

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. 207/RPR/2024)
(Assessment Year: 2018-19)

Income Tax Officer, Near Ambika Petrol Pump, Kharsia Road, Ambikapur, C.G. 497001	V s	Ravindra Gupta, Vill. Sureshpur Khash Post Khadhadorna Sitapur, Tah. - Sitapur, Distt. Surguja, 49711, C.G.
PAN: BHWPG7176F		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	27.08.2024
घोषणा की तारीख/ Date of Pronouncement	:	30.08.2024

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 23.03.2024 u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the Assessment Year 2018-19, which in turn arises from the order of Income Tax Officer, Ward-1, Ambikapur, (in short "The AO"), u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 22.03.2023.

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

1. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs. 1,26,47,200/- made u/s 68 of the Income Tax Act/ 1961 on account of cash deposit?"
2. "Whether on the facts and circumstances of the case the Id. CIT(A) was justified in accepting the submission of the assessee and thereby ignoring the facts brought on record by the AO?"
3. Any other ground which may be adduced at the time of hearing.

3. The brief facts of the case are that the assessee is an individual, who had not filed his return of income (ROI), therefore, as per information received from the Insight Portal under the head "non-filing of return (NMS)", flagged in accordance with the risk management strategy formulated by the CBDT which suggested that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Accordingly, proceedings u/s 147 by issuance of notice are initiated. In the present case, it is observed by the Ld. AO that the assessee has deposited cash and received commission on brokerage aggregating to Rs. 1,28,13,658/- during the FY 2017-18 relevant AY 2018-19 and did not file the return of income, the case was reopened. Accordingly, notice u/s 148, was issued to the assessee on 29.03.2022, requiring the assessee to file the return of income within 30 days from the receipt of the notice. In response to the notice u/s 148, the assessee filed the return of income for the AY 2018-19 on 31.05.2022 declaring total income of Rs. 1,74,790/-. The return is filed after the expiry of time given in the notice u/s 148 (i.e., 30 days from 29.03.2022), hence the same is not

treated as a valid return of income by the Ld. AO. Further, a notice u/s 142(1) of the I. T. Act, calling for details and documents with regard to the issue involved, was issued to the assessee. However, he did not respond to the said notice. Further, opportunities were provided to the assessee on 19.01.2023, 31.01.2023, 08.02.2023, 14.02.2023 and 28.02.2023, but assessee remain non-compliant. Consequently, show cause notice dated 09.03.2023 was issued proposing addition aggregating to the amount of Rs. 1,28,13,658/- for which the case was reopened, again assessee opted not to reply to the notices / letters issued by the Ld. AO, in absence of no response by the assessee, Ld. AO had culminated the assessment with the additions and determination of taxable income, under the following observations:

In view of the above, it is evident that despite giving several opportunities, the assessee has miserably failed to furnish details. In view of prolonged noncompliance on the assessee's part, it is inferred that the assessee has nothing to explain with regard to issue involved for the A. Y. 2018-19 as stated in the order u/s 148A(d). In absence of any details/reply, the assessment proceedings is finalised u/s 144 rws 144B r.w.s 147 of the I. T. Act, 1961 by considering the cash deposits made by the assessee as unexplained cash credits and commission on brokerage received as income from business/profession by the assessee during the financial year 2017-18 relevant to the assessment year 2018-19, total aggregating to tune of Rs. 1,28,13,658/-.

Addition on the following grounds:

- 1. The assessee had cash deposits made during the financial year 2017-18 relevant to the assessment year 2018-19 to tune of Rs. 1,26,47,200/-. These amounts are reflected in the 26AS as deposits by the assessee. Since the assessee failed to disclose the source the same is added as unexplained cash credits and brought to tax u/s 68 of Income Tax Act, 1961.*

2. *The assessee has earned commission on brokerage of Rs 1,48,396/- as per 26AS for the assessment year concerned from M/S Bharathi Airtel limited and Bharathi Payments Bank Limited. As such the amount of Rs. 1,48,396/- is treated as undisclosed income from business/profession and brought to tax.*
3. *The assessee had earned income from interest amounting to Rs. 18,062/- from Central Bank of India. As such the amount of Rs. 18,062/- is treated as undisclosed income from other sources and brought to tax.*

Although, ample opportunity has been provided to the assessee to submit the details and documents with regard to the issue involved no reply has been received from the assessee till date. Hence, as per information entire cash deposits (including through bearer's cheque) in current account held at Central Bank of India amounting to Rs. 1,26,47,200/- made by the assessee shall be treated as unexplained cash credits and commission on brokerage amounting to Rs. 18,062/- and Rs. 1,48,396/- received by the assessee as interest and brokerage/commission respectively as undisclosed income from Business and Other Sources as explained in the computation below Therefore, during the financial year 2017-18 relevant to the assessment year 201819 income aggregating to tune of Rs. 1,28,13,658/- is brought to tax in view of absence of any details and documents.

