

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 110/RPR/2024
(निर्धारण वर्ष Assessment Year: 2016-17)

Panchsheel Solvent Pvt. Ltd., Baldeo Bagh, Nearby Old S P Office, Rajnandgaon, C.G.-491441	v s	Assistant Commissioner of Income Tax, Circle-2, Aayakar Bhavan, Civil Lines, Raipur, C.G.-492001
PAN: AAECP8898A		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal & Vimal Kumar Agrawal, CAs
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	25.10.2024
घोषणा की तारीख /Date of Pronouncement	:	20.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal instituted by the assessee is directed against the orders of Commissioner of Income Tax (Appeals), Raipur-3 [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (in short "the Act"), dated 07.02.2024 for the Assessment Years 2016-17, which in turn arises from the order passed by the Assistant Commissioner of Income Tax, Central-2, Raipur (in short "Ld. AO"), under Section 143(3) of the Income Tax Act, dated 28.12.2018.

2. The grounds of appeal raised by the assessee, reads as under:

1. That the order of the Learned Commissioner (appeals) is arbitrary and illegal and against the principal of natural justice.
2. For the reason that the learned commissioner has not granted sufficient time for effective written submission for pursuing appeal after requesting for 3 month time due to bulk nature of supporting evidences. however only 5 days given instead of 3 month.
3. For the reason that learned commissioner has already made to decide to dismiss the appeal hastily, without necessary care and application of mind.
4. For the reason that by observing the fact of the case the order passed by learned commissioner is bad in law as well as on the fact and circumstances of the case.
5. For the reason that the lumpsum adhock addition of Rs.96,99,743/- on account of Capital Investment made by assessee and treating the same as undisclosed purchase by Hon Assessing officer is bad in law and justified the order of Id AO by learned commissioner without application of mind is not proper and justified.
6. For the reason that the lumpsum adhock addition of Rs.5,98,030/-on account of clerical error made by assessee and treating the same as short term capital gain by the Hon Assessing officer is bad in law and justified the order of Id AO by learned commissioner without application of mind is not proper and justified.
7. For the reason that the lumpsum adhock addition of Rs.1,45,473/-on account of clerical error made by assessee and treating the same as unexplained investment by the Hon Assessing officer is bad in law and justified the order of Id AO by learned commissioner without application of mind is not proper and justified.
8. That the Appellant reserves the right to raise any other legal grounds and supporting evidences at the time of arguments.

3. The brief facts of the case are that, the assessee is a resident company, engaged in the business of manufacturing and trading of edible oil and rice bran oil. The return of income for AY 2016-17 was filed by the assessee on 27.03.2018, declaring total income at Rs. Nil. Later, the case was

selected for limited scrutiny through "CASS", accordingly, statutory notices u/s 143(2) was issued on 21.08.2018. Consequently, notices u/s 142(1) along with detailed questionnaire was issued on 06.09.2018 and 10.11.2018. However, no compliance was made by the assessee in respect of the aforesaid notices. Subsequently, a reminder letter in respect of notice u/s 142(1) dated 10.11.2018 was issued, in response to the same assessee furnished copy of acknowledgment and computation of total income on 29.11.2018. Further, in order to grant of final opportunity to furnished supporting evidences/ documents with proper explanation / justification. Ld. AO issued a notice u/s 144 dated 04.12.2018 to the assessee, in response, to which the assessee submitted a reply *qua* the various issues raised by the Ld. AO, however, the same was not found convincing by the Assessing Officer, therefore, certain additions on account of discrepancies pointed out in the assessment order are made to the income of the assessee, thus, the total income was enhanced from NIL to Rs.1,14,90,060/-.

4. Aggrieved with the aforesaid addition, assessee preferred an appeal before the Ld. CIT(A), however, the assessee despite several opportunities have not responded before the Ld. CIT(A) except at one occasion was rejected by the Ld. CIT(A) considering the pendency of old appeal and directions by the CBDT. Ld. CIT(A) had decided all the grounds raised by the assessee in

appeal before him against the assessee and the appeal is dismissed with the following observations:

Decision on merits: -

3.1 Ground No.1, 3 & 5: - *Through these grounds of appeal, the appellant has challenged "that by observing the facts of the case the order passed by the Learned Assessing Officer is bad in law as well as on the facts and circumstances of the case". The Id. AO passed the assessment order u/s 143(3) for the year under consideration according to procedures provided in the Act and all the additions were made as per following procedure provided in the i. T. Act, 1961.*

The appellant was not filing any written submission, the appellant has shown that he is not interested in pursuing the appeal. The laws aid those who are vigilant, not those who sleep upon their rights. Under these circumstances, in my opinion the appellant is not interest in the appeal. In view of these facts, the appeal of the appellant deserves to be dismissed as it cannot be kept pending adjudication for indefinite period. It is the duty of the appellant to make necessary arrangements for effective representation on the appointed date. Mere filing of an appeal is not enough, rather it requires effective hearing also. Therefore, the appeal is found liable for dismissal. This view is supported by the following judicial pronouncements:-

