

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.551/RPR/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Shri Chanki Ramwani,
Plot No.11/12, Phase-I/II,
Shri Ram Nagar, Shankar Nagar,
Raipur-492 001 (C.G.)
PAN: ANYPR6711J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sakshi Gopal Agrawal, CA
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2025

घोषणा की तारीख / Date of Pronouncement : 16.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the ADDL/JCIT(A), Thiruvananthapuram, dated 29.05.2024, 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 22.10.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That on the fact and circumstances of case of Appellant the order passed by Addl/JCIT (A), Thiruvananthapuram is bad in law, illegal and unsustainable in as much as there is no adjudication on merits as well as the hon'ble Addl JCIT (A) has failed to consider the written submission filed before him explaining reasons of difference in turnover as per 1TR and form 26AS.

2. Without prejudice to above, on the fact and circumstances of case the learned AO has erred on facts and in law by making addition of Rs.16,28,939 on count of unexplained income being suppression of income from business simply on the basis of form 26AS.

3. Without prejudice to above, on the fact and circumstances of the case, the honorable Addl. JCIT (A) has erred in confirming the order of learned assessing officer by passing a non speaking order.

4. That, assessee reserves the right to add, amend, alter or withdraw any ground/grounds of appeal at the time of hearing.”

2. Shri Sakshi Gopal Agrawal, Ld. Authorized Representative (for short 'AR') for assessee at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 152 days. Elaborating on the reason

leading to delay of 152 days involved in filing of the present appeal, the Ld. AR has drawn my attention to the "affidavit", dated 13.01.2025 filed by the assessee, wherein it is stated that though the assessee 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. The Ld. AR to fortify his contention has taken me through Form No.35, which revealed that the assessee had opted for receiving all notices/communications otherwise than through email. The Ld. AR submitted that the assessee had learnt about the order of the CIT(Appeals) in the first week of December when his counsel had logged into his Income tax portal account. The Ld. AR submitted that as the delay involved in filing of the appeal had crept in because of bonafide reasons and not on account of any deliberate or lackadaisical conduct of the assessee, therefore, the same in all fairness be condoned.

3. Per contra, Smt. Anubhaa Tah Goel, Ld. Senior Departmental Representative (for short, 'Sr.DR') objected to the request for condonation of delay. 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 learned authorized representatives of both the parties qua the issue of delay involved in filing of the present appeal.

Ostensibly, a perusal of Form No. 35 reveals that the assessee 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] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)		Acknowledgement Number
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
	CHANKI		RAMWANI	ANYPR6711J	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	17/641BEHIND TAPADIA FIRE WORKS				
	Area/ Locality	Town/ City/ District		State	Country
	NAHAR PARA SANJAY G ANDHICHOWK STATION ROAD	RAIPUR		CHHATISHGARH	INDIA
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communications may be sent on email?
492001	- 9826126782	-	chanki@ratan.katele.com	No	

5. Although, the assessee had specifically stated that all the notices/communications be sent otherwise then through email but no physical/hard copy of the order of the CIT(A) was ever served upon the assessee. The Ld. AR states that it was only when his counsel had logged into his e-portal account in the first week of December and gathered about the disposal of the appeal by the CIT(A), it was only pursuant thereto that it had come to his notice that his appeal had been disposed of by the CIT(A). The Ld. AR in support of his aforesaid contention had drawn my attention to the “affidavit”, dated 13.01.2025. For the sake of clarity, the “affidavit”, dated 13.01.2025 is culled out as under:

- That during A.Y. 2016-17, I was engaged in business of providing goods transportation services in name of **M/s Jai Shree Gurudev Transport**.
- That I have been assessed by ITO, Ward-3(1), Raipur u/s 143(3) of IT Act for the A.Y.2016-17.
- That being aggrieved by assessment order u/s 143(3) dtd. 22/10/2018, I filed an appeal before Id. CIT(A) on 21/08/2019. The Id. ADL/JCIT(A) by his order u/s 250 dtd. 29/05/2024 dismissed the appeal filed before him.
- That your honor, the present appeal has been filed by me on 30/12/2024, and that there was a delay of 152 days in filing of appeal before the honorable ITAT.
- That your honor, the delay in filing the appeal occurred due to the following reasons:-

a. That while filling of form 35 for appeal I had given the following information :-

- e-mail address : chanki@ratan.katele.com
- Mobile no. : 9826126782

- **Whether notices/communication may be sent on email : No**

I have opted not to send notices/communication on email in other words I preferred to receive communication by physical mode on the address mentioned in table 17 of form 35.

b. That none of the notices of hearing nor the order u/s 250 were being issued on above email id by the Id. Adl/JCIT(A) and none of notices nor order u/s 250 were being served physically to me.

c. the order u/s 250 passed by Addl JCIT (A) dated 29/05/2024 was never been received physically on the address mentioned above.