Unfortunately, the assessee failed to furnish the details called for. Hence, the assessment is concluded u/s 144 r.w.s. 144B of the I T Act as under:

S. No.	Particulars	Amount (Rs.)
1	<i>Returned income as per R/I filed in response to 148 (However, treated as not a valid return as the same is filed after the expiry of the time limit given in the notice)</i>	1,74,790/-
Add: 1.	<i>Cash credits u/s 68 of the I T Act.</i>	1,26,47,200/-
Add: 2.	<i>Commission on brokerage</i>	1,48,396/-
Add: 3.	<i>Income from Other Sources</i>	18,062/-
	<i>Assessed income u/s 146 r.w.s. 144 rws 144B of the I. T. Act, 1961</i>	1,29,88,448/-

4. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), wherein the appeal of the assessee is partly allowed by the deleting the addition of Rs. 1,26,47,200/- treating the same as amount pertains to receipts on account of mobile charges on behalf of Bharti Airtel on the basis that this fact was not disputed by the Ld. AO in the assessment order and that as per Form 26AS, assessee has received commission from Bharti Airtel. Ld. CIT(A), however have sustain the addition on account of commission received for Rs. 1,48,396/- and interest income earned by the assessee of Rs. 18,062/-. While deciding the issues, the observations of Ld. CIT(A) were as under:

Determination and Decision

5. *The appellant has not effectively pursued the appellate proceedings, rather not pursued his case at all, despite the service of notices as mentioned in para 3 above. Notices as mentioned above were sent, but there was no response from the appellant.*

5.1 *Finally a notice dated 01.03.2024 was sent to the appellant requiring compliance on 06.03.2024 whereby it was specifically stated that a final opportunity is given to furnish to the appellant to file written submission/evidence & proof in support of his contention on or before the scheduled date as mentioned in the said notice, failing which it shall be presumed that the appellant has no explanation to offer/no proof or evidence in support of his contention, and appeal would be decided accordingly.*

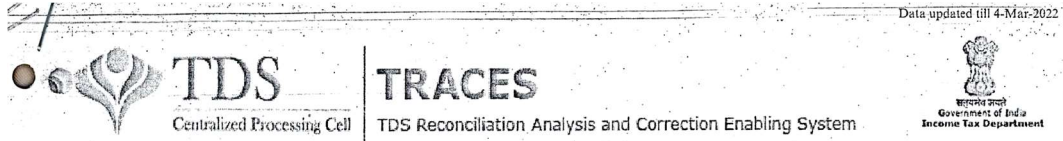
5.2 *All the notices were delivered. The same is evidenced from the details available on the e-filing portal. There was no response whatsoever not even with the purpose to seek an adjournment.*

6. *The appellant has not filed any submissions during the appellate proceedings in spite of the fact that number of opportunities were afforded to the appellant to furnish the same as can be seen from the table above. However, ongoing through the Form 35 submitted by the appellant and the Ledger of his concern Abhishek Telecom with Bharti Airtel, it is observed that the deposits in the Bank account pertained to mobile recharge of prepaid customers of Bharti Airtel. The A.O. also has not disputed the commission received by the appellant from Bharti Airtel. However, since the ITR filed in response to notice u/s 148 of the Act was not filed within the time stipulated, the same was treated invalid by the AO. Therefore, the commission received of Rs 1,48,396/- from Bharti Airtel and Interest received of Rs 18,062/added by the A.O. is hereby sustained. However the addition made by the AO of Rs 1,26,47,200/- u/s 68 of the Act cannot be sustained as the said amount pertains to the receipts received on account of mobile recharge of Bharti Airtel which has been not disputed by the A O in the Assessment order as the AO accepted that the appellant received commission from Bharti Airtel and the fact that the commission can be earned only after certain services have been provided by one which in this case was the service provided by the appellant of doing mobile recharge of prepaid customers of Bharti Airtel ,for which the company in turn paid commission to the appellant and which was also appearing in the Form 26AS .In view of the above facts, the addition made by the AO of Rs 1,26,47,200/- u/s 68 of the Act is hereby deleted. However, the addition made by the AO on account of commission received f Rs. 1,48, 396/- is sustained as well as the addition of income earned from interest received from Central Bank of Rs. 18,062/-.*

5. Dissatisfied with the aforesaid observations and decision deleting the significant part of the addition by Ld. CIT(A), department has assailed the issue before us under the present appeal.

