

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 362, 363 & 364/RPR/2024
निर्धारण वर्ष / Assessment Years : 2014-15, 2015-16 & 2016-17

M/s. Amar Parboiling Industries
Paragaon, Nawapara, Rajim,
Raipur (C.G.)-493 881
PAN : AAPFA4172Q

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 29.08.2024
घोषणा की तारीख / Date of Pronouncement : 30.08.2024

आदेश / ORDER**PER BENCH:**

The captioned appeals filed by the assessee firm are directed against the orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 30.04.2024, which in turn arises from the orders passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 23.12.2016, 26.12.2017 & 26.12.2018 for the assessment years 2014-15, 2015-16 & 2016-17. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.362/RPR/2024 for A.Y.2014-15 wherein, the assessee firm has assailed the impugned order on the following grounds of appeal:

"1. The Assessing Officer erred in disallowing/adding Rs. 25,91,375/- out of purchase account, being 25% of value of purchases made from certain parties, holding that such purchases are bogus and not genuine. He erred in invoking sec. 145(3) and making disallowance/addition of Rs.25,91,375/-. Conclusions 'drawn by the AO and the addition is arbitrary, baseless, unfounded, without appreciating the facts & evidences and is not justified.

2. Without prejudice to ground no.1, the AO erred in making addition of Rs.25,91,375/- on the basis of entries in regular books, after having rejected the same. The stand adopted by AO is arbitrary and not justified.

3. The AO erred in disallowing Rs.5,59,500/- invoking section 40(a)(ia), out of interest account for not making TDS therefrom. The disallowance is arbitrary and not justified.

4. The Assessing Officer erred in -disallowing Rs. 1,00,000/- out of mill repairing, transporting and wages expenses. The disallowance is arbitrary, baseless and not justified.

5. The appellant reserves the right to add, amend or alter any ground/s of appeal."

3. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee firm at the threshold of hearing of the appeals submitted that the captioned appeals involved a delay of 39 days. Elaborating on the reasons leading to the delay in filing of the appeal, it was submitted by the Ld. AR that the same had occasioned for the reason that though the assessee in "Form 35" had categorically stated that all the notices/communications be made available otherwise than by email but no physical copy/hard copy of the order of the CIT(Appeals) had till date been served upon the assessee firm. The Ld. AR submitted that the assessee firm had gathered about the disposal of the appeal from his Chartered accountant who had logged into the income tax portal. The Ld. AR to fortify the aforesaid factual position had drawn our attention to "Form 35". It was submitted by the Ld. AR that as the delay in filing of the present appeal had occasioned in the backdrop of the aforesaid facts and there was no fault on the part of the assessee, therefore, the same in all fairness be condoned. The Ld. AR in support of his aforesaid contention has filed an application a/w. an affidavit dated

16.08.2024 of Shri Vaibhav Rajendra Bothra, partner of the assessee firm, wherein it was deposed by him that he had opted for receipt of notices/communications from the CIT(Appeals) otherwise than through email, but was never served with a copy of the same.

4. Per contra, the Ld. Sr. Departmental Representative (for short 'DR') vehemently opposed the seeking of condonation of the delay in filing of the captioned appeals by the assessee firm. The Ld. DR submitted that as the delay involved in filing of the appeal was inordinate, therefore, the same did not merit to be condoned. However, the Ld. DR on being specifically confronted with the fact that though the assessee in "Form 35" had opted for service of notice/communications in a mode other than email, failed to rebut the said factual position. It was submitted by the Ld. DR 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.

5. We have given thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both the parties qua the delay in filing of the captioned appeals before us. Before advertng any further, it would be relevant to cull out "Form 35" (relevant extract), wherein the assessee had specifically opted that all notices/communications be sent otherwise than though e-mail, as under: (relevant extract):

FORM NO. 35 [See rule 45]			CIT(A)		Acknowledgement Number	
Appeal to the Commissioner of Income-tax (Appeals)					599614091230117	
First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)		
		AMAR PERBOILING INDUSTRIES	AAPFA4172Q			
Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office			
PARAGAON						
Area/ Locality	Town/ City/ District		State	Country		
NAWAPARA, RAJIM	RAIPUR		CHHATISHGARH	INDIA		
Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?		
493881	- 8109102376		lalwaniagrawal@gmail.com	No		

