

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.529/RPR/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Indo Lahri Bio Power Limited
38, Saheed Smarak Complex,
G.E. Road, Raipur (C.G.)-492 001
PAN : AAACI9125K

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, 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 company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 16.10.2023, 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 31.12.2019 for the assessment year 2017-18. The assessee company has assailed the impugned order on the following grounds of appeal:

“1. That on the fact and circumstances of the case of appellant, the Id. CIT(A), NFAC has erred in passing an order u/s.250 without giving proper opportunity of being heard as the notices were never being served on the e-mail ID and contact no. mentioned in form 35. And also that the appellant had specially mentioned in form 35 to not to send notices in electronic mode i.e. to be served physically, Thus in view of same the appellant could not furnish any submission along with supporting documents during the course of appeal proceedings. Therefore the order passed by the CIT-Appeal deserves to be quashed or set-aside.

2. On the facts and in the circumstances of the case, the Ld. CIT-Appeal (NFAC) has erred in sustaining the order of the A.O. wherein the Assessing Officer has erred in making addition of Rs.29,40,000/- on account of cash deposited as unexplained cash credit u/s. 68 of the I.T.Act, 1961 as the cash has been duly recorded in the books of accounts of the appellant. The addition made by the A.O. and sustained by the CIT-Appeal is unjustified, unwarranted and - at uncalled for.

3. On the facts and in the circumstances of the case, the Ld. CIT-Appeal has erred in sustaining the order of the A.O. wherein the Assessing Officer has erred in invoking provisions of section 115BBE of Income Tax Act, 1961. The invocation of provisions of section 115BBE by A.O. and sustained by the CIT-Appeal is unjustified, unwarranted and uncalled for.

4. The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. Shri Bikram Jain, Ld. Authorized Representative (for short 'AR') for assessee company at the threshold submitted that the present appeal involves a delay of 346 days. Elaborating on the reason leading to the delay of 346 days involved in filing of the present appeal, the Ld. AR has drawn my attention to the "affidavit", dated 10.12.2024 filed by the assessee company. The Ld. AR stated that though the assessee company had specifically stated in Form No. 35 that all notices/communications be sent in a mode otherwise through email but, till date, no physical/hard copy of the impugned order of the CIT(A) had been received by the assessee company. The Ld. AR to fortify his contention has taken me through Form No.35, which revealed that the assessee company had opted for receiving all notices /communications otherwise than through email.

3. Per contra, Smt. Anubhaa Tah Goel, Ld. Senior Departmental Representative (for short, 'Sr.DR') objected to the request for condonation of delay involved in filing of the present appeal by the assessee company. It was submitted by her that as the delay involved in filing the appeal was inordinate, therefore, the same does not merit to be condoned.

4. I have heard the Ld. Authorized Representatives of both the parties qua the issue of delay involved in filing the present appeal. Ostensibly, a

perusal of “Form No. 35” reveals that the assessee company had opted out of service of notices/communications through email. For the sake of clarity, the relevant extract of “Form No. 35” is culled out as under:

FORM NO. 35 [See rule 45]			CIT(A)		Acknowledgement Number
Appeal to the Commissioner of Income-tax (Appeals)			CIT (A), Raipur- 1		295054061230120
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
			INDO LAHRI BIO POWER LTD	AAACI9125K	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	38 Shaheed Smarak Complex			GE Road Raipur	
	Area/ Locality	Town/ City/ District		State	Country
	Raipur	RAIPUR		CHHATISHGARH	INDIA
Pincode	Mobile No	STD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?	
492001	9300203971	-	indo_lahri1994@rediffmail.com	No	

5. Although, the assessee company had specifically stated that all the notices/communications be sent otherwise than through email but no physical/hard copy of the order of the CIT(A) had been served upon the assessee company. The Ld. AR stated that it was only when the assessee’s counsel had logged into its e-portal account, it was only pursuant thereto that it had come to his notice that the appeal filed by the assessee company for AY 2017-18 had been disposed of by the CIT(A) on 16.10.2023.

