

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.02/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Sarita Konda
Camelia Flat No.15, Block A01,
4th Floor, Greenville City, Boriyakala,
Raipur (C.G.)
PAN: AUKPS1814J

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Smt. Tarannum Verma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.01.2025

घोषणा की तारीख / Date of Pronouncement : 24.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 26.12.2023, 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 30.11.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

“1. Ld. CIT(A) erred in deciding appeal without service of notice. Resultantly, appellate order is illegal & unsustainable.

2. Ld. CIT(A) erred in not adjudicating the appeal on merits. The appellate order passed by Ld. CIT(A) is illegal inasmuch as the same is contrary to principles of natural justice.

3. Ld. CIT(A) erred in not adjudicating the following grounds taken before him :-

i) The Assessing Officer erred in making addition of Rs.16,31,000/- on account of alimony money received by the appellant, holding it to be taxable, invoking sec. 56(2)(v). The addition made by AO is arbitrary, baseless and is not justified.

ii) The Assessing Officer erred in making addition of Rs. 15,02,867/- on account of death claim received by the appellant on death of her husband, holding it to be taxable income, invoking sec. 56(2)(v). The addition made by AO is arbitrary, illegal and is not justified.

4. Without prejudice to above, Ld. CIT (A) erred in confirming the addition to the extent of Rs.17,02,867/- made by AO without appreciating the fact that the issue relating such addition is not covered within the scope of "limited scrutiny".

5. The appellant reserves the right to add, amend or alter any ground/s of appeal.”

2. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for assessee, at the threshold of hearing, submitted that the present appeal involves a delay of 307 days. Elaborating on the reason leading to delay of 307 days involved in filing of the present appeal, the Ld. AR has drawn my attention to the application for condonation and the "affidavit", dated 06.01.2025 filed by the assessee. The Ld. AR 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 by her. The learned 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.

3. Per contra, Smt. Tarannum Verma, 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 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	
				291892240150120	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
	KONDA		SARITA	AUKPS1814J	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	STREET NO, 9			KOHKA ROAD	
	Area/ Locality	Town/ City/ District		State	Country
	SHANTI NAGAR	BHILAI, DURG		CHHATISHGARH	INDIA
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?
491001	- 9826781619	-	shardap.l.soni@gmail.com	No	

5. Although, the assessee had specifically stated that all the notices/communications be sent otherwise through email but no physical/hard copy of the order of the CIT(A) had been served upon the assessee. The Ld. AR stated that it was only when the assessee's counsel had logged into her e-portal account on 05.12.2024, that it had come to her notice that her appeal for AY 2017-18 had been disposed off by the CIT(A) on 26.12.2023. The Ld. AR in support of his aforesaid contention had taken me through the "affidavit" dated 06.01.2025 filed by the assessee. For the sake of clarity, the "affidavit", dated 06.01.2025 is culled out as under:

AFFIDAVIT

Sarita Konda, D/o Angul Deshraj, aged about 55 years, resident of Camelia Flat No.15, Block A01, 4th Floor, Greenville City, Boriyakala, Raipur (C.G) do hereby declare on solemn affirmation as under: -

1. THAT I am above named person having PAN AUKPS1814J.
2. THAT in my case, order u/s 250 was passed by Ld. CIT(A) for A.Y. 2017/18 on 26.12.2023, against which appeal has been filed before Hon'ble ITAT on 01.01.2025. That the appeal was supposed to be filed by 24.02.2024 but the same was filed on 01.01.2025, resulting into delay of 307 days.
3. THAT I did not receive copy of appellate order dated 26.12.2023 either physically or by post/courier etc. The delay in filing of appeal is due to the reason that the notices were not received by me in e-mail id mentioned in Form no. 35. In such form, I have mentioned e-mail id "shardap.1.soni@gmail.com", yet all hearing notices u/s 250 were sent by department on "laxmitripti@rediffmail.com" & "casmitajain@gmail.com", which belongs to my earlier counsel and his staff.

The fact of passing of appellate order came to my knowledge on 05.12.2024, when notice u/s 250 was received by me for proceedings u/s 144 r.w.s. 263 in respect of same year. While checking portal, my counsel informed me about passing of ex-parte order u/s 250.



6. JAN 2025

4. THAT although in Form no. 35, email id "shardap.1.soni@gmail.com" was given but against the column "whether notices/ communication may be sent on email?" I had mentioned "no".

I was under genuine and bonafide belief that the notices/ order etc. would be received by me physically and therefore, there was no reason for me to follow inbox of email. However, notices as well as appellate order were not received by me physically or by post/courier etc. Since I did not receive notices physically or by post/courier etc., no compliance could be made due to the above mentioned reasons.



THAT this affidavit is being deposed to affirm the above facts and is intended to be filed before Hon'ble ITAT along with condonation application.

Place: Raipur
Date: 06.01.2025

6. JAN 2025

Sarita Konda
(Sarita Konda)
Deponent

6. Admittedly, as the CIT(Appeals) 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 her email account. As the assessee states that the impugned order of the CIT(A) had come to her notice on 05.12.2024 (supra), 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 01.01.2025 i.e. within the stipulated time period, therefore, the same can safely be held to have been filed within the prescribed time.

7. I, thus, in terms of the aforesaid observations, condone the impugned delay of 307 days (as pointed out by the registry) in filing of the present appeal by the assessee.

