

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 546 & 547/RPR/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Pramila Gokuldas Daga Girls College
Bal Ashram Parisar, Kutchery Chowk,
Raipur (C.G.)-492 001
PAN: AAATP4369D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3(4), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, CA
Revenue by : Smt. Tarannum Verma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.01.2025
घोषणा की तारीख / Date of Pronouncement : 24.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee trust are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 22.10.2024, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s 144 AND 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') dated 09.10.2018 and 10.04.2019 for the assessment year 2011-12.

2. We shall first take up the appeal filed by the assessee trust in ITA No.547/RPR/2024 (quantum appeal) for A.Y.2011-12, wherein the assessee trust has assailed the impugned order on the following grounds of appeal before us:

“1. In view of the facts of the case, the Ld. AO had erred in treating the entire cash deposit in saving bank account of Rs.77,27,120/- as total income of the appellant.

2. In view of the facts of the case, the Ld. AO had erred in adding the interest on fixed deposit of Rs.33,347/- to the total income of the appellant.

3. Looking to the facts of the case, the appellant is eligible for exemption available u/s.10(23)(c)(iiiad) and hence may kindly be allowed.

4. In view of the circumstances of the case, best judgment assessment order passed u/s.144 without giving proper opportunity of being heard to the appellant is unjustified.

The appellant craves to be allowed to add, amend, withdraw or otherwise modify the aforesaid grounds of appeal.”

3. Succinctly stated, the A.O issued notice u/s. 148 of the Act, dated 21.03.2018 for A.Y.2011-12, therein, calling upon the assessee trust to file its return of income. Ostensibly, as the assessee trust had failed to comply with the aforesaid notice, therefore, a reminder letter dated 12.06.2018 was personally served. As the assessee trust still failed to file its return of income in compliance to notice u/s. 148 of the Act, therefore, the A.O was constrained to proceed with and frame the assessment u/s. 144 of the Act.

4. During the course of assessment proceedings, the A.O observed that the assessee trust had during the subject year made cash deposits of Rs.77,27,120/- in its bank account. Also, it was observed by him that the assessee trust had received interest income of Rs.33,347/-. As there was no explanation forthcoming from the assessee trust regarding the source of the aforesaid cash deposits and interest income, therefore, the A.O vide his order passed u/s.147 r.w.s. 144 of the Act, dated 09.10.2018, after making the aforesaid additions, assessed the income of the assessee trust at Rs.77,60,467/-.

5. Aggrieved the assessee trust carried the matter in appeal before the CIT(Appeals) but without success. Ostensibly, as the assessee trust despite having been intimated about the fixation of hearing of the appeal on four occasions, i.e. on 15.02.2021, 03.10.2024, 10.10.2024 and 15.10.2024 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. The CIT(Appeals) observing that there was no infirmity in the view taken by the A.O, sustained the additions made by him, viz. (i) undisclosed cash deposits : Rs.77,27,120/-; and (ii) addition of interest income : Rs.33,347/- and dismissed the appeal.

6. The assessee trust being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Shri Ravi Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee trust, at the threshold of hearing, submitted that the A.O had grossly erred in law and facts of the case in assuming jurisdiction and framing the impugned assessment vide his order passed u/s. 147 r.w.s. 144 of the Act, dated 09.10.2018. Elaborating on his contentions, the Ld. AR had come forth with three fold contentions, viz. (i) that the assessment framed by the A.O in absence of valid service of notice u/s. 148 of the Act cannot be sustained and is liable to be struck down on the said count itself; (ii) that though notice u/s. 148 of the Act was issued by the ITO,

Ward-2(1), Raipur i.e. a non jurisdictional A.O but the assessment, thereafter, had been framed by the ITO, Ward-3(4), Raipur i.e. the jurisdictional A.O but in absence of any order of transfer u/s.127 of the Act; and (iii) that as the gross receipts of Rs.77.27 lacs (approx.) of the assessee trust were exempt u/s.10(23)(c)(ii) of the Act, therefore, there was no justification for the A.O to have held the same as unexplained cash deposits specifically when the reassessment proceedings in the case of the assessee for the subsequent years i.e. A.Y.2015-16, 2016-17, 2019-20 and 2020-21 had been dropped by the department.