6. Admittedly, as the Department has failed to serve upon the assessee company, a hard copy of the impugned order, therefore, I find no justification in reckoning the period of limitation for filing the same from

the date on which the impugned order is stated to have been dropped in its email account. As the assessee states that the impugned order of the CIT(A) had come to its notice on 04.12.2024, therefore, in all fairness, the period of limitation has to be reckoned from the said date. As the present appeal has been filed by the company on 11.12.2024 i.e. within the stipulated time period of 60 days from the aforesaid date, i.e. 04.12.2024, therefore, the same can safely be held to have been filed within the prescribed time period. I, thus, in terms of my aforesaid observations condone the impugned delay of 346 days (as pointed out by the registry) involved in filing of the present appeal by the assessee company.

7. Succinctly stated, the assessee company had filed its return of income for A.Y.2017-18 on 02.11.2017, declaring an income of Rs.Nil. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

8. Assessment was, thereafter, completed by the A.O vide his order passed u/s.143(3) of the Act, dated 31.12.2019, wherein after treating the cash deposits made by the assessee in Specified Bank Notes (SBNs) of Rs.29,40,000/- as unexplained cash credit u/s.68 of the Act, income of the assessee company was determined at the same amount.

9. Aggrieved, the assessee company carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded four

opportunities i.e. on 05.02.2021, 04.11.2022, 11.09.2023 and 19.09.2023 had failed to participate in the proceedings before the first appellate authority, therefore, the latter was constrained to proceed with and dispose of the appeal vide an ex-parte order. Accordingly, the CIT(Appeals) finding no infirmity in the view taken by the A.O upheld the addition and dismissed the appeal. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5. Observations, Findings and Decisions

5.1. The order of the Ld. AO passed u/s.143(3) dated 31.12.2019 as well as the grounds of appeal and statement of facts filed by the appellant has been carefully considered. In essence, all the substantial grounds taken by the appellant relate to the action of the Ld. AO regarding addition of Rs.29,40,000/- on account of unexplained cash credit u/s. 68 of the I.T. Act, 1961.

5.2 During the course of appellate proceedings, the appellant assessee was given several opportunities vide notice of hearing/letter dated 05.02.2021, 04.11.2022, 11.09.2023 and 19.09.2023 to represent the case by uploading written submission along with supporting document(s) if any. In the letter to show cause dated 24.08.2023, an explanation was -sought mentioning as to why appeal of the appellant should not be dismissed due to repeated non-compliances. However, the appellant did not avail the opportunities to counter the findings of the Ld. AO and hence appellant's reluctance to comply to the notices leads to the presumption that it has either nothing to explain in this regard or is not interested to continue the appellate proceeding and thus has no objection at present regarding addition made by the Ld. AO in the impugned assessment order. The reason for the addition was specifically mentioned in detail in the assessment order but the appellant failed to upload any evidence or submission in support of the grounds of appeal.

5.3 It is the well-settled dictum of law "VIGILENTIBUS, NO DORMENTIBUS, JURA SUBVENIUNT" which means the law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim once right she/he must

be watchful of his/her rights. Only those persons, who are watchful and careful of using his/her rights, are eligible for the benefits of the law. Law confers rights on persons who are vigilant of their rights. In this connection, the various judicious decisions of the Hon'ble Courts may be cited. In the case of the Estate of Late Tukojirao Holkar vs Commissioner of Wealth Tax (1997) (223 ITA 480 MP) the Hon'ble M.P. High Court held that, "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, the court is not bound to answer the reference." Similarly, Hon'ble Punjab & Haryana High Court in the case of New Dewan Oil Mills Vs. CIT reported in (2008) 296 ITR 495 (P&H) had returned the reference unanswered, since the assessee remained absent and there was no assistance from the assessee. In the case of CIT vs B. N. Bhattacharya. (118 ITR 461) (Pages 477, 478), the Hon'ble Supreme Court held that "appeal does not mean, the mere filing of the memo of the appeal but effectively pursuing the same". The Hon'ble Delhi High Court in the case of CIT vs Gold Leaf Capital Corporation Ltd on 02.09.2011 in ITA No.798 of 2009 held that a negligent appellant should not be given many opportunities just because the quantum of the amount involved is high. The necessary course of action is to draw an adverse inference, otherwise, it would amount to giving a premium to the appellant for his negligence. When the appellant is non-cooperative, it can safely be concluded that the appellant did not want to adduce evidence as it would expose the falsity and non-genuineness of his claim. The Hon'ble ITAT, Delhi in the case of Whirlpool India Ltd vs DCIT (ITA No.2006/Del/ 2011 dated 19.12.2011) has dismissed the appeal for non-attending hearing inferring that the appellant is not effectively pursuing the appeal.

