

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:366/RPR/2024
(निर्धारण वर्ष Assessment Year: 2010-11)

Viola Singh, Jarhabhata, Bilaspur, 495001, C.G.	V s	Income Tax Officer, Ward-1(4), Civil lines, Raipur, C.G.
PAN: BJOPS5423H		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G. S. Agrawal, CA
राजस्व की ओर से /Revenue by	:	Smt. Tarannum Verma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	30.01.2025
घोषणा की तारीख/Date of Pronouncement	:	31.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeal), NFAC, New Delhi, [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the AY 2010-11, dated 22.04.2024, which in turn arises from the order u/s 144 r.w.s. 147 dated 26.12.2017, passed by ITO, Ward-1(4), Raipur (in short Ld. AO").

2. The grounds of appeal raised by the assessee are as under:
1. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in dismissing the appeal ex-parte without considering the fact that Appellant requested for supply of copies of documents material for preparing submissions and Id. Assessing Officer did not supply the same despite appellant personally visiting latter's office on innumerable times and the documents are still no supplied rendering great hardship to Appellant to prepare and present her case.*
 2. *That under facts in the law the Id. CIT(A) erred in passing the order ex-parte without considering the facts available on record such as on Form No. 35, assessment order. Prayed that passing of order ex-parte without considering the facts of the case is not as per law.*
 3. *That the adjournment application of the assessee which were submitted to the Ld. CIT(A) have neither been rejected nor any communication in this respect have been made with the assessee. Thus, there was clear violation of principle of natural justice on the part of the Ld. CIT(A).*
 4. *That the learned CIT(A) has dismissed appeals filed by the assessee ex-parte, without discussing the issues on merits in a hurried manner for nonappearance of the assessee on given dates of hearing, but the fact remain that the assessee had filed a letter requesting for date, but the CIT(A) has ignored the adjournment sought by the assessee and dismissed the appeals ex-parte. Therefore, he order of the CIT(A) may be set aside to give on more opportunity of hearing to the assessee to file necessary evidence to defend its case.*
 5. *That the learned CIT (Appeal) erred in not considering that A.O. Raipur has no jurisdiction to make the assessment and issue notice*

as the appellant is residing of Bilaspur and filling her return at Bilaspur .

6. *That the learned CIT (Appeal) erred in confirming the addition of Rs.17820600/- on account of income from sale of property in the hands of assessee.*
7. *That the learned CIT (Appeal) erred in not considering the facts that the A.O. has not replied the objection raised by the appellant.*
8. *The appellant reserves the right to add, alter, and omit all or any of the grounds of appeal with the permission of the Hon'ble ITAT.*

Additional Grounds:

9. *"That under the facts and the law, the Ld. CIT (Appeals) erred in confirming the Order of the Ld. AO who made assessment on the Appellant and raised demand without having any jurisdiction as no proceeding u/s 148 was initiated against the Appellant and no valid Notice u/s 148 of the Income Tax Act, 1961 was issued and served upon appellant. Prayed to annul the Assessment Order."*
10. *That under the facts and the law, without prejudice to above, the Notice issued u/s 148 dated 31.03.2017 in the name of Vimal Nihal Singh LH on 09.11.2017 is barred by limitation, therefore entire proceedings are null and void."*

3. The brief facts of the case are that the assessee namely Smt. Vimal Nihal Singh, had not filed her Return of Income (ROI), for the AY 2010-11, but the Ld. AO was in receipt of certain specific information through NMS module of ITD with respect to that AIR transaction made by the assessee during the relevant FY 2009-10, that the assessee has sold an immovable property worth

Rs.1,78,20,600/-. On the basis of said information, the recourse u/s 147 of the Act has been initiated by issuing of notice u/s 148 of the Act after statutory approval of Pr. Commissioner of Income Tax-1, Raipur. Reasons were recorded u/s 148(2) of the I. T. Act.

4. Notice u/s 148 issued to the assessee was returned with the remark by the postal department that, the assessee is 'no more' and hence envelop is return back to the sender. Therefore, the inspector of income tax was deputed to serve the same, thus, service was made on L/H Smt. Viola Singh (Daughter of the assessee) in the given address fixing the case for hearing on 17.11.2017. In response to the said notice, the assessee was required to file the Return of Income within 30 days from the date of receipt of the said notice & but instead of responding, the L/H remain non-responsive towards the notice and to attend the hearing on the prescribed dates. Subsequently, assessee's daughter (L/H) Smt. Viola Singh attended the officer of Ld. AO on 08.12.2017, filed a letter regarding reason of reopening of the case. The reasons therefore, are served to her and the case was partly discussed. Later on, a notice u/s 142(1) with specific queries related to the matter was issued fixing the case on 15.12.2017. However, thereafter the L/H of the assessee neither attended nor any written submission have furnished with the department. Ld. AO also attempted through telephonic contact to the Legal Heir (L/H) and requested

her to submit the reply and related documents to make out the facts of the transaction, however, neither compliance have been made nor have appeared. Ld. AO observe that the L/H overlooked the notices, she failed to produce any evidence, despite sufficient opportunities are provided to her.

