

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.04/RPR/2025

निर्धारण वर्ष / Assessment Year : 2011-12

Mukesh Kumar Mittal
Bhaiyathan Road,
Post-Surajpur (C.G)-497 229
PAN: AMLPM8514A

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 24.01.2025

घोषणा की तारीख / Date of Pronouncement : 27.01.2025

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 31.01.2024, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s. 263 r.w.s 144B of the Income-tax Act, 1961 (in short 'the Act') dated 18.03.2022 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That, on the facts and circumstances of the case and in law, the very first reassessment order passed u/s.143(3)/147 dt. 19/11/2018 of the Income Tax Act, 1961, is illegal and bad in law, and therefore all consequential orders, i.e. order passed u/s. 263 by Ld. PCIT, order passed u/s. 147 r.w.s 263 dt. 18/03/2022 [which has been appealed against before Ld. CIT(A)], and appellate order u/s.250 dt. 31/01/2024 [which is now appealed against] are also non-est and illegal, and therefore not sustainable in law and liable to be quashed.

2. That, on the facts of the case, Ld. IT(A) is not justified in dismissing the appeal without giving effective opportunity of being heard as asked by the appellant in Form No. 35 and therefore it is liable to be quashed.

3. That, without prejudice to above, on the facts of the case and in law, Ld. CIT(A), NFAC, erred in confirming the addition of Rs.29,39,000.00 made by the AO and it is liable to be deleted.

4. That, AO erred in initiating penalty u/s.271(1)(c) without considering the facts of the case judicially.


5. That the appellant reserves the right to add, alter or modify any ground of appeal.”

2. Shri Ravi Agrawal, Ld. Authorized Representative (for short 'AR') for assessee, at the threshold of hearing, submitted that the present appeal involves a delay of 278 days. Elaborating on the reason leading to the delay of 278 days involved in filing of the present appeal, the Ld. AR has drawn my attention to the application for condonation of delay and the "affidavit", dated 31.12.2024 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, no physical/hard copy of the impugned order of the CIT(A) was received by him. 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. It was submitted by the Ld. AR that as the delay of 278 days had occasioned for no fault on his part, therefore, the same in all fairness be condoned.

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 Ld. 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

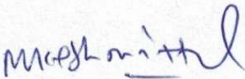
of notices/communications from the CIT(Appeals) office through email. For the sake of clarity, the relevant extract of “Form No. 35” is culled out as under:

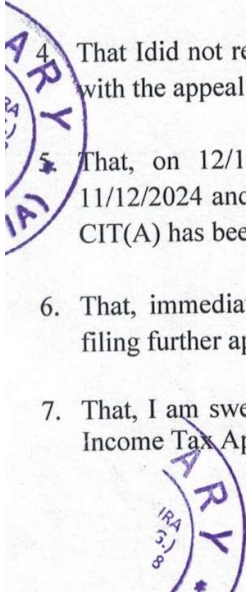
FORM NO. 35 [See rule 45]	
Appeal to the Joint Commissioner (Appeals) or the Commissioner of Income-tax (Appeals)	
Acknowledgement Number -592303750210422	
 e-Filing <i>Anywhere Anytime</i> <small>Income Tax Department, Government of India</small>	
Personal Information :	
Name of Entity	MUKESH MITTAL
PAN	AMLPM8514A
TAN	-
Address	surajpursurajpur, surajpur, , , ,
Mobile No.	7697453877
STD code	7775
Landline No.	
Email Address	pa959936@gmail.c om
Whether notices/communication may be sent on email?	No

5. Although, the assessee had specifically stated that all the notices/communications be sent otherwise than through email, but no physical/hard copy of the order of the CIT(A) was served upon the assessee. The Ld. AR in support of his aforesaid contention had taken me through the “affidavit” dated 31.12.2024 filed by the assessee. For the sake

of clarity, the “affidavit”, dated 31.12.2024 is culled out as under (relevant extract):

1. That I am carrying on retail cloth trading business and showing my business income in my income tax return. I regularly file my income tax return and my PAN is AMLPM8514A.
2. That, for assessment year 2011-12 (financial year 2010-11) my assessment has been made u/s 147 read with section 263 vide order dt. 16/02/2022. I had filed appeal against that order before Ld. CIT(A), in the National Faceless Appeal Centre.
3. That, I had mentioned “ NO “ in form 35 in the column “ whether notice/communication may be sent on e-mail “ as I am not very well versed with using e-mail.
4. That I did not receive any notice by post from the office of Ld. CIT(A) in connection with the appeal proceeding.
5. That, on 12/12/2024, I came to know about penalty notice u/s 271(1)(c) dt. 11/12/2024 and only then, on 12/12/2024, I came to know that my appeal before Ld. CIT(A) has been dismissed vide order dt. 31/01/2024.
6. That, immediately after knowing this fact, I have contacted my tax consultant for filing further appeal against the order of Ld. CIT(A).
7. That, I am swearing this affidavit before notary public to furnish before Honourable Income Tax Appellate Tribunal, Raipur Bench, Raipur.


(Mukesh Mittal)
Deponent



6. Admittedly, it is a matter of fact borne from record that though the assessee had in the memorandum of appeal in “Form-35” specifically stated that all the notices/communications be sent otherwise than through email but no physical/hard copy of the order of the CIT(A) had

been served upon the assessee. 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 his email account. As the assessee states that the impugned order of the CIT(A) had come to his notice on 12.12.2024 (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 03.01.2025 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 278 days (as pointed out by the registry) in filing of the present appeal by the assessee.