*(i) In the case of **Estate of Late Tukojirao Holkar vs. CWT 223 ITR 480 (M.P.)** Hon'ble MP High Court has held as under:-*

*4. As held in **Jamunadas v. CST [1993] 38 MPLJ 462 (MP)** and the common order passed in **Miscellaneous Civil Case No. 303 of 1986--B. R. Phosphate v. CST and Miscellaneous Civil Case No. 304 of 1986--B. R. Phosphate v. CST** by this court on November 6, 1995, this court is not bound to answer the reference. In **Jamunadas v. CST [1993] 38 MPLJ 462**, it is held as under:*

“For the foregoing reasons, we are of the opinion 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, this court is not bound to answer the reference. We refuse to answer the reference and also saddle the assessee with the costs of the Department quantified at Rs. 150."

(ii) *In the case of **Kalsaria Diamonds Pvt. Ltd. Vs Addl. CIT in ITA NO 1783/Mum/2012** dated 05.09.2013, Hon'ble Mumbai ITAT placing reliance on decision of Hon'ble MP High court in the case of Estate of Late Tukojirao Holkar (supra) has held as under:-*

2. Earlier this appeal was fixed for hearing on 21/3/2013, when nobody attended on behalf of the assessee, therefore, as per directions of the Tribunal the matter was adjourned to 05/09/2013 and notice was directed to be issued through RPAD. Accordingly, notice was sent through RPAD at the address given in Form No.36. However, the said notice was received back from the postal authorities with the remark "Unclaimed -Return to Sender'. The assessee has not intimated any change of address to the registry. Adjournment application has also not been filed. Therefore, in the facts and circumstances of the case, we presume that the assessee is not interested in prosecuting this appeal. Following the decision of the Tribunal reported in the case of CIT vs. Multiplan India (P) Ltd.38 ITD 320 (Del) and the decision of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT, 223 ITR 480 (M.P) we dismiss the appeal filed by the assessee in limine.

*No explanation has been furnished by the appellant at this stage on the findings and conclusion of the Id. AO. In absence of any explanation & on the basis of facts gathered and discussed by the Id. AO, considering entire facts in the assessment order, I find that Id. AO is justified in assessing the total income of the appellant as discussed above. when repeated opportunity in this regard was provided clearly shows that the appellant is not interested in pursuing the appeal. I have considered the facts of the assessment order and found that **"The appellant has never objected the procedures followed for assessment order and validity of statutory notices issued and served to its. Therefore, procedure followed for assessment order and issuance and services of notices are valid and lawful. The***

issuance and service of the notice u/s 143(2) of the Act is valid and lawful. The Id. AO passed the assessment order u/s 143(3) for the year under consideration according to procedures provided in the Act and made additions of Rs.96,99,743/-, Rs.5,98,030/- & Rs.1,45,472/- as per following procedure provided in the I.T. Act, 1961 and principals of natural justice. Therefore, the claim of the assessee is remains unstainable for assessment order passed by the Id. AO is bad in law as well as on the facts and circumstances of the case." Therefore, following the view taken in the case cited above, the appeal filed by the appellant deserves to be dismissed accordingly, Therefore, appeal on these grounds are dismissed.

- 3.2 **Ground No. 2:** - *Through this ground of appeal, the appellant has challenged the addition of Rs.96,99,743/-. The Id. AO has given his findings in para 6 of the assessment order AY 2016-17. During the course of assessment proceedings, the Id. AO made addition on the following grounds,*

"As per profit and loss account of reported period it found that the assessee has claimed expenditure on account of investment of Rs.96,99,743/- for purchase of new assets. During the course of assessment proceedings, the assessee was asked to explain that why in absence of bills and vouchers not furnished during the assessment proceeding, an amount of Rs.96,99,743/- should not be disallowed on account of unexplained investment u/s 69 and added back to the total income.

During the course of assessment proceedings, the assessee has furnished his reply through email on 25.12.2018 before the Id. AO. After considering the assessee's reply, the Id. AO added Rs.5,98,030/- to the total income of the assessee for the year under consideration, as the assessee failed to furnished any supporting for its contention as income from short term capital gain on sale of plant and machinery."

Despite the repeated opportunity of hearing to appellant, no explanation has been furnished by the appellant during the course of assessment proceedings and appellate proceedings on the findings and conclusion of the Id. AO. In absence of any explanation and supporting documents for favoring appellant contention & on the basis of facts gathered and discussed by the Id. AO, considering entire facts in the

assessment order, I find that the Id. AO is justified in assessing the total income of the appellant as discussed above. In these circumstances & in view of supported by the judicial pronouncements mentioned in para 3.1. Respectfully, following the view taken in the case cited above, the appeal filed by the appellant deserves to be dismissed accordingly, addition of Rs.5,98,030/- is hereby confirmed and ground of appeal is dismissed.