5. Another opportunity with specific mention that failing to comply with the notices in the present case, the case will be decided on merits on the basis of information available on record, however, L/H Smt, Viola Singh remain non-compliant. In view of non-cooperation of the L/H of the assessee, and failure on her part to file written response, the notice u/s 148, on account of non-compliance on the part of the assessee, Ld. AO decided the case u/s 144 of the Act on the best judgment basis by making the additions of Rs.1,78,20,600/- treating the same as income of the assessee.

6. Aggrieved with the aforesaid addition by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), however, could not succeed and the appeal of the assessee was dismissed on account of non-prosecution after observing any proof on the merits based on information available with the Ld. CIT(A). The observations of the Ld. CIT(A), while dismissing the appeal of the assessee read as under:

5. Discussion and appellate decision:-

It is evident from the above chronology of events that even though various opportunities were provided to the appellant Who deliberately and Willfully avoided the compliance of statutory notices which simply prove that he is not interested in prosecution of the matter. It is held in the case of CIT Vs. B.N. Bhattachargee & Ors. (118 ITR 461) by the Hon'ble Supreme Court that the appeal does not mean merely filing of appeal but effectively pursuing it. The sum and substance of ratio of this case is that the assessee cannot ask for relief merely by filing an appeal. In the case of Estate of Late Tukojirao Holkar Vs. CWT (223 ITR 480) (MP) while dismissing the reference at the instance of the assessee in default made following observation in their order:-

*"If the patty 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, the court is not bound to answer the reference.
"*

The Hon'ble Bombay High Court in the case of M/S. Chemipol V/s. Union of India in Excise Appeal No.62 of 2009 has held that in the cases where the assessee does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution. Likewise, in the case of CIT Vs. Multiplan India (P) Ltd. (38 ITD 320) (Del) the appeal filed by the appellant was dismissed for non-attendance.

5.1 Respectfully, following these judicial pronouncements (supra), the appeal filed by the appellant is treated as dismissed for non-prosecution. On merit also, the appellant has failed to disprove that the immovable property was not sold out by the deceased person. Neither any satisfactory explanation was given by the assessee before the AO in the assessment proceedings nor before me in appellate proceedings with regard to sale of the immovable property by the deceased mother of the assessee. This is a clear case where no satisfactory

explanation with supporting evidence was submitted by the appellant. In view of the facts and circumstances of the case and considering the above cited decisions, the addition made on account of capital gain was rightly made by the AO. Therefore, I hold that decision of the Ld. AO was fully justified and hence I confirm the addition of Rs.1,78,20,600/-. In view of the above, on merits also appeal deserves to be dismissed. Hence, appeal is dismissed for non-prosecution as well as on merits too.

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

7. Aggrieved with the aforesaid order of Ld. CIT(A), the assessee preferred an appeal, which is under consideration in the present case.

8. At the very inception of the hearing, it is noticed that the appeal of assessee is barred by limitation being filed with a delay of 46 days, for which an application for condonation of delay along with affidavit of the L/H of assessee (in individual capacity) is furnished before us, on this issue after hearing the Ld. AR's of both the parties, we are of the view that there are justifiable reasons leading to delay in filing of the appeal, therefore, the same is condoned.

9. At the outset, Shri G. S. Agrawal, CA, Authorized Representative of the assessee (in short "Ld. AR"), raised multiple contentions that (i) Ld. CIT(A) has erred in dismissing the appeal of the assessee on ex-

parte basis without considering the fact that the assessee requested for supply of copies of documents material for preparing submissions and Ld. AO but the same were not made available to assessee despite request of innumerable times (ii) Ld. CIT(A) erred in passing the *ex-parte* order without considering the facts available on record such as on Form No. 35, assessment order. (iii) that the adjournment application of the assessee neither rejected nor any communication has been made with the assessee by the Ld. CIT(A). (iv) that learned CIT(A) has not considered the assessee's claim that Ld. AO, Raipur has no jurisdiction to make the assessment and issue notice, as the assessee is resident of and filling her returns at Bilaspur only. (v) that the addition was wrongly confirmed by the Ld. CIT(A), (vi) that the Ld. CIT(A) erred in not considering the facts that the A.O. has not replied the objection raised by the appellant, (vii) that the Ld. AO who made the assessment and raised demand have no jurisdiction in the case of the assessee and (viii) that the notice u/s 148 dated 31.03.2017 was issued and served in the name of Smt. Vimal Nihal Singh LH on 09.11.2017, which was barred by limitation.