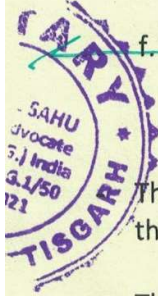
d. That due to above, I was unaware with the fact that the learned Adl/JCIT(A) has passed the order on 29/05/2024.

e. That I became aware of above facts very recently (first week of December) that is on login of my IT Portal **e-proceeding tab** by my counsel.

f. Thus there is delay of 152 days in filing of appeal before your honour which is neither intentional nor deliberate but due to the facts as explained above.

That your honor, it is most humbly prayed that for the reason stated above the delay in filing memorandum of appeal may kindly be condoned.

- That your honor, the Appellant shall remain obliged for this favour of yours and for such act of kindness, the Appellant shall ever pray.




(DEPONENT)

VERIFICATION

6. Admittedly, as the CIT(A)'s office has failed to serve upon the assessee, a hard copy of the impugned order, therefore, I find no justification in reckoning the period of limitation from the date on which the impugned order is stated to have been dropped in his email account. As the assessee states that the impugned order of the CIT(A) had come to his notice in the first week of December, 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 assessee on 30.12.2024 i.e. within the stipulated time period of 60 days from the aforesaid date, i.e. first week of

December, therefore, the same can safely be held to have been filed within the prescribed time.

7. I, thus, in terms of my aforesaid observations condone the impugned delay of 152 days (as pointed out by the registry) in filing of the present appeal by the assessee.

8. Succinctly stated, the assessee who is engaged in the business of transportation had e-filed his return of income for A.Y.2016-17 on 27.02.2017, declaring an income of Rs.8,68,430/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

9. During the course of assessment proceedings, the A.O observed that on a perusal of the "Form 26AS" of the assessee, it transpired that he had as per his books of account suppressed his receipts by an amount of Rs.16,28,939/-. For the sake of clarity, the observation of the A.O is culled out as under:

"3. Addition on account of suppression of income from business-

During the year under consideration assessee has shown total receipts u/s.194C of Rs.91,90,756/-. This consists of receipts of Rs.90,14,829/- from Chahatisgarh State Civil Supplies Corporation Limited, Rs.1,73,167/- from Arvind Saraf and Rs.2,760/- from K. K. Automotive Pvt Ltd. However, on perusal of form 26AS it is observed that assessee received total of Rs.1,06,43,768/- from Chahatisgarh State Civil Supplies Corporation Limited and Rs.1,73,167/- from Arvind Saraf and Rs. 2,760/- from K K Automotive Pvt Ltd. Thus, it is found that assessee has suppressed his receipts by Rs.16,28,939/-.

On being asked about this, assessee has simply stated "copy of form 26AS is attached at the time of filing of return and another 26AS also hereby enclosed after filing of the return and there is difference 26AS."

Assessee's above submission may be factually correct but it cannot be said that the suppression in receipts has been explained. It may be true that Form 26AS might not be updated at the time of filing of his return of income but assessee ought to have prepared his return of income on the basis of his books of account and not merely on the basis of Form 26AS. Assessee has maintained his books of account because he has written yes against the column 'Whether liable to maintain accounts as per section 44AA? In his return of income'.

Thus, it is observed that though assessee has maintained his books of account he has shown receipts less by Rs. 16,28,939/-. Moreover, since assessee has already claimed all his incidental expenses, no further expenses can be allowed and so the less shown turnover/receipts of Rs.16,28,939/- is held to be the unexplained income derived from business or profession and therefore, this amount is added to the returned income of the assessee."