5.4 In this regard, the decision of the Hon'ble High Court of Mumbai in the case of M/S Chemipol vs Union of India, Central Excise Appeal No.62 of 2009 may further be referred to wherein the Hon'ble Court clearly held that every court, judicial Body or Authority, which has a duty to decide a case between two parties, inherently possesses the power to dismiss the case in default.

5.5 On merits also, the appellant has no case. The main ground taken by the appellant relates to addition of Rs.29,40,000/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961. It is seen from the assessment order that the appellant had deposited cash amounting to Rs.29,40,000/- in the bank account during demonetization period. It was revealed that there was no cash deposits made during the prior period of demonetization period except an amount of Rs.30,000/- and the assessee has shown an amount of Rs.42.46 lakh under revenue from operation

as per audit report. During the course of assessment proceedings, the following queries were raised by the Ld. AO in show cause letter dated 28.12.2019:

“The assessee has explained that cash deposit of Rs.29,40,000/- during demonetization is out of sale of husk. However, the reply can't be accepted on following ground:

1. No purchase & sale bills of husk produced. It simply shows that sale of husk is bogus.
2. The details of persons to whom husk were sold have not been submitted, meaning by that no sales were made.
3. No transportation invoices/biltly have been produced. The mode of transportation was also not given. This meant that no sales were made.
4. No opening & closing stock of husk was shown in the book. Some stock must be there if it is part of regular business.
5. From 03/04/2016 to 30/09/2016 all purchase of husk were shown in credit from sister concern and no payments were made, though the assessee had money in books as all sales were shown to have been received in cash. It is unbelievable that purchases of Rs.29,45,000/ have been made and no payments were to be made for the purchases for 9 months. It shows that no purchases have been made.
6. From 03/04/2016 to 30/09/2016, all purchases were shown in credit and from 01/10/2016 to 20/10/2016, all purchases were shown in cash. This pattern of purchases itself shows that purchases are not genuine.
7. From 03/04/2016 to 30/09/2016, all purchases were shown from sister concern and from 01/10/2016 to 20/10/2016, all purchases were shown from other parties to whom cash were paid. Again this pattern of purchases doesn't seem realistic.
8. There is no reason why assessee purchased from 03/04/2016 to 30/09/2016 from sister concern only and from 01/10/2016 to 20/10/2016, all purchase from outsiders only though it attract 40A(3) of the Act and after 21/10/2016, no purchases and sale were shown. It clearly establishes that all purchases & sales were bogus, only to explain that cash deposits during demonetization, these purchases & sales were manufactured.
9. From 03/04/2016 to 30/09/2016, all purchases were shown in cash, but no deposits were made in bank despite of huge cash balance shown at hand, neither payment were made for the

purchases. It proves that sales were bogus and actually no sales have been made.

10. From 21/10/2016 to 26/10/2016, no purchases shown but sales were shown whereas it shows, in past, the daily purchases & daily sales having no closing stocks. It implies that sales were only fabricated.

11. No weigh bridge slips were produced.

12. No toll tax slips were produced.

13. After 26/10/2016, no purchases and sales of husk shown. If this was the actual business of assessee, it should have been continued after demonetization period also, but it could not.

This clearly shows that bogus sales & purchased were shown in the books only to explain the deposits in bank during demonetization.

14. In F.Y. 2015-16, total purchases shown of Rs.20, 00,389/- and no credit purchases. Net profit earned shown 100%. In F.Y. 2016-17, profit ratio 5%. This again shows that sales and purchases are only books entry only as per requirement of the assessee to explain its undisclosed income.

15. The assessee has shown purchases & sales of 2017.40 MT husk during April, 2016 to October,2016, if it is assumed that each truck/tractors trolley carries 3 MT of husk, then assessee required 691 trucks or tractors to carry the husk. But the assessee has not produced details of even single truck/tractor through which husks were transported. The assessee has also not produced destination of husk to sales.

16. No corresponding expenses on transportation, loading/unloading expenses, hamali, labour expenses, etc. were shown in the books thereby meaning that these sales & purchases shown in books are bogus.

17. The assessee has following bank a/cs :

1. SBI, A/c No. : 308068981191

But no transactions found at all in F.Y. 2016-17.

2. PNB, A/c No. : 0640021.

But no transactions found at all in F.Y. 2016-17.