3.4 Ground No. 6:- *Through this ground of appeal, the appellant has challenged the addition of Rs.1,45,4721-. The Id. AO has given his findings in para 6 of the assessment order AY 2016-17. During the course of assessment proceedings, the ld. AO made addition on the following grounds,*

"On perusal of ITR for 2015-16 and 2016-17, it found that as per ITR 2015-16, w.d.v. of furniture and fitting as on 31.03.2015 is Rs.15,80,128/- whereas as per ITR 2016-17 the w.d.v. of furniture and fitting as on 01.04.2015 is 17,25,600/-. Thus, there are increase in opening balance and closing balance is Rs.1,45,472/-. The assessee was asked to explain why the increase amount should not be considered as unexplained investment and depreciation claimed i.e. Rs.14,550/- on the increased amount should be disallowed and added back to the total income.

During the course of assessment proceedings, the assessee has furnished his reply through email on 25.12.2018 Id. AO. After considering the assessee's reply, the Id. AO added Rs.1,45,472/- to the total income of the assessee for the year under consideration, as the assessee failed to furnish any supporting for its contention, hence amount of Rs.1,45,472/- is considered as unexplained investment u/s 69 of the Act as the assessee has no valid explanations/ no evidence. Therefore, an amount of Rs.1,45,472/- and depreciation claimed at Rs.14,550/- is disallowed are added back to the total income."

Despite the repeated opportunity of hearing to appellant, no explanation has been furnished by the appellant during the course of assessment proceedings and appellate proceedings on the findings and conclusion of the Id. AO. In absence of any explanation and supporting documents for favoring appellant contention & on the basis of facts gathered and discussed by the Id. AO, considering entire facts in the

assessment order, I find that the Id. AO is justified in assessing the total income of the appellant as discussed above. In these circumstances & in view of supported by the judicial pronouncements mentioned in para 3.1. Respectfully, following the view taken in the case cited above, the appeal filed by the appellant deserves to be dismissed accordingly, addition of Rs.1,45,472/- is hereby confirmed and ground of appeal is dismissed.

4. In result, appeals are dismissed.

5. Aggrieved with the aforesaid order by Ld. CIT(A), the assessee preferred to file the present appeal, which is under consideration before us.

6. After hearing both the parties, our adjudication *qua* the grounds of the present appeal is as under:

7. Ground No. 5: Regarding lumpsum / ad hoc addition of Rs.96,99,743/- on account of capital investment made by the assessee, treating the same as undisclosed purchase by the Ld. AO, confirmed by the Ld. CIT(A).

7.1 The findings *qua* the aforesaid addition made by the Ld. AO have been described in the assessment order at para 6 (page no. 7), wherein a query was raised to the assessee regarding a claim in the profit and loss account of the relevant period showing an expenditure on account of investment for purchase of new asset, for which there was no bills or

vouchers furnished during the assessment proceedings. In response to aforesaid queries, a reply was furnished by the assessee that the assessee had invested an amount of Rs. 96,99,743/- during the FY 2015-16 in the assets, namely Land, Camera, Civil Construction-building lift installed, Plant & Machinery and Truck (Old). Assessee clarified that all the supporting documents of such investment are enclosed with the reply. Ld. AO observed that the assessee failed to explain source of investment made, therefore, an amount of Rs.96,99,743/- was added back to the total income of the assessee u/s 69 of the Act.

7.2 On the aforesaid issue, Ld. AR on behalf of the assessee submitted that the transactions of investment are made through banking channel also supporting bill and vouchers are furnished before the Ld. AO, therefore, the addition made by the Ld. AO u/s 69 for the want of source of investment was without any basis and uncalled for. It is the submission that sufficient evidence are available to explain the source of investment made. To substantiate the aforesaid fact, Ld. AR submitted before us details of investment, copies of ledger account, bank statement, invoice for purchase of respective asset etc.