Accordingly, the A.O based on his aforesaid observations vide his order passed u/s. 143(3) of the Act, dated 22.10.2018 made an addition of the suppressed receipts of Rs.16,28,939/- and determined the income of the assessee at Rs.24,97,369/-

10. Aggrieved the assessee carried the matter in appeal before the ADDL/JCIT(A), Thiruvananthapuram but without success. As is discernible from the order of the ADDL/JCIT(A) the latter had called upon the assessee to put forth an explanation as regards the discrepancy of Rs.16,28,939/-. In reply, the assessee filed "Form 26AS" for the subject year, wherein receipts were disclosed at Rs.1,08,19,695/-. Accordingly,

the ADDL/JCIT(A) finding no infirmity in the view taken by the A.O upheld the addition of Rs.16,28,939/- and dismissed the appeal. For the sake of clarity, the observations of the ADDL are culled out as under:

“2. In this case, an addition of Rs.16,28,939/- was made being difference between the total receipts determined by the Assessing Officer of Rs.1,08,19,695/- and the total receipts offered by the appellant Rs.91,90,756/- u/s 194C.

3. A show cause notice dated 10-05-2024 was issued to the appellant to explain the discrepancy which is re-produced hereunder:

"In your case, for the assessment year 2016-17. You are required to show cause the following-

1. Vide this office notices dated 17-04-2024 and 23-04-2024, the appellant was asked to furnish form 26AS and revised form 26AS. But there is no reply from the appellant. However you have received Rs.1,06,43,768/- from Chhattisgarh State Civil Supplies Corporation Limited and Rs.1,73,167/- from Arvind Saraf and Rs. 2760/- from K K Automotive Pvt. Ltd. Thus, total receipts u/s.194C is Rs.1,08,19,695/-.

2. It is understood that appellant relied on revised form 26AS at the time of filing return of income. You had shown total receipts of Rs.91,90,756/-. It may be noted that appellant should rely on books of account while filing the return of income. But that was no done. Therefore, you are required to show cause why Rs. 16,28,939/- being the difference between total receipts of Rs. 1,08,19,695/- and receipts shown by you of Rs. 91,90,756/- should not be added to total income.

Your reply should reach this office on or before 20-05-2024."

4. In response, the appellant filed Form 26AS for the AY 2016-17 where the total receipts were Rs.1,08,19,695/-. Therefore, the addition made of Rs.16,28,939/- is confirmed.

In the result, the appeal is not allowed.”

11. The assessee being aggrieved with the order of the ADDL/JCIT(A), Thiruvananthapuram has carried the matter in appeal before the Tribunal.

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

13. The assessee has filed an application dated 13.01.2025 seeking admission of certain documents as additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. I am of the view that as the Tribunal had not directed the assessee to place on record the aforesaid documents, therefore, the same not being as per Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 does not merit admission. However, the assessee shall remain at a liberty to place the same before the CIT(Appeals) as per Rule 46A of the Income Tax Appellate Tribunal Rules, 1963 subject to the latter's satisfaction.

14. Apropos the merits of the case, the Ld. AR submitted that though the assessee vide his letter uploaded/submitted before the CIT(Appeals) on 25.05.2024 vide acknowledgement No.240953711250524, Page 47 of APB, which inter alia, included a reconciliation chart of turnover/TDS credits, but the CIT(Appeals) without considering the said documents had disposed of the appeal vide his order dated 29.05.2024.

15. Ostensibly, it is a matter of fact borne from record that the CIT(Appeals) had summarily upheld the addition of Rs.16,28,939/- made by the A.O without passing a speaking order in the backdrop of the material/documents as were uploaded by the assessee before him on 25.05.2024 vide acknowledgement No.240953711250524. Considering the aforesaid facts, I am of a firm conviction that the matter in all fairness requires to be restored to the file of the ADDL/JCIT(A) with a direction to re-adjudicate the same after considering the reply/reconciliation that was filed by the assessee appellant in the course of the set-aside proceeding before him. Needless to say, the CIT(Appeals) in the course of set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee who shall remain at liberty to substantiate his claim on the basis of fresh documentary evidence, if any.

16. Before parting, I may herein clarify that though the assessee in the memorandum of appeal, i.e “Form-35” had specifically opted out of service of all notices/communication through email but at the time of hearing, the assessee had stated that if the notices/communications intimating the fixation of hearing of the appeal in the course of set-aside proceedings are dropped in the said email account i.e. chanki@ratan.katele.com, then the same would duly be complied with.

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

Order pronounced in open court on 16th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 16th 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 फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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