

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.532/RPR/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Ranchi Fuels  
Limtara, Nandghat,  
Baloda Bazar-492 006 (C.G.)  
PAN: AATFR0836L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Bhatapara (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA  
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.01.2025

घोषणा की तारीख / Date of Pronouncement : 08.01.2025

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee-firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 28.09.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 27.12.2019 for the assessment year 2017-18. The assessee-firm has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case the assessment order passed u/s.143(3) of the Income Tax Act, 1961 by the Learned ITO, Bhatapara is bad-in-law, illegal and void-ab-initio inasmuch as the mandatory notice u/s. 143(2) of the Income Tax Act, 1961 has been issued by Learned ITO-4(1), Raipur, whereas, the Learned ITO, Bhatapara who passed the impugned Assessment Order has not issued any Notice u/s.143(2) electronically which renders the entire proceedings illegal and bad-in-law. The Assessment Order passed by Learned ITO, Bhatapara without there being any valid Notice u/s143(2) may kindly be declared as bad-in-law and illegal and consequential enhancement of Rs.26,99,761/- made to the Total income may kindly be directed to be deleted.

2. On the facts and in the circumstances of the case the assessment order passed u/s.143(3) of the Income Tax Act, 1961 is illegal, bad-in-law and void-ab-initio inasmuch as the case of the assessee was transferred from Learned ITO-4(1), Raipur to Learned ITO, Bhatapara who subsequently passed the assessment order, whereas the assessment order is silent about the order u/s.127 for the transfer of case from Learned ITO-4(1), Raipur to Learned ITO, Bhatapara which implies that there is no such order u/s.127 regarding transfer of the case to Learned ITO, Bhatapara which renders the entire assessment proceeding bad-in-law, illegal and void-ab-initio. It is prayed that the assessment order passed u/s.143(3) may

kindly be declared as illegal, bad-in-law and void-ab-initio and consequential enhancement of Rs.26,99,761/- made to the total income may kindly be directed to be deleted.

3. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.19,761/- being 1/5th of the total depreciation claimed on car by the assessee on account of alleged personal use and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the addition to the tune of Rs.19,761/- as the addition is contrary to facts, law and legislative intent, hence, it is prayed that the addition of Rs.19,761/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

4. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.26,80,000/- on account of introduction of capital by the partners of the firm by invoking Section 68 of the Income Tax Act, 1961 and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the addition to the tune of Rs.26,80,000/- as the addition is contrary to facts, law and legislative intent, hence, it is prayed that the addition of Rs.26,80,000/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

5. On the facts and in the circumstances of the case, the Learned CIT (Appeal) is not justified in passing the order and confirming the additions/disallowances in an ex-parte order for want of prosecution without providing sufficient opportunity of being heard to the assessee and thereby violating the principles of natural justice. Hence, the impugned order passed by the Learned CIT (Appeal) without dealing with the grounds of appeal on merit is liable to be declared as illegal and bad-in-law. It is prayed that the order passed by the Learned CIT (Appeal) may kindly be set aside.

6. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.”

2. Shri Veekaas S Sharma, Ld. Authorized Representative (for short 'AR') for the assessee firm at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 382 days.

Elaborating on the reasons leading to the delay, the Ld. AR submitted that the same had occasioned on account of ill-health of the earlier counsel of the assessee's firm viz. Shri Navin Kumar Gupta, Advocate. Carrying his contention further, the Ld. AR submitted that the assessee's earlier counsel viz. Shri Navin Kumar Gupta had provided his email id in Form 35 i.e. [navinkgupta2014@gmail.com](mailto:navinkgupta2014@gmail.com). The Ld. AR submitted that as Shri Navin Kumar Gupta (supra) was suffering from chronic neurological condition as could safely be gathered from Unique Disability ID issued by the Government of India, Page 2 of APB, therefore, it was for the said reason that he had failed to bring to the notice of the assessee both the notice(s) fixing the hearing of the appeal as well as copy of order of the first appellate authority which was dropped in his email id. It was submitted by the Ld. AR that as the assessee firm had suffered dismissal of its appeal not for any fault on its part but for the bonafide reasons attributable to its counsel, therefore, the impugned delay involved in filing of the appeal in all fairness be condoned. The Ld. AR in support of his aforesaid contention relied on the judgement of the Hon'ble Jurisdictional High Court in the case of Navodit Samaj Sevi Sanstha, Charama Vs. ITO, Ward-Jagdalpur, TAXC No.225/2024, dated 09.12.2024. The Ld. AR submitted that the Hon'ble High Court in its aforesaid order had held that while considering the appellant's request for condonation of delay the term "sufficient cause" should be considered liberally. Also, the Ld. AR had relied on the judgment