3. IDBI A/c No. : 60641. ‘

No significant transaction in F.Y. 2016-17 except cash deposit during demonetisation in the month of Nov, 2016. On perusal of these bank accounts of the assessee, it clearly establishes that the assessee has no business at all and therefore sales and purchases shown in the books are manufactured and bogus only.

18. The pattern of cash deposits during demonetization on is as under:

<i>Date</i>	<i>Amount</i>
15.11.2016	2,45,000/-
16.11.2016	2,45,000/-
17.11.2016	2,45,000/-
18.11.2016	2,45,000/-
19.11.2016	2,45,000/-
21.11.2016	2,45,000/-
22.11.2016	2,45,000/-
23.11.2016	2,45,000/-
24.11.2016	2,45,000/-
25.11.2016	2,45,000/-
28.11.2016	2,45,000/-
29.11.2016	2,45,000/-
<i>Total</i>	29,40,000/-

This multiple deposits in old currency notes during demonetization shows that the assessee has no cash in hand as on 08/11/2016, otherwise the assessee could have deposited entire money of Rs.29,40,00/- at one go on 10/11/2016, but not done. .

19. History of assesses from the Balance sheet shows that its share capital is all bogus as these pertain to paper & non existing companies.

20. Books of accounts along with bills and vouchers and sale and purchase bills as claimed to have produced for verification as per

the last submission has never been produced before the undersigned.

All the above facts prove that the business of assessee shown as trading of husk is bogus and no such purchases and sales of husk have taken place. The books have been manufactured to book bogus purchases & bogus sales without any supporting documents and without any corresponding expenses just to explain the unaccounted money deposited during demonetization period. No purchases and sales were verifiable. Therefore, books of assessee is rejected and credit amounts of Rs.29,40,000/- in the books and in the banks are treated as unexplained money liable to be added u/s. 68 of IT Act.”

In response to the above show cause letter, the appellant had filed submissions; however, the same was not acceptable to the Ld. AO. The Ld.AO established by graphical presentation in respect of FY 2015-16 and FY 2016-17 as to how accumulation of cash were made so as to accommodate the cash deposit in the guise of cash sales.

During assessment proceedings, the assessee appellant claimed that the source of cash deposit was from cash sales, however, failed to furnish concrete documentary evidence e.g. various bills and other surrounding evidences. The appellant failed to submit satisfactory explanation regarding huge amount of cash deposits in Old notes (SBN) during the” demonetization period in spite of several opportunities provided by the Ld. AO and accordingly, the entire amount of cash deposits were treated as unexplained cash credit u/s 68 of the I.T. Act, 1961 and added back to the total income of the appellant.

During the course of appellate proceeding, the appellant failed to explain the grounds taken against the issues. The reason for addition was clearly mentioned in the assessment order. It is noted from the impugned order that the appellant had three bank accounts maintained with SBI, PNB and IDBI Bank. However, there were no transactions found during FY 2016-17 in the bank account of SBI and PNB. No significant transaction was noticed by the Ld. AO except the cash deposit during demonetization period in the bank account of IDBI Bank which made the AO sceptical about the existence of the business itself. The appellant made no effort to counter the findings of the Ld. AO either by uploading relevant document(s) or explaining the matter in detail and chose to remain silent about the issue in spite of several opportunities were provided to it by issuing notice/letters dated 05.02.2021, 04.11.2022, 11.09.2023 and 19.09.2023.

5.6 In view of this, I find no reason to interfere into the order of the Ld. AO and the same is upheld accordingly. Therefore, all the substantial grounds taken by the appellant are dismissed.

6. In the final result, order of the Ld. AO is upheld leading to simultaneous dismissal of the grounds of appeal taken by the appellant for statistical purpose only.”

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

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

12. Shri Bikram Jain, Ld. Authorized Representative (for short 'AR') for the assessee company, at the threshold, submitted that the assessee company had been visited with an ex-parte order by the CIT(Appeals) without validly putting it to notice about the fixation of the hearing of the appeal. Carrying his contention further, the Ld. AR submitted that the assessee company in its memorandum of appeal i.e. "Form 35", had though categorically opted out of receipt of notices/communications from the office of the CIT(Appeals) through email but no physical/hard copy of the notice(s) fixing the hearing of the appeal was ever served upon it. The Ld. AR to fortify his aforesaid contention had taken me through an "affidavit", dated 10.12.2024 of Shri Pradeep Agrawal, director of the assessee company, wherein he had deposed the aforesaid factual position.

