

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.530/RPR/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Virendra Singh Parihar
Yamuna Nagar, Behind Bhatia Residence,
Mangla, Bilaspur (C.G.)-495 001
PAN: BCSPP0907Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Sunil Kumar Agrawal,
Vimal Kumar Agrawal, CAs

Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.01.2025

घोषणा की तारीख / Date of Pronouncement : 09.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 14.10.2024, which in turn arises from the order passed by the A.O under Sec. 144/147 of the Income-tax Act, 1961 (in short 'the Act') dated 30.11.2019 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal:

“Gr.No.1

"On the facts and circumstances of the case and in law, reopening u/s.147/148 is invalid as there is no live link between the information received and reasons recorded so as to enable the AO to form a reason to believe for escaped income of Rs.39,83,578; ROI filed on 31-3-13 declaring income of Rs.1,79,180 which includes business income of Rs.1,80,590 made u/s.44AD on gross receipts of Rs.16,58,750; reopening is based on mere borrowed information without verifying the facts & there is no application of mind by the AO that there was cash deposits of Rs.38,37,500 which is out of from cash withdrawals of Rs.21,85,200 from the same bank account & also from other business receipts of Rs.16,58,750 shown in the ROI filed on 31-3-13; reopening u/s.148/147 is invalid and is liable to be quashed; relied on Well Trans Logistics India P Ltd (2024) (Del HC); Shri Dnyaneshwar Maharaj Sausthan (2024) (Bom. HC); Rajhans Processors [2023] (Raj HC); Meenakshi Overseas P Ltd (2017) (Del HC)."

Gr.No.2

"On the facts and circumstances of the case and in law, ld. CIT(A) has erred in sustaining addition of Rs.39,83,578 on account of unexplained cash deposits into saving bank account, without considering the fact that there was cash deposits of Rs.38,37,500 which is sourced from cash

withdrawals of Rs.25,85,200 from the same bank account & also from other business receipts of Rs.16,58,750 shown in the ROI filed on 31-3-13; addition is unjustified & is liable to be deleted."

Gr.No.3

"On the facts and circumstances of the case and in law, ld.CIT(A) has erred in sustaining addition of Rs.39,83,578 as it is against the principle of natural justice that no physical notice of hearing has been received by the assessee and it is an ex-parte order passed u/s.250 dt.14-10-24 without going into merits of the case; matter is liable to be set aside for fresh adjudication on matter."

Gr.No.4

"The appellant craves leave, to add, urge, alter, modify or withdraw any rounds before or at the time of hearing."

2. Succinctly stated, the A.O based on information that the assessee had during the subject year made cash deposits exceeding Rs.10 lacs in his bank account, initiated proceedings u/s.147 of the Act.
3. During the course of the assessment proceedings, the A.O in absence of any explanation forthcoming from the assessee as regards the source of cash deposits of Rs.39,83,578/- made in his bank account No.760801011000784 with Bank of Baroda, Branch : Bilaspur, held the entire amount as unexplained cash credit and determined the income of the assessee at the same amount.
4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded five opportunities i.e. on 27.12.2020, 04.11.2021, 19.01.2022, 30.07.2024 and

02.09.2024, had failed to participate in the proceedings before the first appellate authority, therefore, the latter finding no infirmity in the view taken by the A.O, upheld the addition made by him and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before the Tribunal.

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

7. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold submitted that the A.O had grossly erred in law and facts of the case in assuming jurisdiction and initiating proceedings u/s.147 of the Act *de-hors* any valid "reasons to believe". The Ld. AR in order to buttress his aforesaid claim had drawn my attention to the copy of "reasons to believe" as were culled out by the A.O in the body of the assessment order vis-à-vis those that were subsequently made available to him, Page 3 of APB. The Ld. AR submitted that the contents of the said "reasons to believe" were found to be at variance. Elaborating on his contention, the Ld. AR submitted that the A.O in the "reasons to believe" (that was supplied to him) had stated that notice u/s. 148 of the Act was issued after obtaining the prior approval of the Pr. CIT, Bilaspur.

The Ld. AR submitted that it is incomprehensible that how the notice u/s. 148 of the Act could have been issued prior to obtaining of the approval of the appropriate authority.

8. Alternatively, the Ld. AR stated at bar that though the assessee had specifically in the memorandum of appeal i.e. in "Form 35" opted out of service of notices/communications from the office of the CIT(Appeals) through email, but on neither of the five occasions any hard/physical copy of a notice intimating the fixation of hearing of the appeal was ever served upon him. The Ld. AR in order to fortify his aforesaid contention had taken me through the "Form 35" which substantiated his claim that the assessee had opted out of service of all notices/communications from the office of the CIT(Appeals) through email. Carrying his contention further, the Ld. AR submitted that as the assessee had suffered dismissal of his appeal vide an ex-parte order without having been put to notice of hearing of the appeal on any of the occasions, therefore, the matter in all fairness be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the same.

9. Per contra, Smt. Anubhaa Tah Goel, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by her that as the assessee had been afforded five opportunities to participate in the proceedings before the first appellate

authority, therefore, it is difficult to fathom that he had remained unaware for a period of four years about the ongoing proceedings before the CIT(Appeals). The Ld. DR submitted that after introduction of the faceless regime in disposal of the appeals the service of notices/communications by the office of the CIT(Appeals) in physical mode had been dispensed with.

10. Admittedly, it is a matter of fact borne from record that the assessee had in the memorandum of appeal i.e. in "Form 35" opted out of service of notices/communications from the office of the CIT(Appeals) through email. Ostensibly, the CIT(Appeals) on all the five occasions viz. on 27.12.2020, 04.11.2021, 19.01.2022, 30.07.2024 and 02.09.2024 had issued notices/communications to the assessee about the fixation of hearing of the appeal through ITBA. The Ld. AR states at bar that no physical/hard copy of the notice(s) intimating the fixation of hearing of the appeal as was opted by the assessee in the memorandum of appeal had ever been served upon him.

11. Considering the aforesaid facts, I am of a firm conviction that as the assessee had not been validly put to notice about the fixation of the hearing of the appeal i.e. in a manner as was specifically opted by him in the memorandum of appeal i.e. Form 35, therefore, the dismissal of the appeal without validly putting him to notice cannot be sustained. I, thus, in terms of my aforesaid observations, am of the view that the matter in all

fairness requires to be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the same afresh after dropping the notice intimating the fresh date of fixation of the hearing of the appeal through ITBA portal, to which, the Ld. AR has concurred. 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 on the basis of fresh documentary evidence, if any.

12. 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 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, 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 same 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 column. 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.

13. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 09th day of January, 2025.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 09th January, 2025.

SB, Sr. PS.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on		Sr.PS/PS
2	Draft placed before author		Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		