return and ITR	3,66,35,032/-
Addition on account of disallowance u/s. 269SS of the Act	2,00,12,280/-
Addition on account of disallowance u/s 269T of the Act	5,10,33,244/-
Addition on account of disallowance u/s 68 of the Act	4,30,72,145/-
Addition as discussed in para(v)	64,32,971/-
Total addition	15,71,85,672/-
Total Assessed Income	15,95,21,570/-

4. Aggrieved with the additions, so made by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein again the assessee remain inattentive or non-existent towards the notices issued and opportunities granted, therefore, Ld. CIT(A) had confirmed the additions made by the Ld. AO with the following observations:

Decision: *I have carefully considered the facts of the case as well as gone through the observation and findings of the AO 's assessment order Since no written submission against the grounds, as enumerated in grounds of appeal, is filed by the appellant despite availing multiple opportunity of hearing dated 23-09-2023, 16-10-2023, the appeal relating to the grounds is disposed on merit i.e. based on materials available on records.*

I find from the grounds of appeal vis-a-vis statement of facts that the appellant claimed the AO has made erroneous addition based on erroneous information,

misconception of account and the same proceedings being bad in law. But the appellant is unable to submit any written documents in support of its claim and in course of appeal proceeding the attitude of non-compliance on the part of the appellant reveal the said claim of appellant being unacceptable. It is observed from the assessment orders that despite availing ample opportunity in assessment stage neither the appellant nor its authorized representative could have provided any acceptable satisfactory evidence against the show cause notice issued for the proposed addition made in the year under consideration on various issues In view of that considering the entire conspectus or the case I am of opinion that despite availing adequate opportunity the appellant is unable to give either satisfactory explanation with corroborating evidence regarding justification of disclosure of turnover as per service tax return or to give any satisfactory explanation regarding taking or accepting loan or deposits other than account payee cheques beyond the threshold limit in contravention to section 269SS or repayment of loan or deposits other than account payee cheques beyond the threshold limit in contravention to section 269T or satisfactory explanation of receipts of share capital or actual value of turnover . Accordingly, I do not find any infirmity in the order of the AO and find the same was justified in as much as the addition being made in accordance with law. Considering the entire conspectus of the case I hold that the appellant has no proper explanation regarding above findings of the AO. Accordingly, all the additions made by the AO in assessment order subject to actual repayment of loan or deposit [which appears erroneously taken by the AO in assessment order as Rs. 5,10,33,244/- in lieu of Rs. 4,90,89,196/- (3,77,91,196 + 1,12,98,000)] and actual share application money received, stand confirmed and the grounds relating to these issues are dismissed.

5. As the additions / disallowances made by the Ld. AO are confirmed in the order of Ld. CIT(A), the assessee again feel to be aggrieved with the same and, therefore, had carried the matter before us in the present appeal.

6. At the outset, Ld. Authorized Representative, Shri Prafull Pendse, CA on behalf of the assessee have drawn our attention to the paper book dated 22.04.2024 submitted on 24.04.2024, comprising of (i) a copy of application for rectification of mistake u/s 154 of the Act filed before the Ld. AO dated 24.12.2018, (ii) a letter dated 09.04.2019 issued by the Ld. AO i.e., DCIT, Circle-3(1), stating about rectification for A.Y. 2016-17 completed on 12.02.2019, wherein the demand raised by the department has been reduced to Rs. 4,73,91,645/-, (iii) also copy of acknowledgment of these two documents furnished before Ld. CIT(A), submitted online on 28.10.2023. Based on these documents, it was the submission by Ld. AR that assessment order passed u/s 144 on 28.11.2018 was having certain mistakes apparent, thus, requested for rectification by the assessee through an application u/s 154 on 24.12.2018, which according to the letter issued by DCIT, Circle-3(1) i.e., the Ld. AO on 09.04.2019 was disposed of through an order u/s 154 on 12.02.2019, however, no rectification order have been served upon the assessee nor the same is available on the portal of the department. Placing the arguments further on this issue, it was the submission that when such facts have been furnished before the Ld. CIT(A) before the date of the appellate order dated

23.01.2024, such crucial information was not looked into and simply brushed aside by the Ld. CIT(A), stating that there was no response by the assessee. The grounds of appeal are disposed of by the Ld. CIT(A), with the assertion that he is dealing with merits based on material available on record, however, in real terms the merits of the grounds are not deliberated which is apparent from the order of Ld. CIT(A). Ld. CIT(A) without making any independent inquiry which is obligatory upon him had summarily accepted the verdict of Ld. AO, whereas the information regarding rectification u/s 154 was before him and to clarify the same he was empowered to direct for a remand report from the Ld. AO. The order of Ld. CIT(A) was totally on the basis of assessee's inability to furnish satisfactory explanations with corroborative evidence *qua* the justification of disclosure of turnover, loans or deposits other than account payee cheques beyond the threshold limit in contravention to section 269SS and section 269T of the Act. It is further submitted that apart from ignoring the issue of rectification, the Ld. CIT(A) had not commented anything about the merits of the issues, therefore, order of Ld. CIT(A) is absolutely misconceived, bad in law and therefore, the same is liable to be set aside and the additions made by Ld. AO shall be deleted.