6. At the outset, Ld. Sr. DR on behalf of the department have submitted that Ld. CIT(A)'s order was not justified, wherein the addition was deleted based on the facts that the assessee has provided services of mobile recharge to prepaid customers of Bharti Airtel. It is further argued that, the conviction of Ld. CIT(A) that

such information is discernible from the Form 26AS was not emanating in totality. The copy of relevant portion of Form 26AS is furnished by the Ld. Sr. DR, the same is extracted hereunder:



Form 26AS

Annual Tax Statement under Section 203AA of the Income Tax Act, 1961

• See Section 203AA and second provision to Section 206C (5) of the Income Tax Act, 1961 and Rule 31AB of Income Tax Rules, 1962

Resident Account Number (PAN)	BHWP7176F	Current Status of PAN	Active	Financial Year	2017-18	Assessment Year	2018-19
Name of Assessee	RAVINDRA GUPTA						
Address of Assessee	VILL SURESHPUR KHASH, POST KHADHADORNA SITAPUR, KHADHADORNA TAH SITAPUR, DISTT SURGUJA, CHATTISGARH, 497111						

- Above data / Status of PAN is as per PAN details. For any changes in data as mentioned above, you may submit request for corrections Refer www.tin-nsdl.com / www.uitsl.com for more details. In case of discrepancy in status of PAN please contact your Assessing Officer
- Communication details for TRACES can be updated in 'Profile' section. However, these changes will not be updated in PAN database as mentioned above

PART A - Details of Tax Deducted at Source

(All amount values are in INR)

Sr. No.	Name of Deductor				TAN of Deductor	Total Amount Paid / Credited	Total Tax Deducted	Total TDS Deposited
1	CENTRAL BANK OF INDIA				BPLC01789E	18062.27	1807.00	1807.00
Sr. No.	Section 1	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted **	TDS Deposited
1	194A	31-Mar-2018	F	29-May-2018	-	1410.20	141.00	141.00
2	194A	31-Mar-2018	F	29-May-2018	-	726.29	72.00	72.00
3	194A	31-Mar-2018	F	29-May-2018	-	755.87	76.00	76.00
4	194A	03-Mar-2018	F	29-May-2018	-	9033.45	904.00	904.00
5	194A	27-Jan-2018	F	29-May-2018	-	3659.98	366.00	366.00
6	194A	26-Oct-2017	F	30-Jan-2018	-	2139.13	214.00	214.00
7	194A	05-May-2017	F	08-Aug-2017	-	337.35	34.00	34.00
2	AIRTEL PAYMENTS BANK LIMITED				DELA26021C	1562.60	78.13	78.13
Sr. No.	Section 1	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted **	TDS Deposited
1	194H	31-Jan-2018	F	06-Jun-2018	-	15.00	0.75	0.75
2	194H	30-Oct-2017	F	08-Feb-2018	-	10.00	0.50	0.50
3	194H	30-Sep-2017	F	30-Oct-2017	-	16.20	0.81	0.81
4	194H	31-Aug-2017	F	30-Oct-2017	-	10.15	0.51	0.51
5	194H	30-Jun-2017	F	06-Aug-2017	-	10.00	0.50	0.50
6	194H	30-May-2017	F	06-Aug-2017	-	223.00	11.15	11.15
7	194H	30-Apr-2017	F	06-Aug-2017	-	878.25	43.91	43.91
8	194H	30-Apr-2017	F	06-Aug-2017	-	400.00	20.00	20.00
3	BHARTI AIRTEL LIMITED				RTKB03826E	146832.58	7342.00	7342.00
Sr. No.	Section 1	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted **	TDS Deposited
1	194H	31-Mar-2018	F	03-Jun-2018	-	18704.75	935.00	935.00
2	194H	28-Feb-2018	F	03-Jun-2018	-	11680.87	584.04	584.04
3	194H	31-Jan-2018	F	03-Jun-2018	-	14067.42	703.00	703.00
4	194H	31-Dec-2017	F	06-Feb-2018	-	21066.09	1053.30	1053.30
5	194H	30-Nov-2017	F	06-Feb-2018	-	16974.01	845.70	845.70
6	194H	31-Oct-2017	F	06-Feb-2018	-	13819.29	690.96	690.96
7	194H	30-Sep-2017	F	01-Nov-2017	-	20750.60	1038.00	1038.00
8	194H	31-Aug-2017	F	01-Nov-2017	-	18292.51	915.00	915.00
9	194H	31-Jul-2017	F	01-Nov-2017	-	11477.04	574.00	574.00