Admittedly, the Ld. AR had rightly stated that the assessee firm had opted for receipt of notices/communications from the office of the CIT(Appeals) in a mode otherwise than through e-mail. Also, the assessee firm has filed before us an “affidavit”, dated 16.08.2024, wherein it had categorically stated that despite exercising the aforesaid option as regards the mode of service of notices/communications, it had not received any physical copy of the order of the CIT(Appeals), dated 30.04.2024. For the sake of clarity, relevant contents of the affidavit, dated 16.08.2024 are culled out as under:

AFFIDAVIT

I, **Vaibhav Rajendra Bothra**, S/o Rajendra Bothra, aged about 42 years, resident of Madam Chowk, Nawapara Rajim, Raipur (C.G.) do hereby declare on solemn affirmation as under: -

1. THAT I am partner in M/s Amar Parboiling Industries having PAN AAPFA4172Q.
2. THAT in case of above named firm appellate order u/s 250 was passed by Ld. CIT(A) for A.Y. 2014/15 on 30.04.2024, against which appeal has been filed before Hon'ble ITAT on 07.08.2024. That the appeal was supposed to be filed by 29.06.2024 but the same was filed on 07.08.2024, resulting into delay of 39 days.

THAT copy of appellate order/ notices was neither received physically nor by post/courier etc. and it was only dropped in the mail box of e-mail id.


THAT delay in filing of appeal is due to the reason that although in Form no. 35, email id of firm was given but against the column "whether notices/ communication may be sent on email?" it was mentioned "no". We were under genuine and bonafide belief that the notices/ order etc. would be received by us physically and therefore, there was no reason to follow inbox of email.

The fact of passing of appellate order came to knowledge only in the month of July, 2024 when our counsel logged into Income Tax Portal for checking status of case, when it was found that the appellate order was already passed on 30.04.2024.




THAT this affidavit is being deposed to affirm the above facts and is intended to be filed before Hon'ble ITAT in connection with the appeal filed by the partnership firm before Hon'ble ITAT.

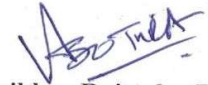
Place : Nawapara Rajim
Date : 16.08.2024


(Vaibhav Rajendra Bothra)
Deponent

VERIFICATION

I, **Vaibhav Rajendra Bothra**, S/o Rajendra Bothra, aged about 42 years, resident of Madam Chowk, Nawapara Rajim, Raipur (C.G.), do hereby confirm that what has been stated in para no. 1 to 5 above is true and correct as per my personal knowledge and belief.

Place : Nawapara Rajim
Date : 16.08.2024


(Vaibhav Rajendra Bothra)
Deponent

6. We are of the considered view that as stated by the Ld. AR, and rightly so, as the assessee had opted for receipt of the notices/communications from the office of the CIT(Appeals) in a mode otherwise than through e-mail, therefore, there can be no justification in reckoning the period of limitation for preferring of the present appeal from the date on which, the impugned order was dropped in its e-mail account. A view to the contrary would render the exercise of the aforesaid option by the assessee firm as regards the mode of service of notices /communications in "Form 35" as redundant and otiose. As deposed by the assessee firm (through its partner) in the "affidavit" that it had not received any physical copy of the order of the CIT(Appeals) till date and

had gathered about the same from his Chartered accountant who had logged into the income tax portal, therefore, in our view, the filing of the appeal on 07.08.2024 cannot justifiably be held to have been delayed on account of any lapses or lackadaisical conduct on the part of the assessee firm.

7. 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, we are unable to persuade ourselves to subscribe to the same. If that would have so, then there was no need to provide for an option to the appellants 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, we are 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 its 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 firm 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, we are afraid that the Ld. DR's contention that the assessee firm was validly put to notice vide the notices dropped in his e-mail account does not merit acceptance.

8. Considering the totality of the facts, we are of a strong conviction that as the impugned delay of 39 days involved in the filing of the captioned appeals had occasioned due to bonafide reasons and not for any callous or lackadaisical conduct on the part of the assessee, therefore, the same merits to be condoned.

9. Succinctly stated, the assessee firm which is engaged in the business of manufacturing and trading of rice had e-filed its return of income for A.Y.2014-15, declaring an income of Rs.2,49,100/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s. 143(2) of the Act.