7. In order to substantiate / rebut against additions / disallowances made by the Ld. AO, Ld. AR has requested for admission for additional evidences for which a paper book containing 214 pages have been furnished before us, against which

Ld. Departmental Representative i.e., Ld. CIT-DR has refuted with his strong objections that the assessee could not be provided with the opportunity to furnish such bulky paper book containing all the primary information at this stage before the tribunal, which the assessee had squarely failed to furnish before the Authorities below.

8. Ld. CIT DR, Shri S. L. Anuragi on behalf of the revenue further in rebuttal have submitted that conduct of the assessee before both the authorities i.e., Ld. AO and Ld. CIT(A) was negligent, non-compliant and careless, assessee had never shown his interest in the Tax Assessment Proceedings or Appellate Proceedings, it was never represented before both the Authorities. In compliance the assessee should not be allowed to produce evidence or explanations at this stage for first time before the ITAT. The additions made by the Ld. AO and sustained by Ld. CIT(A) are, therefore, deserves to be upheld.

9. We have considered the rival submissions, perused the material available on record and for gone through the thoroughly with the order of Ld. Revenue and Authorities.

10. Apropos, additional evidence furnished by the Ld. AR of the assessee first time before us, we find force in the submission of Ld. CIT- DR that the assessee,

who remain negligent and inattentive before both the authorities below and have not furnished any information or explanation in support of its contentions before them, the tribunal cannot be used as a platform to furnish all the primary information which are supposed to be furnished before the authorities below. We, therefore, rejected the additional paper book furnished by the assessee, and therefore, we are not dealing with any of the documents freshly furnished before us.

11. In the present case, admittedly, the conduct of assessee cannot be taken at a par with a compliant assessee. The assessee remained absent before Ld. AO as well as before the Ld. CIT(A). Ld. AO was compelled to complete the assessment u/s 144, wherein certain additions / disallowances were made and the same were approved by the Ld. CIT(A) in absence of any further explanations / supporting corroborative evidence furnished by the assessee. However, Ld. CIT(A) have not decided the issues on merits also the information regarding rectification of assessee's assessment for which, though the order of rectification dated 12.02.2019 could not be placed before us by the either party, Ld. CIT(A) would have inquired on this issue from the Ld. AO to clarify as to what was the fate of the said rectification order. Since, the original demand imposed on the assessee as per order u/s 144 has been reduced to Rs. 4.73 Crore by the Ld. AO on account of rectification carried out, as emanating from Ld. AO's letter dated 09.04.2019,

the entire addition / disallowances confirmed by the Ld. CIT(A) found to be misconceived and under improper appreciation of facts on record. The order of Ld. CIT(A) has no discussion on merits of the issues rather, his attention was totally on the non-compliance on the part of the assessee, shows that Ld. CIT(A), NFAC has decided the issue on ex-parte basis without considering the merits of the issue, in light of the settled judicial precedents on the issue that *“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.”*, therefore, we are of the considered view that the order of Ld. CIT(A) is suffering with error which needs to be corrected by fresh adjudication.

12. On the aforesaid issue, this bench has already arrived at a view and have adopted in various decision wherein it is decided that in case Ld. CIT(A) has not disposed of the appeal of the assessee on merits, then the matter requires to be restored back to the files of Ld. CIT(A) to decide the same after due deliberations on the merits. Our decision is further fortified by the ratio of law laid down by Hon'ble Mumbai High Court in the case of **CIT vs. Premkumar Arjundas Luthra (HUF) reported in [2016] 240 taxman 133**, wherein Hon'ble Bombay High Court has held as under:

“.....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 Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 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. Section 251(l)(a) and (b) 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-section (2) of Section 251 of the Act also makes it dear 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 Section 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, with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer 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 dear from the Section 251(l)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to at 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.”

13. In view of aforesaid observations of the Hon'ble Bombay High Court, in absence of deliberation on the issues on its merits by the Ld. CIT(A) based on material available on record, in the interest of justice, we find it appropriate to restore the present appeal back to the files of Ld. CIT(A) for fresh adjudication. Also, on account of non-cognizance of the information regarding reduction of demand through rectification which was furnished by the assessee before the Ld. CIT(A), in the interest of justice, the matter requires restoration and to be revisited by the Ld. CIT(A). We, therefore, restored the matter back to the file of Ld. CIT(A). Needless to say, that reasonable opportunity of being heard shall be provided to the assessee and liberty to furnish necessary

information, explanations, evidence and jurisprudence in support of his contentions in the set aside appellate proceedings.

14. Since, we have restored the matter back to the files of Ld. CIT(A), therefore, we refrain ourselves to deal with the grounds of the present appeal on merits for which the assessee is at liberty to assail before the Ld. CIT(A).

15. In the result, appeal of the assessee is partly allowed in terms of our aforesaid observations.

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- R.S. Dreamland Pvt. Ltd., Raipur
2. प्रत्यर्थी / The Respondent- DCIT-3(1), 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.

**Sd/-
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

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