8. Succinctly stated, the assessee had filed his return of income for A.Y.2011-12 on 09.08.2011, declaring an income of Rs.1,58,380/-. Subsequently, the case of the assessee was reopened and the assessment was framed by the A.O vide his order passed u/s.143(3) r.w.s. 147 of the Act, dated 19.11.2018 determining the income of the assessee at Rs.3,07,420/-.

9. After culmination of the assessment proceedings, the Pr. CIT called for the assessment record and set-aside the assessment order passed by

the A.O u/s.143(3) r.w.s. 147 of the Act, dated 19.11.2018 with a direction for fresh adjudication of the issue qua the source of cash deposits of Rs.29,39,000/- in the assessee's bank account. Thereafter, the A.O giving effect to the order of the Pr. CIT, Raipur-1 had framed the assessment vide his order passed u/s. 147 r.w.s. 263 r.w.s. 144B of the Act, dated 18.03.2022, wherein, after making an addition of cash deposits of Rs.29,39,000/- by treating the same as the assessee's unexplained money u/s. 69A of the Act the income of the assessee was determined at Rs.32,46,420/-.

10. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5. Decision:

5.1 The grounds of appeal, statement of facts and assessment order passed u/s.147 r.w.s. 263 r.w.s. 144B of the Act dated 16.03.2022 have been perused carefully. At the outset it is worth mentioning that during the pendency of the appeal, appellant was issued various notices of hearing u/s. 250 of the Act dated 04.01.2024, 12.01.2024 & 23.01.2024. For all these hearing notices, appellant could not make any submission in spite of availing sufficient time and opportunities. From the fact of appellant's non-response to various notices, it is clear that apparently, appellant has no specific submissions to file to pursue the pending appeal. As appellant failed to avail the opportunities offered on various occasions from time to time, it is understood that appellant is not keen to pursue the appeal as per law and accordingly, appeal filed by the appellant is liable to be dismissed for non-prosecution by the appellant. The following citations/decisions of Hon'ble Adjudicating Authorities clearly envisage for dismissal of appellant's appeal for appellant's failure to prosecute/pursue the pending appeal in spite of availing

sufficient time and opportunities and accordingly, is not maintainable. The relevant citations are briefed as under for placing reliance to adduce appellant's non-prosecution of appeal as not maintainable.

1. In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively pursuing it".

2. In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while dismissing the reference made at the instance of assessee in default made following observations in their order. "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".

3. In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date. The Hon'ble Tribunal laid down the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

5.1.1 Keeping in view the above facts of appellant's non-prosecution of this pending appeal and also placing reliance on above citations, appellant's appeal is to be treated as not maintainable. The approach of the assessee amply shows that he is not interested in prosecuting the appeal. Therefore, having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed.

6. In the result, the appeal is dismissed.”

11. The assessee being aggrieved with the order of the CIT(Appeals) 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 as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

13. Shri Ravi Agrawal, Ld. AR for the assessee, at the threshold, submitted that as the CIT(Appeals) had disposed of the appeal without validly putting the assessee to notice about the fixation of the hearing of the appeal on three occasions, viz. notice(s) dated 04.01.2024, 12.01.2024 and 23.01.2024, therefore, the assessee had suffered dismissal of the appeal vide an ex-parte order. Elaborating on his contention, the Ld. AR submitted that though the assessee 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 impugned notices intimating the fixation of the hearing of the appeal was ever served upon him. Carrying his contention further, the Ld. AR submitted that as the assessee had remained divested of an opportunity to put forth his case and assail 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 validly putting the assessee to notice. Elaborating further on his contentions, the Ld. AR submitted that the CIT(Appeals) had grossly erred in law and facts of the case by failing to address the specific issues, based on which, the assessee had assailed the impugned order before him.

14. Apart from that, the Ld. AR submitted that the A.O in the present case had wrongly assumed jurisdiction and initiated proceedings u/s. 147 of the Act. Elaborating on his contention, the Ld. AR submitted that though the A.O in the “reasons to believe”, Page 7 of APB, had observed that the assessee had not filed his return of income, however, the same was factually incorrect as he had for the subject year filed his return of income. The Ld. AR in support of his aforesaid contention had drawn my attention to Page 7 & 10 of APB. The Ld. AR submitted that though the assessee in the course of the assessment proceedings had objected to the assumption of jurisdiction by the A.O vide his letter dated Nil (filed on 15.11.2018), but the same was not disposed of by the A.O as required per the mandate of law. The Ld. AR in support of his aforesaid contention had relied on the judgment of the Hon’ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19 (SC). The Ld. AR based on his aforesaid contention submitted that as the A.O had not only wrongly assumed jurisdiction based on incorrect facts and reopened the case of the assessee, but also, thereafter, had framed the assessment in gross violation of the settled mandate of law, i.e. not disposing of the objections filed by the assessee as required under law, therefore, the assessment so framed by him was liable to be struck down on the said count itself.

15. Per contra, Smt. Tarannum Verma, the Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by her that as the assessee despite having been afforded three opportunities i.e. on 04.01.2024, 12.01.2024 and 23.01.2024 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.

16. 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, he 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 his "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 the notices intimating the fixation of appeal i.e. vide impugned

notice(s) dated 04.01.2024, 12.01.2024 and 23.01.2024 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 he had failed to participate in the same.

17. 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 his 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 assail the impugned order of assessment before him as per extant law.

18. Before parting, I may herein clarify that though the assessee in his 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 email account i.e. Mukeshmittal3454@gmail.com, then the same would duly be complied with.

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

Order pronounced in open court on 27th day of January, 2025.

Sd/-

(रवीश सूद / **RAVISH SOOD**)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 27th 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.