8. Succinctly stated, the case of the assessee was selected for scrutiny assessment for the subject year to verify the substantial cash deposits made in her bank account during the demonetization period. During the course of assessment proceedings, the A.O observed that the assessee had made cash deposits of Rs.16,31,000/- in her bank account Nos.770036065852 and 77049794799 with Chhattisgarh Rajya Gramin Bank, Rajnandgaon. Although it was the claim of the assessee that cash deposits in her bank account was the amount of alimony that she had

received from her ex-husband viz. Shri K. Lalit Kumar pursuant to the decree of divorce on 19.04.2012 of the Hon'ble Family Court, Rajnandgaon, but the A.O held a firm conviction that the same was an amount received by her without consideration, and thus, was liable to be assessed as her income u/s.56(2)(v) of the Act.

9. Apart from that, the A.O held the amount of Rs.15,02,867/- received by the assessee as the death claim of her ex-husband, viz. Shri K. Lalit Kumar as her income u/s. 56(2)(v) of the Act.

10. Accordingly, the A.O based on his aforesaid deliberation, vide his order passed u/s.143(3) of the Act, dated 30.11.201, after making the aforesaid additions determined the income of the assessee at Rs.38,40,797/-

11. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). Ostensibly, as the assessee despite having been afforded three opportunities i.e. on 19.01.2021, 07.11.2023 and 29.11.2023 had failed to participate in the proceedings before the first appellate authority, therefore, the latter on the said count itself dismissed the appeal. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“2. In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken

by the appellant, the case was posted for hearing on various dates, the details of which are as under:

Date of notice	Date of compliance	Status
19.01.2021	26.01.2021	No Compliance
07.11.2023	14.11.2023	No Compliance
29.11.2023 (Final opportunity)	07.12.2023	No Compliance

3. The National Faceless Appeal Centre (NFaC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but has not chosen to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal. 4.1 Reference is made to the decision of Hon'ble Supreme Court in the case of CIT Vs. BN Bhattacharya (1997) 118 ITR 461 (SC), in which the Hon'ble Apex Court while dealing with the issue of prosecution of appeal has stated that:

"Preferring an appeal means more than formally filing it but effectively pursuing it".

4.2 The Delhi Tribunal in CIT Vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi) when faced with a similar situation of non-prosecution of appeal, dismissed the appeal of revenue.

4.3 Reliance is also placed in the case of Vipul Logistic & Warehousing (P) Ltd Vs. ITO, wherein the Hon'ble Delhi ITAT has confirmed even the order of CIT(A) who dismissed the appeal of the taxpayer when there was no response to the notices issued. The observations and decision of the Hon'ble ITAT are as under:

"We have heard rival submissions and have gone through the entire material available on record. In the grounds filed before us, assessee has not raised any such ground about the assessment being time barred. Therefore, since the plea raised by the assessee does not arise out of its grounds of appeal, the same is dismissed. We see no infirmity on the order of CIT(A) which is passed ex-parte due to deliberate non-cooperation of the assessee. Therefore, the assessee's appeal is dismissed."

4.4 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

5. As a result, the appeal filed by the appellant is dismissed."

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

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

14. Shri R.B. Doshi, Ld.AR for the assessee, at the threshold, submitted that though the assessee had in memorandum of appeal i.e. "Form-35" specifically opted out of service of notices/communications from the office of the CIT(Appeals) through email, but no physical/hard copy of any such notices issued on either of the three occasions, viz. on 19.01.2021, 07.11.2023 and 29.11.2023 intimating the fixation of hearing of the appeal was ever served upon her. Elaborating on his contention, the Ld. AR submitted that the assessee for no fault on her part had remained divested of an opportunity to defend her case before the first appellate authority

and had been visited with an ex-parte order. Carrying his contention further, the Ld. AR submitted that even otherwise, the CIT(Appeals) had dismissed the appeal without advertng to the specific issue, based on which, the impugned order was assailed before him. The Ld. AR based on his aforesaid contentions submitted that the matter in all fairness be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the same after validly putting the assessee to notice.

15. Per contra, Smt. Tarannum Verma, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

16. I have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities. It is a matter of fact borne from record that though the assessee had in memorandum of appeal i.e. "Form-35" specifically opted out of service of notices/communications from the office of the CIT(Appeals) through email, but no physical/hard copy of any such notices on either of the three occasions, viz. on 19.01.2021, 07.11.2023 and 29.11.2023 intimating the fixation of hearing of the appeal was ever served upon her.

17. Admittedly, it is a matter of fact borne from record that the assessee despite having been afforded three 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 in the “memorandum of appeal” filed before the CIT(Appeals) in “Form 35” had specifically opted out of service of notices/communications from his office through email, therefore, she 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 her “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 three occasions viz. on 19.01.2021, 07.11.2023 and 29.11.2023 the notices intimating the fixation of appeal i.e. were issued electronically through ITBA. Accordingly, I concur with the claim of the Ld. AR that there were justifiable reasons for the assessee of having remained unaware about the on-going appellate proceedings before the CIT(Appeals) due to which she had failed to participate in the same.

18. 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 her 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 who shall remain at a liberty to substantiate her contentions on the basis of fresh documentary evidence, if any.

19. Before parting, I may herein clarify that though the assessee in her 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. shardap.1.soni@gmail.com, then the same would duly be complied with.

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

Order pronounced in open court on 24th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 24th 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 फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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