of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & Ors. (1987) 167 ITR 471 (SC).

3. Smt. Anubhaa Tah Goel, Ld. Sr. Departmental Representative (for short 'DR') submitted that as the delay involved in filing of the present appeal is inordinate, therefore, the same does not merit to be condoned.

4. I have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties as regards the delay involved in filing of the present appeal. It is a matter of fact borne from record that the delay had occasioned on account of compelling circumstances which the assessee's earlier counsel Shri Nabin Kumar Gupta was at the relevant point of time facing, due to which, he had failed to bring to the notice of the assessee the fact that its appeal had been disposed off by the CIT(Appeals)/NFAC, Delhi. As there is bonafide reason leading to the delay in filing of the present appeal, therefore, the same in my view merits to be condoned. My aforesaid view is fortified by the judgement of the **Hon'ble Jurisdictional High Court** in the case of **Navodit Samaj Sevi Sanstha, Charama Vs. ITO, Ward-Jagdalpur, TAXC No.225/2024, dated 09.12.2024**, wherein the Hon'ble High Court had held as under:

"22. A conspectus of the aforesaid judgments noticed herein-above (supra) would show that their Lordships of the Supreme Court have clearly indicated that a liberal approach in

considering the application for condonation of delay construing sufficient cause has to be adopted and appeal has to be decided on merits unless the case is hopelessly without merit. "Sufficient cause" within the meaning of Section 253(5) of the IT Act has to be construed liberally so as to advance substantial justice especially when the delay is not deliberate and outcome of mala fide.

23. Reverting to the facts of the present case, in the present case, appeal preferred by the appellant Society was delayed by 55 days, as noticed above, for which cause much less sufficient cause has to be shown and the appellant has explained that on account of wrong advise of his counsel to reapply for registration, he had firstly preferred application afresh under Section 12A of the IT Act for registration and thereafter, due to delay in deciding the second application for registration and realising the mistake, he preferred appeal with a delay of 55 days, that is how the delay in filing the appeal has taken place. This fact remained uncontroverted, as no counter-affidavit controverting the facts stated and cause shown for not preferring the appeal right within the period of limitation was filed by the Revenue. As such, the cause shown for delay in filing the application supported by affidavit remains uncontroverted and it would constitute "sufficient cause" within the meaning of Section 253(5) of the IT Act. The rejection of application for condonation of delay has serious civil consequences upon the status of the Society, as by rejection of the application of the appellant Society, the Society would not be able to claim tax exemption under the provisions contained in Sections 11 & 12 of the IT Act, and that too in absence of counter-affidavit filed by the Revenue opposing the application for condonation of delay supported by affidavit. The ITAT ought to have condoned the delay in preferring the appeal as there is no allegation that delay in filing the appeal is *mala fide* or it is deliberate, rather it is *bona fide* based on wrong advise of his counsel to reapply for registration.

24. In that view of the matter, the order impugned dated 20-9-2024 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in ITA No.304/RPR/2024 is set aside and delay of 55 days in preferring the appeal is hereby condoned. The appeal is restored to its original number to the file of the ITAT. The matter is remitted to the ITAT for considering and deciding the appeal afresh on merits within three months from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the matter.