10. During the course of assessment proceedings, it was observed by the A.O that the assessee firm had made purchases from three parties aggregating to Rs.1,03,65,500/-, viz. (i) Eden Rice Mill : Rs.18,75,000/-; (ii) Shri Bajrang Foods Products : Rs.25,00,000/-; and (iii) Sakshi Gopal Corporation : Rs.59,90,500/-. The A.O observed that as the assessee firm

had failed to substantiate the authenticity of the purchase transactions, therefore, held the entire amount of purchases of Rs.1,03,65,500/- as bogus. Also, the A.O after relying upon the order of Vijay Proteins Ltd. (1996/58 ITD 428 ALD), disallowed 25% of the total purchases of Rs.1,03,65,500/- i.e. Rs.25,91,375/-. Further, the A.O rejected the books of accounts of the assessee firm u/s. 145(3) of the Act.

11. Also, it was found by the A.O that the as assessee firm had paid interest of Rs.5,59,500/- to NBFC, viz. without deducting TDS while making the aforesaid payment, therefore, he made an addition of Rs.5,59,500/- u/s. 40(a)(ia) of the Act. The A.O on verification of books of accounts observed that the mill repairing expenses, transporting expenses on paddy and rice, wage expenses were not fully supported by proper vouchers, therefore, disallowed an amount of Rs.1,00,000/-. Accordingly, the A.O vide his order passed u/s. 143(3) of the Act dated 23.12.2016 after making the aforesaid additions determined the income of the assessee firm at Rs.34,99,980/-.

12. Aggrieved, the assessee firm carried the matter in appeal before the CIT(Appeals). As the assessee firm despite having been afforded sufficient opportunities had failed to participate in the course of the proceedings before the first appellate authority, therefore, the latter was constrained to proceed with the matter and dismiss the appeal in limine.

13. The assessee firm being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

14. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record.

15. Shri R.B Doshi, Ld. AR for the assessee firm at the threshold submitted that though the assessee firm 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 it. The Ld. AR in support of his contention, had filed an "affidavit", dated 16.08.2024, of the assessee firm, 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 us through the order of the CIT(Appeals), which revealed that despite the fact that hearing of appeal was fixed on five occasions, viz. 31.12.2020, 01.11.2022, 05.10.2023, 30.10.2023 and 27.04.2024 but there was no compliance on the part of the assessee firm. 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.

16. 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 firm 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.

17. We 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. As stated by the Ld. AR the assessee firm 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

firm had opted out of service of all notices/communications through email, we 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. we find substance in the Ld. AR's claim that the assessee firm for no fault on its part had remained divested of an opportunity for putting up its case in the course of the proceedings before the first appellate authority. We are of the view that now when the assessee firm 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 firm to participate in the proceedings before the first appellate authority had occasioned for no fault on its part, but for the lapse on the part of the office of the CIT(Appeals) in validly putting it to notice, therefore, in my view, the summarily dismissal of the appeal is in violation of the principles of natural justice.

18. Accordingly, we are 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 the set-aside proceedings afford a reasonable opportunity of being heard to the assessee firm which shall remain at a liberty to substantiate its claim/contentions before the CIT(Appeals) based on fresh documentary evidence, if any. Thus, the

Grounds of appeal Nos. 1, 2, 3 & 4 raised by the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

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

20. In the result, appeal of the assessee firm in ITA No.362/RPR/2024 for A.Y.2014-15 is allowed for statistical purposes in terms of our aforesaid observations.

ITA Nos. 363 & 364/RPR/2024
A.Y.2015-16 & 2016-17

21. As the facts and issues involved in the captioned appeals remains the same as were there before us in ITA No. 362/RPR/2024 for A.Y.2014-15, therefore, the order therein passed while disposing of the said appeal shall apply mutatis-mutandis for disposing of the captioned appeals i.e., ITA Nos.363 & 364/RPR/2024 for A.Y.2015-16 & 2016-17. In these cases also, we restore the matter to the file of the CIT(Appeals) in terms of the observations recorded while disposing of the appeal of the assessee firm in ITA No.362/RPR/2024 for A.Y.2014-15.

22. In the result, appeals of the assessee firm in ITA No.363 & 364/RPR/2024 for A.Y. 2015-16 & 2016-17 are allowed for statistical purposes in terms of our aforesaid observations.

23. In the result, appeals of the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 30th day of August, 2024.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 30th 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, Raipur-1 (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.