PART A1 - Details of Tax Deducted at Source for 15G / 15H

Sr. No.	Section 1	Transaction Date	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted **	TDS Deposited
No Transactions Present							

Assessee PAN: BHWPG7176F

Assessee Name: RAVINDRA GUPTA

Assessment Year: 2019

PART A2 - Details of Tax Deducted at Source on Sale of Immovable Property u/s 194IA/ TDS on Rent of Property u/s 194IB /TDS on payment to resident contractors and professionals u/s 194M (For Seller/Landlord of Property/Payee of resident contractors and professionals)

Sr. No.	Acknowledgment Number	Name of Deductor	PAN of Deductor	Transaction Date	Total Transaction Amount	Total TDS Deposited
Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***
Gross Total Across Deductors						
No Transactions Present						

PART B - Details of Tax Collected at Source

Sr. No.	Section ¹	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Collected **	TCS Deposited
No Transactions Present								

PART C - Details of Tax Paid (other than TDS or TCS)

Sr. No.	Head	Minor Head	Tax	Surcharge	Education Cess	Penalty	Interest	Others	Total Tax	BSR Code	Date of Deposit	Citizen Serial Number	Remarks
No Transactions Present													

Part D - Details of Paid Refund

Sr. No.	Assessment Year	Mode	Refund Issued	Nature of Refund	Amount of Refund	Interest	Date of Payment	Remarks
No Transactions Present								

Part E - Details of SFT Transaction

Sr. No.	Type of Transaction	Name of SFT Filer	Transaction Date	Amount (INR)	Remarks
1	SFT-003_03A Cash deposit in current account	CENTRAL BANK OF INDIA, CHANDERMUKHI4TH FLOORBALANCE SHEET DEPTNARIMAN POINT, MUMBAI, MAHARASHTRA, INDIA, 400021		6323600.00	O
2	SFT-003_03A Cash deposit in current account	CENTRAL BANK OF INDIA, CHANDERMUKHI4TH FLOORBALANCE SHEET DEPTNARIMAN POINT, MUMBAI, MAHARASHTRA, INDIA, 400021		6323600.00	O
3	SFT-003_03B Cash withdrawals in current account	CENTRAL BANK OF INDIA, CHANDERMUKHI4TH FLOORBALANCE SHEET DEPTNARIMAN POINT, MUMBAI, MAHARASHTRA, INDIA, 400021		0.00	O
4	SFT-003_03B Cash withdrawals in current account	CENTRAL BANK OF INDIA, CHANDERMUKHI4TH FLOORBALANCE SHEET DEPTNARIMAN POINT, MUMBAI, MAHARASHTRA, INDIA, 400021		0.00	O

Notes for SFT: -

- Amount shown for SFT-005 and SFT-010 is as per below formula:-
Aggregate gross amount received from the Person (-) Aggregate gross amount paid to the Person

PART F - Details of Tax Deducted at Source on Sale of Immovable Property u/s 194IA/ TDS on Rent of Property u/s 194IB /TDS on payment to resident contractors and professionals u/s 194M (For Buyer/Tenant of Property /Payer of resident contractors and professionals)

Sr. No.	Acknowledgment Number	Name of Deductee	PAN of Deductee	Transaction Date	Total Transaction Amount	Total TDS Deposited	Total Amount Deposited other than TDS
Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***	Total Amount Deposited other than TDS
Gross Total Across Deductors							
No Transactions Present							

(All amount values are in INR)

PART G - TDS Defaults* (Processing of Statements)

Sr. No.	TANs	Short Payment	Short Deduction	Interest on TDS Payments Default	Interest on TDS Deduction Default	Late Filing Fee u/s 234E	Interest u/s 220(2)	Total Default
No Transactions Present								

*Notes:

- Defaults relate to processing of statements and do not include demand raised by the respective Assessing Officers.
- For more details please log on to TRACES as taxpayer.