10. On the aforesaid issues, Ld. AR placed before us written submissions and relevant documents with the prayer that the order of

Ld. CIT(A) on *ex-parte* basis is a hardship to the assessee and the same is not in accordance with the mandate of law. It was the submission that, even the Ld. AO, who had passed the order is not the jurisdictional AO of the assessee to make assessment in the intent case, that the notice u/s 148 was issued after the stipulated time in the present case, therefore, the same is barred by limitation. With the aforesaid submissions, it was the prayer by Ld. AR that the assessment framed in the case of Smt. Viola Singh L/H of Smt. Vimal Nihal Singh is illegal and *void ab initio* and the same is liable to be quashed.

11. Per contra, Ld. Sr. DR submitted that Ld. AO had rightly issued the notice u/s 148 to the L/H late Smt. Vimal Nihal Singh, the conduct of the L/H of the assessee was non-cooperative and non-responsive, therefore, the Ld. AO was constrained to make the addition of unexplained amount received by the deceased assessee, in absence of any explanation by the L/H, despite sufficient opportunities granted to her. Ld. Sr. DR further submitted that the careless approach of assessee has remained continue before the Ld. CIT(A) also, that there was no compliance or representation on behalf of the assessee, consequently, Ld. CIT(A) rightly confirmed the addition in absence of any explanation by the L/H of the assessee, after discussing the merits of issue on the

basis of material available before him. In view of such facts and circumstances, Ld. AO had rightly made the addition, which cannot be held to be unsustainable, therefore, Ld. CIT(A) had rightly confirmed the addition, which deserves to be upheld.

12. We have considered the rival submissions, perused the material available on record and case laws relied upon by the parties. During the process of hearing before us, it is noticed that the assessment was framed in the name of Viola Singh L/H of Late Smt. Vimal Nihal Singh, Vikrant Bhawan, Behind Netaji Complex, Jharbhata, Bilaspur (C.G.), mentioning PAN No. BSLPS1366K of the deceased assessee late Smt. Vimal Nihal Singh, however the appeal before the Ld. CIT(A) was filed against the aforesaid order with the PAN No. BJOPS5423H of Smt. Viola Singh (individual) and the appellate proceedings are completed against Smt. Viola Singh (individual), instead of in the name of Viola Singh L/H of Smt. Vimal Nihal Singh. At this stage, it is incomprehensible to accept that, how the assessment order passed against Viola Singh L/H of Late Smt. Vimal Nihal Singh, which was assailed before the First Appellate Authority has been decided in the name of Viola Singh in individual capacity treating her the assessee instead of in the capacity of L/H of her mother Late Smt. Vimal Nihal

Singh. Herein, we may observe that the assessee who was implicated at first stage by the Ld. AO by way of assessment u/s 144 r.w.s. 147, cannot be changed during the appellate proceedings even if certain information are mistakenly filed by the assessee in Form No. 35. It was the duty of First Appellate Authority to raise objection to such an application of the assessee suffering with defects, to take necessary action for removal of such defects before deciding the appeal. In view of such facts and circumstances, we find that there was a serious laps *qua* the illegality of impugned appellate order by the First Appellate Authority, which was assailed before us in the present appeal that the same was passed against an assessee, who was not the assessee in the initial proceedings u/s 147 of the Act and against whom the additions are made in the impugned assessment order was passed. Considering the aforesaid defect in the order of Ld. CIT(A), it would be appropriate to set aside the same and restore the matter back to the file of Ld. CIT(A) to decide the issues afresh in the name of Viola Singh L/H of Late Smt. Vimal Nihal Singh, after affording opportunity of being heard to the assessee.

13. Adverting to the contentions raised by the Ld. AR regarding wrong assumption of jurisdiction by the Ld. AO *inter alia* the violation of

principle of natural justice by the Ld. CIT(A), as well as, the issues raised on merits, as the matter is set aside to the file of Ld. CIT(A) for fresh adjudication in terms of aforesaid observations, we refrain from dealing with all such contentions of the Ld. AR, the same are therefore, allowed to be raised before the Ld. CIT(A).

14. In result, appeal of assessee in **ITA No. 366/RPR/2024** for the AY 2010-11 is **allowed** for statistical purposes.

Order pronounced in the open court on 31/01/2025.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 31/01/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Viola Singh
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(4), 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