

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.538/RPR/2024

निर्धारण वर्ष / Assessment Year : 2016-17

M/s. Shri Mangalam Traders
1, Village-Parsada, Post- Bemcha,
Tehsil: Mahasamund-493 445 (C.G.)
PAN : ABDFS1546F

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, CA
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2025

घोषणा की तारीख / Date of Pronouncement : 21.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the ADDL/JCIT(A), Udaipur dated 29.10.2024, 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 26.12.2018 for the assessment year 2016-17. The assessee firm has assailed the impugned order on the following grounds of appeal:

“1. That the order of Ld. CIT(A) is bad in law as well as on facts and the entire additions of Rs.19,91,000/- sustained by the Ld. CIT(A) are bad in law and accordingly liable to be deleted.

2. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in making addition of Rs.19,91,000/- without mentioning the section under which disallowance has been made under the of income tax act, 1961.

3. The learned CIT(A) erred in sustaining the disallowance of Rs.19,91,000/- made on account of bogus purchases without appreciating the fact that the disallowance was made mechanically without appreciating the evidences furnished by the assessee and also without rejecting the books of account.

4. Without prejudice to Ground No.1, 2 & 3 above and in the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that based on the judicial dictum at best only a percentage (gross profit rate) of the alleged bogus purchases could have been disallowed and not 25% of alleged bogus purchases of Rs.79,64,000/-.

5. The above grounds are independent and without prejudice to one and another.

6. The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the

ground or ground and to adduce fresh evidence at the time of hearing of the appeal.”

2. Succinctly stated, the assessee firm which is engaged in the business of rice milling had e-filed its return of income for A.Y.2016-17 on 30.08.2016, declaring an income of Rs.1,07,730/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of assessment proceedings, the A.O observed that the assessee firm was one of the beneficiary of bogus purchase bills of Rs.79,64,000/- procured from four tainted parties, as under:

S. No.	Name of the party	Total purchase
1.	M/s. Agrawal Agro	24,00,000/-
2.	M/s. Balaji Food Rice Tech	21,14,000/-
3.	M/s. Shri Hanuman Food Product	13,00,000/-
4.	M/s. Bhagwati Paddy	21,50,000/-
	Total	79,64,000/-

As the assessee firm had failed to substantiate the authenticity of the aforesaid purchase transactions, therefore, the A.O after rejecting its books of account u/s.145(3) of the Act disallowed 25% of the subject bogus purchases and worked out a disallowance of Rs.19,91,000/-. Accordingly, the A.O vide his order passed u/s.143(3) of the Act, dated 26.12.2018,

after making the aforesaid addition determined the income of the assessee firm at Rs.20,98,730/-.

4. Aggrieved the assessee firm carried the matter in appeal before the ADDL/JCIT(A), Udaipur but without success. As the assessee firm despite having been afforded four opportunities i.e. on 30.12.2020, 13.02.2024, 22.02.2024 and 07.10.2024 had failed to participate in the proceedings before the first appellate authority, therefore, the latter had dismissed the appeal of the assessee for want of prosecution. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“8. Decision

8.1 I have carefully considered the facts of the case and the assessment order u/s.143(3) of the Act, 1961. The issue involved in this appeal is addition of Rs.19,91,000/- on account of bogus purchases.

Despite being given many opportunities, the appellant did not respond during appellate proceedings nor furnished any written submission or any evidence in support of the grounds of appeal raised. The assessment order of the A.O has been carefully perused and I find that during the assessment proceedings no evidence was produced and the appellant failed to substantiate the genuineness of purchases made and the AO has passed a detailed and speaking order discussing the said issue in detail.

8.2. In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect. However, in the instant case, appellant has not furnished any evidence/written submission in support of grounds of appeal raised by the appellant.

8.3 As mentioned in Para 6.1 of this appeal order, this office has issued several letters / notices to appellant to file written submission. However, the appellant did not file written

submissions. The notices were issued on email available in the ITBA Module of the Income Tax Department.

8.4. From the above conduct of the appellant, it is evident that the appellant is not interested in pursuing its appeal. The Hon'ble Supreme Court in the case of CIT Vs B. N. Bhattacharjee & Others [1979] 10 CTR 354 (SC) observed that preferring an appeal, means effectively pursuing it. The Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Holkar Vs CWT [1979] 223 ITR 480 (MP) dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the appellant in the present proceeding, I am of the view that the appellant is not interested in pursuing the appeal.

8.5 The Hon'ble Supreme Court in the decision pronounced on October 25, 2019 in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd in Civil Appeal No. of 2019 (Arising out of SLP (Civil) No. 29855 of 2018) has held that if a notice is duly served upon the litigant through its authorized representative, and it was provided sufficient opportunity to appear before the Court and contest the matter but the litigant chooses to let the matter proceed ex-parte, the order cannot be recalled. In the case of the present appellant, the notices to the appellant u/s 250 of the I.T. Act, 1961, have been issued online-through the ITBA software, as is required under the Faceless Assessment & Appeals now in practice.