25. The tax appeal stands allowed. No order as to cost(s).”

5. I, thus in terms of my aforesaid observations am of the view that as the delay of 382 days involved in filing of the present appeal had occasioned for the reasons which were beyond the control of the assessee, therefore, the same is hereby condoned.

6. Succinctly stated, the assessee firm had filed its return of income for A.Y. 2017-18 on 07.11.2017, declaring an income of Rs.1,46,170/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s. 143(2) of the Act.

7. Assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act, dated 27.12.2019, wherein after, inter alia, making two additions/disallowances viz. (i) disallowance out of depreciation on car : Rs.1,65,931/-; and (ii) addition u/s.68 of the Act : Rs.26,80,000/-, the income of the assessee firm was determined at Rs.28,45,931/-.

8. Aggrieved the assessee firm carried the matter in appeal before the CIT(Appeals). As the assessee firm despite having been afforded four opportunities i.e. on 11.01.2021, 28.07.2023, 06.09.2023 and 18.09.2023 had failed to participate in the proceedings before the first appellate authority, therefore, the latter holding a firm conviction that it was not interested in prosecuting the matter dismissed the same. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

**“4. Decision:**

4.1 The grounds of appeal, statement of facts and assessment order passed u/s.143(3) of the Act dated 27.12.2019 have been perused carefully. At the outset it is worth mentioning that during the pendency of the appeal, appellant was issued various notices of hearing u/s.250 of the Act dated 11.01.2021, 28.07.2023, 06.09.2023 & 18.09.2023. For all these hearing notices, appellant could not make any submission in spite of availing sufficient time and opportunities. From the fact of appellant's non-response to various notices, it is clear that apparently, appellant has no specific submissions to file to pursue the pending appeal. As appellant failed to avail the opportunities offered on various occasions from time to time, it is understood that appellant is not keen to pursue the appeal as per law and accordingly, appeal filed by the appellant is liable to be dismissed for non-prosecution by the appellant. The following citations /decisions of Hon'ble Adjudicating Authorities clearly envisage for dismissal of appellant's appeal for appellant's failure to prosecute/pursue the pending appeal in spite of availing sufficient time and opportunities and accordingly, is not maintainable. The relevant citations are briefed as under for placing reliance to adduce appellant's non-prosecution of appeal as not maintainable.

1. In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively Pursuing it".

2. In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while dismissing the reference made at the instance of assessee in default made following observations in their order. "if the party at whose instance the reference is made fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference",

3. In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date. The Hon'ble Tribunal laid down

the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

4.1.1 Keeping in view the above facts of appellant's non-prosecution of this pending appeal and also placing reliance on above citations, appellant's appeal is to be treated as not maintainable.

4.1.2 During the appellate proceedings, the appellant was issued various notices of hearing u/s.250 of the Act dated 11.01.2021, 28.07.2023, 06.09.2023 & 18.09.2023 which were not complied with. The approach of the assessee amply shows that it is not interested in prosecuting the appeal. Therefore, having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed.

5. In the result, the appeal is dismissed.”

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

10. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

11. Apropos, the merits of the case, I find that the CIT(Appeals) had dismissed the appeal of the assessee for non-prosecution. Although I am principally in agreement with the CIT(Appeals) that as the assessee firm despite sufficient opportunities had failed to participate in the proceedings before him, therefore, it was liable to be visited with an ex-parte order, but at the same time, I am unable to persuade myself to accept the manner in

which the appeal of the assessee firm had been disposed off by him. In my considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, 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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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-s. (2) of s. 251 of the Act also makes it clear 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 s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all 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.”

12. I, thus, not being able to persuade myself to subscribe to the summarily dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. 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 on the basis of fresh documentary evidence, if any. Thus, the grounds of appeal raised by the assessee firm are allowed for statistical purposes in terms of the aforesaid observations.

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

Order pronounced in open court on 08<sup>th</sup> day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 08<sup>th</sup> January, 2025.

\*\*\*SB, Sr. PS.

**आदेश की प्रतिलिपि अग्रहित / 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 फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.