Carrying his contention further, the Ld. AR submitted that as the assessee company had remained divested of an opportunity to put up its case before the first appellate authority, therefore, the matter in all fairness requires to be restored to his file with a direction to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee company.

13. As in the course of hearing of the appeal, it transpired that the notices were which dropped in the email id i.e. nutanispat2002@gmail.com might be the email account one which was being used by the assessee company for filing of its return of income, therefore, the Ld. AR was directed to place on record a copy of the return of income for the immediately preceding year. The Ld. AR had placed on record copies of the returns of income for A.Y.2022-23 and A.Y.2023-24, wherein the assessee company had provided a different email id i.e. lahari.lam@rediffmail.com.

14. Per contra, Smt. Anubhaa Tah Goel, Ld. Sr. Departmental Representative (for short 'DR') submitted that it is incomprehensible that despite the fact that the appellate proceedings before the CIT(Appeals) were spread over two years (approx.) but the assessee company had remained unaware about the same. The Ld. DR to buttress her aforesaid claim had drawn my attention to the observation of the CIT(Appeals) which revealed that "Show Cause Notice" (SCN)/letter intimating fixation of hearing of the

appeal were for the first time issued on 05.02.2021, and thereafter, was followed by three notices i.e. with the last one on 19.09.2023. The Ld. DR submitted that as a matter of practice, where the assessee fails to respond to the notices intimating the fixation of the hearing of the appeal that was sent at the email id that was provided by it in "Form 35", then, notices are issued at the email id used by it for filing of its return of income etc. The Ld. DR submitted that as the email id, on which, notices had been issued in the present case i.e.nutanispat2002@gmail.com was being used by the assessee company, therefore, it could not now be permitted to say that it had remained oblivion of the fixation of hearing of the appeal as was intimated vide notice(s) dropped in the said email account. Also, the Ld. DR submitted that as the email id i.e. nutanispat2002@gmail.com in all probabilities would have been tagged with the PAN account of the assessee, therefore, it cannot be said that the CIT(Appeals) had failed to validly put the assessee to notice about the fixation of the appeal.

15. I have given thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both the parties. Admittedly, it is a matter of fact borne from record that the notices of hearing/letters dated 05.02.2021, 04.11.2022, 11.09.2023 and 19.09.2023 intimating the fixation of the hearing of the appeal were issued by the CIT(Appeals)/NFAC. Also, the communication enablement window notice/letter dated 04.11.2022 was issued by the first appellate authority.

I find substance in the Ld. AR's contention that except for, the notice/letter dated 04.11.2022 (supra) neither of the remaining notices intimating fixation of the appeal was ever dropped in the email account provided by the assessee in "Form 35" i.e. indo-lahari1994@rediffmail.com. Although the Ld. DR states that the notices intimating the fixation of the hearing of the appeal would have been dropped in the email id i.e. nutanispat2002@gmail.com for the reason that the assessee company had not responded to the initial notices but the said fact is not discernible from the record. As there is nothing available on record which would reveal that on any occasion any notice intimating the fixation of the hearing of the appeal was dropped in the email id provided by the assessee in "Form 35" i.e. indo-lahari1994@rediffmail.com, therefore, I am unable to comprehend as to how the assessee could be held to have been validly put to notice about the fixation of the hearing of the appeal on different dates.

16. Be that as it may, as the assessee company had opted out of receipt of notices/communications from the office of the CIT(Appeals) through email id, therefore, I am of a firm conviction that as no physical/hard copy of the notice was ever served upon it i.e. in a manner that it had opted for in the memorandum of appeal, therefore, it can safely be concluded that the CIT(Appeals) had proceeded with and disposed of the appeal without validly putting the assessee company to notice about the fixation of the hearing of the appeal. As the assessee company had remained divested of

an opportunity to contest its appeal before the first appellate authority, therefore, I am of the view that the same clearly militates against the principle of natural justice i.e. *audi-altram-partem*. Accordingly, I restore the matter to the file of the CIT(Appeals) for fresh adjudication. Needless to say, the CIT(Appeals) shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee company which shall remain at a liberty to substantiate its claim on the basis of fresh documentary evidence, if any.

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

Order pronounced in open court on 08th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 08th 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 फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.