9. Apart from that, the Ld. AR submitted that though the assessee trust in its memorandum of appeal i.e. "Form 35" had specifically opted out of service of notices/communications from the office of the CIT(Appeals) through email but neither of the notices intimating the fixation of hearing of the appeal i.e. on 15.02.2021, 03.10.2024, 10.10.2024 and 15.10.2024 were ever physically served upon the assessee trust. Carrying his contention further, the Ld. AR submitted that as the assessee trust had remained unaware about the ongoing proceedings before the CIT(Appeals), therefore, for no fault on its part, it had remained divested of an opportunity of putting its case before the first appellate authority. The Ld. AR in order to buttress his aforesaid claim had drawn our attention to "Form-35". It was, thus, the claim of the Ld. AR that the matter in all fairness required to be restored to the file of the CIT(Appeals)

with a direction to re-adjudicate the same after validly putting the assessee trust to notice.

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

11. As the Ld. AR has assailed the validity of the order of the CIT(Appeals), for the reason that the latter without validly putting the assessee to notice about the fixation of hearing of the appeal had disposed of the appeal, therefore, we shall first deal with the said material aspect.

12. Admittedly, it is a matter of fact borne from record that the assessee trust 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, we find substance in the contention advanced by the Ld. AR that as the assessee trust 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, 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 trust/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. notice(s) dated 15.02.2021, 03.10.2024, 10.10.2024 and 15.10.2024 were issued electronically through ITBA. We, thus, concur with the Ld. AR's claim that there were justifiable reasons for the assessee trust 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. For the sake of clarity, the relevant extract of the "Form-35" is culled out as under:

FORM NO. 35 [See rule 45] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)		Acknowledgement Number
					471986061070519
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
			PRAMILA GOKULDAS DAGA GIRLS COLLEGE	AAATP4369D	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	BAL ASHRAM PARISH				
	Area/ Locality	Town/ City/ District		State	Country
	KUTCHRY CHOWK	RAIPUR		CHHATISHGARH	INDIA
Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?	
492001	- 6265650009	-	daga.girls.college.raipur@gmail.com	No	

13. 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), we are of the view that as the assessee trust-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 trust which shall remain at a liberty to substantiate its contentions on the basis of fresh documentary evidence, if any.

14. Before parting, we may herein clarify that though the assessee trust 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. daga.girls.college.raipur@gmail.com, then the same would duly be complied with.

15. In the result, appeal of the assessee trust in ITA No.547/RPR/2024 for A.Y.2011-12 is allowed for statistical purposes in terms of our aforesaid observations.

ITA No.546/RPR/2024
[Appeal on penalty u/s.271(1)(c) of the Act]
A.Y.2011-12

16. We shall now take up the appeal filed by the assessee trust in ITA No.546/RPR/2024, wherein it has assailed the impugned order on the following grounds of appeal:

“1. In view of the facts of the case, the Ld. AO had erred in passing the penalty order u/s.271(1)(c) without giving proper

opportunity of being heard to the appellant and hence may kindly be quashed.

2. In view of the facts of the case, the appellant has filed appeal, before the first appellate authority, against the assessment order in subject and hence the order of penalty may kindly be stayed upto the disposal of aforesaid appeal.

The appellant craves to be allowed to add, amend, withdraw or otherwise modify the aforesaid grounds of appeal.”

17. Succinctly stated, the assessment in the case of the assessee trust was framed by the A.O vide his order passed u/s.147 r.w.s. 144 of the Act, dated 09.10.2018, wherein its income was determined at Rs.77,60,467/- (supra). The A.O while culminating the assessment initiated penalty proceedings u/s.271(1)(c) of the Act.

18. After culmination of the assessment proceedings, the A.O vide his order passed u/s. 271(1)(c) of the Act, dated 10.04.2019 imposed penalty of Rs.22,47,605/-.

19. Aggrieved, the assessee trust carried the matter in appeal before the CIT(Appeals) who upheld the penalty imposed by the A.O u/s. 271(1)(c) of the Act.

20. The assessee trust being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

21. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

22. At the threshold, we may herein observe that as the appeal filed by the assessee trust against the order passed by the CIT(Appeal) i.e. in quantum appeal in ITA No.547/RPR/2024 had been restored by us to the file of the CIT(Appeals) for fresh adjudication, therefore, on the same terms, we herein restore the present appeal to his file with a direction to re-decide the same after disposing off the quantum appeal i.e. ITA No.547/RPR/2024.

23. In the result, appeal filed by the assessee trust in ITA No.546/RPR/2024 for A.Y.2011-12 is allowed for statistical purposes in terms of our aforesaid observations.

24. Resultantly, both the appeals of the assessee trust are allowed for statistical purposes in terms of our aforesaid observations.

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

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(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, Raipur-1 (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.