8.6 The decision of the Hon'ble High Court of Mumbai in the case of M/s. Chemipol v/s. Union of India [Central Excise Appeal No.62 of 2009] clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in case of Nandramdas Dwarkadas, AIR 1958 MP 260, is reproduced below: Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

8.7 The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. NallaThampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In

the latter case, the Apex Court has held as under:- "That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be without its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

8.8 In its decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA No.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence as it would expose falsity and non-genuineness.

8.9 During the appellate proceedings, the appellant has been provided more than sufficient opportunities but appellant failed to submit any submission or evidence during appeal proceedings in support of grounds of appeal as well as statement of facts, and remained non-compliant. The law assists those that are vigilant with their rights and not those that sleep there upon. Following this principle as embodied in the well-known dictum "vigilant bus non dormientibus, jura subveniunt", the grounds raised in this appeal as reproduced in para Nu. 3 supra are dismissed.

9. In the result, the appeal is dismissed."

5. The assessee firm being aggrieved with the order of the ADDL/JCIT(A), Udaipur 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 Prafulla Pendse, Ld. Authorized Representative (for short 'AR') for the assessee firm, at the threshold, submitted that the CIT(Appeals) had disposed of the appeal without validly putting the assessee firm to notice about the fixation of the appeal on different dates. Elaborating on his contention, the Ld. AR submitted that though the assessee firm had in the memorandum of appeal i.e. "Form-35" specifically opted out of receipt of all notices/communications through email, but till date no physical/hard copy of either of the notices intimating the fixation of the hearing of the appeal on four occasions i.e. on 30.12.2020, 13.02.2024, 22.02.2024 and 07.10.2024 was ever served upon it. The Ld. AR in support of his aforesaid contention had taken me through the "Form 35" which reads as under: (relevant extract)

FORM NO. 35 [See rule 45]			CIT(A)		Acknowledgement Number	
Appeal to the Commissioner of Income-tax (Appeals)					496420741080619	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)	
			SHRI MANGALAM TRADERS	ABDFS1546F		
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office		
	SHREE MANGALAM TRADERS			TUMGAON ROAD		
	Area/ Locality	Town/ City/ District		State	Country	
	Mahasamund	MAHASAMUND		CHHATISHGARH	INDIA	
Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?		
493445	- 9425213218	-	skantca@yahoo.co.in	No		

Carrying his contention further, the Ld. AR submitted that as the assessee firm had remained divested of an opportunity to put forth its case assailing the impugned addition made by the A.O before the CIT(Appeals), therefore, the latter's order is liable to be set-aside with a direction to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee firm.

8. Per contra, Smt. Anubhaa Tah Goel, the Ld. Sr. Departmental Representative (for short 'DR') relied on the order of the ADDL/JCIT(A). It was submitted by her that as the assessee firm despite having been afforded four opportunities i.e. on 30.12.2020, 13.02.2024, 22.02.2024 and 07.10.2024 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 had rightly upheld the same.

9. Admittedly, it is a matter of fact borne from record that the assessee firm despite having been afforded four opportunities vide impugned service of notices electronically through ITBA had failed to participate in the proceedings before the first appellate authority. At the same time, I find substance in the contention advanced by the Ld. AR that as the assessee firm in the memorandum of appeal filed before the CIT(Appeals) in "Form 35" had specifically opted out of service of notices/communications from its office through email, therefore, it had remained unaware about the on-

going appellate proceedings for which notices were issued electronically through ITBA and, thus, for the said reason had failed to participate in the same. As stated by the Ld. AR and, rightly so, though the assessee/appellant in its memorandum of appeal filed with the CIT(Appeals), i.e. in "Form-35" had specifically opted out of service of notices/communications from his office through email but on all the four occasions the notices intimating the fixation of appeal i.e. on 30.12.2020, 13.02.2024, 22.02.2024 and 07.10.2024 were issued electronically through ITBA. Accordingly, I concur with the claim of the Ld. AR that there were justifiable reasons for the assessee firm of having remained unaware about the on-going appellate proceedings before the CIT(Appeals) due to which it had failed to participate in the same.

10. Considering the totality of the facts involved in the present case which had resulted to passing of an ex-parte order by the CIT(Appeals), I am of the view that as the assessee-appellant for no fault on its part had remained divested of a sufficient opportunity to participate in the proceedings before the first appellate authority, therefore, the matter in all fairness requires to be restored to his file for fresh adjudication. 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 aforesaid claim on the basis of fresh documentary evidence, if any.

11. Before parting, I may herein clarify that though the assessee firm in its 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 Ld. AR 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. skantca@yahoo.co.in, then the same would duly be complied with.

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

Order pronounced in open court on 21st day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 21st 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.