Contact Information

Payment Form/Mode	Contact details of my service filer
A	Deductor
A1	Deductor
A2	Deductor

7. In view of aforesaid submissions, it was the submission of Ld. Sr. DR that since the issue was not appropriately appreciated by the Ld. CIT(A) and the amount received by the assessee in the form of Commission from Bharti Airtel Limited for Rs. 1,46,832/- is entirely representing the cash deposits by the assessee to the tune of Rs.1,26,47,200/- in his bank account pertains to the deposits towards amounts received by the assessee on account of mobile recharge from prepaid customers is not emanating. Under such facts and circumstances, the matter needs to be verified and inquired from the assessee and M/s Bharti Airtel so as to arrive at a logical conclusion that whether the cash deposits in the bank account of the assessee are only towards mobile recharge or some other income of the assessee is also involved. Under such circumstances, it was the prayer that the order of Ld. CIT(A) was not justified on the facts and law and therefore the same is liable to be set aside.

8. This matter was fixed for hearing for 4 times including today i.e., 27.08.2024. However, the assessee was not represented by anyone. Considering no representation on behalf of the assessee, the matter is taken up for hearing and after going through the facts of the present case and the material available on record, the same is adjudicated.

9. We have considered the contentions raised by the Ld. Sr. DR on behalf of the assessee and perused the material available on record. In present case, huge cash deposits in the account of assessee are noticed by the department and, therefore, in absence of any return of income filed by the assessee, the matter of the assessee was selected for reopening assessment under the provisions of section 147/148. During the entire assessment proceedings, the assessee had filed the ROI in response to notice u/s 148, otherwise was totally nonresponsive towards all the notices u/s 142(1) of the Act, therefore, the assessment was completed under section 144 r.w.s. 147 r.w.s. 144B of the Act. On perusal of 26AS of the assessee, Ld. AO observed that there are deposits of Rs 1,26,47,200/- in the bank account of the assessee, however, the source of such cash deposits was not furnished before the Ld. AO. It is also discernible from Form 26AS that commission income of Rs. 1,48,396/- was received by the assessee from Bharti Airtel Ltd. Ld. AO also observed that the assessee has earned interest income from Central bank of India amounting to Rs. 18062/-. Ld. AO have made the additions on account of aforesaid observations. Subsequently, the issue was carried before the Ld. CIT(A), wherein the assessee remains absent on various occasion when the matter was fixed for hearing. The case was disposed of by the Ld. CIT(A) based on material on record. The amount of cash deposit in Central Bank of Indian of assessee for Rs. 1,26,47,200/- was considered as amount received by the assessee on account of services provided by him to prepaid

customers for mobile recharge on behalf of Bharti Airtel, taking the basis that assessee has received commission from Airtel Payment Bank Ltd. and Bharti Airtel Ltd. Herein, we may observe that there must be cash deposits in the account of assessee, which the assessee have received from the customers while providing prepaid mobile recharging services on behalf of Bharti Airtel Ltd., however, whether the entire amount of Rs. 1,26,47,200/- pertains to such services is not verifiable. On perusal of orders of both the revenue authorities nothing is discernible that such fact was inquired into from M/s Bharti Airtel Ltd. so as to reach to the factual truth. Since, it can be perceived that the substantial amount deposited by the assessee in cash in his bank account should be relating to his services of mobile recharge at the same time, the possibility cannot be ruled out that certain amounts over and above such mobile recharge charges, in case if deposited by the assessee, the same should have been treated as his income. For the reasons stated hereinabove, in the interest of justice, we find it appropriate to restore the matter back to the file of Ld. AO to re-adjudicate the issue and frame the assessment *denovo* after conducting necessary inquiries from concerned parties (viz. Bharti Airtel Ltd. for actual prepaid charges received from the assessee as their agent, Central Bank of India for amounts remitted to Bharti Airtel Ltd. by the assessee during the relevant year, or any other concerned party as deemed necessary) for verification of facts regarding cash deposits by the assessee, keeping cognizance of the fact that the assessee is working as an

agent for Bharti Airtel Ltd. from where commission income was generated. Needless to mention, that the assessee shall be provided with reasonable opportunity of being heard in the set aside assessment proceedings.

10. Resultantly, the grounds of appeal raised by the present appeal in the revenue are disposed of in terms of our aforesaid observation and ITA No. 207/RPR/2024 of the revenue is **partly allowed** for statistical purposes.

Order pronounced in the open court on 30/08/2024.

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 30/08/2024

Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- ITO, Ambikapur
2. प्रत्यर्थी / The Respondent- Ravindra Gupta
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT, 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