7.3 Ld. Sr. DR representing the revenue on the other hand, vehemently supported the order of revenue authorities.

7.4 We have considered the rival submissions, perused the material available on record including the evidence placed by the assessee and the orders of revenue authorities. On a thoughtful consideration of the facts and circumstances of the present case, we find that necessary supporting documents to substantiate the addition in assets by way of fresh investment are furnished before the Ld. AO, however, the addition was made on account of unexplained investment, whereas referring to the bank statement of the assessee, the source of investment cannot be construed as unexplained at threshold, without considering the entries through banking channel which are claimed to be duly recorded in the books of the assessee. Under such circumstances, it cannot be said that all the evidence laid are ingenuine or bogus and the transactions is totally through unexplained investments. However, it seems that the assessee was unable to explain the source of investment made to the satisfaction of the Ld. AO, which though as per the narrative in the assessment order does not find to be specifically harped upon by the Ld. AO, when the part information was furnished by the assessee. Since the information furnished before us supports the assessee's contention that the investments are made from explained sources subject

to verification of such evidence, thus, it would be fair and justified to restore this issue back to the file of Ld. AO for fresh adjudication in light of the facts on record, wherein the assessee is directed to cooperate during the set aside assessment proceedings with its vigilant response without any failure, in absence of which the Ld. AO would be at liberty to decide the issue in accordance with law.

7.5 Needless to say, reasonable opportunity of being heard and liberty to furnish necessary evidence, explanation and contentions to the assessee in the set aside assessment proceedings.

7.6 In result, **Ground No. 5** of the present appeal is allowed, partly for statistical purposes.

8. Ground No. 6: Regarding lumpsum / ad hoc addition of Rs.5,98,030/- on account of clerical error made by assessee, treating the same as short term capital gain.

8.1 Ld. AO observed that in ITR for AY 2015-16, the plant and machinery of the assessee was Rs.16,02,91,142/- whereas as per ITR for AY 2016-17, the opening balance of plant and machinery was carried down to Rs.15,96,93,112/-. The difference in closing balance of the previous year and the opening balance of the year under consideration

has reflected as shortfall of Rs.5,98,030/-. Such discrepancy was put forth to the assessee to explain as to why the aforesaid shortfall should not be considered as short-term capital gain on account of sale of plant and machinery. In response, assessee submitted that the change in opening and closing balance of the plant and machinery was due to change of method of depreciation, there was no suppressing of the transaction of sale of plant and machinery. Ld. AR placed before us copy of depreciation chart for AY 2016-17. It was the prayer that since the change in amount of closing stock of plant and machinery in the previous year which was carried forward as the opening stock in the current year was on account of change of method of depreciation, therefore, the same shall not be treated as short-term capital gain of the assessee.

8.2 Per contra, Ld. Sr. DR representing the revenue vehemently supported the order of revenue authorities.

8.3 We have considered the rival submissions, perused the material available on record and the orders of revenue authorities. On perusal of the depreciation chart of the assessee, it is evident that there was no entry in the column "SOLD", therefore, the inference that there was a sale of asset during the year under consideration by the Ld. AO cannot be subscribed to, in absence of any evidence to prove so, only on the basis

of presumption or failure of assessee to furnish the supporting evidence regarding the method of depreciation due to which such change in closing stock viz-a-viz opening stock was occurred. This issue needs further examination / investigation, therefore, in the interest of justice it would be appropriate to set aside the same to the file of Ld. AO for verification and fresh adjudication.

8.4 Needless to say, reasonable opportunity of being heard and liberty to furnished necessary evidence, explanation and contentions to the assessee in the set aside assessment proceedings.

8.5 In result, **Ground No. 6** of the present appeal is **allowed, partly** for statistical purposes.

9. Ground No. 7: Regarding lumpsum / ad hoc addition of Rs. 1,45,473/- on account of change in the value of opening stock of furniture and fittings as on 31.03.2015 at Rs.15,80,128/- whereas the opening value was taken as Rs.17,25,600/-.

9.1 On this issue also the assessee explained that it was on account of accounting treatment of the depreciation which due to some clerical error has been corrected during the year under consideration, therefore, addition u/s 69 is uncalled for.

9.2 Ld. Sr. DR, on the contrary supported the orders of revenue authorities.

9.3 We have considered the rival submissions, perused the material available on record and the orders of revenue authorities. Since the issue pertains to clerical error in computation of depreciation, which arises because the assessee was unable to explain the same with supporting evidence before the Ld. AO, the same, thus, is covered by our observations to the issue raised by the assessee in ground no. 6 of the present appeal, therefore, we deem it fit to restore the same back to the file of Ld. AO for verification and fresh adjudication.

9.4 Needless to say, reasonable opportunity of being heard and liberty to furnish necessary evidence, explanation and contentions to the assessee in the set aside assessment proceedings.

9.5 In result, **Ground No. 7** of the present appeal is **allowed, partly** for statistical purposes.

10. Ground No. 1, 2, 3 & 8: These grounds are general, academic and consequential in nature, which does not call for any separate adjudication, therefore, the same are dismissed in absence of any further argument or contention.

11. Resultantly, **ITA No. 110/RPR/2024** of the assessee for the AY 2016-17 is **partly allowed for statistical purposes**, in terms of our aforesaid observations.

Order pronounced in the open court on 20/01/2025.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 20/01/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Panchsheel Solvment Pvt. Ltd.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-2, Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur