

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 No.533/RPR/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Madhu Anil Mark
Block No.D7, Flat No.19,
Chauhan Green Vally, Moti Lal Nehru Nagar,
Durg (C.G)-490 020
PAN : AIPPM0087J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1, Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri A.K Pansari, Advocate
Revenue by : Smt. Tarannum Verma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 31.01.2025
घोषणा की तारीख / Date of Pronouncement : 03.02.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the ADDL/JCIT(A), Lucknow, dated 22.08.2024, which in turn arises from the order passed by the A.O under Sec.144 of the Income-tax Act, 1961 (in short 'the Act') dated 17.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Cash Deposited is Rs.20.00 lakhs only which is assessee own money which he has withdrawn from State Bank of India on 06.09.2016 (A/c No.10741297845) before demonetization period and suddenly after announcement of demonetization assessee has deposited the money in his Punjab National Bank account on 12.11.2016 (A/c No. 1521000100984498) since old notes were declared non legal tender money by the government. Bank statement of both banks is available.

2. Cash Deposited in bank account is Rs.20.00 lakhs only which was withdrawn by the assessee from his bank account but in Assessment Order Ld. AO has erred in mentioning it as Rs.40.00 Lakhs in Para-3 of Assessment Order dated 17.12.2019. The demonetization period is also written as 09.11.2019 to 31.12.2019 in assessment order under para-3 which is not correct. Thus the addition by the Ld. A.O. is not correct as it is not income of assessee.

3. Assessee is a 68 Years senior citizen and a serious heart patient and undergoing medical treatment. Presently assessee has no source of income except interest income from bank.”

2. Shri A.K Pansari, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold of hearing, submitted that the present appeal involves a delay of 20 days. Elaborating on the reasons leading to the delay involved in filing of the present appeal, the Ld. AR has filed an application seeking condonation of the same a/w. an "affidavit" dated 25.01.2025. It was submitted by the Ld. AR that as the delay involved in filing of the present appeal had occasioned due to bonafide reasons, therefore, the same in all fairness be condoned.

3. Per contra, Smt. Tarannum Verma, Ld. Sr. Departmental Representative (for short 'DR') did not raise any objection to the seeking of condonation of delay of 20 days involved in filing of the present appeal by the assessee appellant.

4. After considering the application filed by the assessee seeking condonation of a delay of 20 days involved in filing of the appeal and the "affidavit" dated 25.01.2025 a/w. medical certificates of the assessee, I am of the view that as there were justifiable reasons leading to the delay of 20 days involved in filing of the present appeal which is not inordinate, therefore, the same merits to be condoned.

5. Succinctly stated, the assessee had e-filed his return of income for A.Y.2017-18 on 27.07.2017 declaring an income of Rs.16,47,390/-.

Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

6. The A.O based on information that the assessee during the demonetization period i.e. 09.11.2016 to 31.12.2016 had made cash deposits of Rs.40,00,000/- in his bank account, thus, in absence of any explanation forthcoming regarding the source of the aforesaid cash deposits, held the entire amount as the unexplained income of the assessee and made an addition of the same. Accordingly, the A.O vide his order passed u/s.144 of the Act, dated 17.12.2019, after making the aforesaid addition, determined the income of the assessee at Rs.56,47,390/-.

7. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. Ostensibly, as the assessee despite having been afforded five opportunities i.e. on 29.01.2021, 14.02.2024, 18.04.2024, 08.07.2024 and 01.08.2024 had failed to participate in the proceedings before the first appellate authority, therefore, the latter dismissed the appeal. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“8.3 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the

claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. At present Assessee do not have any other source of income accept the interest which he received from his previously deposited salaries, he had shifted from Dallirajhara to Bhilai He did not receive a single letter from the Income Tax Department He just received one phone call from the Income Tax Department and his legal counsellor had replied to the Income Tax Department on 27/12/2019, but even after that the Income Tax Department had passed an ex- parte order under section 144 under Income Tax Act Assessee had now shifted from Dallirajhara to Bhilai He did not receive any information from the Income Tax department and he sincerely apologizes to the Income Tax Department for not seeing his tax portal after when his counsellor had replied on 27 /12/ 2019 and Now he received an ex- parte order on 15/05/ 2020. Core of issued of ground which was already discussed in this order as in lack of any follow up made by applicant to discharge his duty to response against burden of proof his appeal cannot be accepted. Same is the position in case of all allowances, deductions, claims or loss, etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. Hence, respectfully following the above mentioned judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed.

In my considered view, the findings of the AO in the assessment order are self-speaking and do not require any interference. Hence the appeal is liable to be dismissed.

9. In the end result, the appeal is DISMISSED.”

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

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

10. Shri A.K Pansari, Ld.AR for the assessee, at threshold of hearing, submitted that the impugned addition of Rs.40 lacs (supra) made by the A.O while framing the assessment vide his order passed u/s. 144 of the Act, dated 17.12.2019 is based on perverse observations. Elaborating on his contention, the Ld. AR submitted that the assessee had only made cash deposits of Rs.20 lacs in his bank account No.1521000100984498 held with Punjab National Bank, Branch : Dallirajhara, District : Durg. The Ld. AR had taken us through the bank statement of the aforesaid bank account held by the assessee with Punjab National Bank, Page 33-34 of APB, which revealed that a cash deposit of Rs.20 lacs was made on 12.11.2016. Although the assessee had placed on record copy of his bank account No.10741297845 held with State Bank of India, we find that the same is incomplete and pertains to a part of the year, i.e. 01.08.2016 to 21.09.2016, Page 31-32 of APB.

11. Apart from that, the Ld. AR submitted that the ADDL/JCIT(A), Lucknow had disposed off the appeal without validly putting the assessee

to notice about the fixation of the same on different dates. Elaborating on his contention, the Ld. AR stated at bar that though the assessee had in the memorandum of appeal i.e. "Form-35" specifically opted out of receipt of all notices/communications from the CIT(Appeals)'s office through email, but till date no physical/hard copy of either of the notices intimating the fixation of the hearing of the appeal on either of the five occasions i.e. 29.01.2021, 14.02.2024, 18.04.2024, 08.07.2024 and 01.08.2024 was ever served upon him. The Ld. AR in support of his aforesaid contention had taken us through the "Form 35" which reads as under: (relevant extract)

FORM NO. 35 [See rule 45] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)	Acknowledgement Number 350129540100620	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
	MADHU	ANIL	MARK	AIPPM0087J	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	BLOCK NO D7 , PLAT NO 19			CHAUHAN GREEN VELLY	
	Area/ Locality	Town/ City/ District		State	Country
	Moti Lal Nehru Nagar	DURG		CHHATISHGARH	INDIA
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?
490020	91 - 9754123464	-	aippm0087j@akpansari.in	No	

Carrying his contention further, the Ld. AR submitted that as the assessee had remained divested of an opportunity to put forth his 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 him to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee.

12. Apropos the source of the cash deposits of Rs.20 lacs made by the assessee in his bank account No. No.1521000100984498 held with Punjab National Bank, Branch : Dallirajhara, District : Durg on 12.11.2016, it was submitted by the Ld. AR that the same was sourced from the cash withdrawal of Rs.20 lacs that was made by him on 06.09.2016 from his bank account No. 10741297845 held with State Bank of India.

13. Per contra, Smt. Tarannum Verma, 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 despite having been afforded five opportunities i.e. 29.01.2021, 14.02.2024, 18.04.2024, 08.07.2024 and 01.08.2024 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. Also, the Ld. DR submitted that it is incomprehensible that the assessee would have remained unaware about the ongoing appellate proceedings before the CIT(Appeals) which had continued for a period of 4 years i.e. upto 22.08.2024.

14. Admittedly, it is a matter of fact borne from record that the assessee despite allegedly having been afforded five 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 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 six occasions the impugned notices intimating the fixation of appeal i.e. dated 29.01.2021, 14.02.2024, 18.04.2024, 08.07.2024 and 01.08.2024 were issued electronically through ITBA. Accordingly, we 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.

15. 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-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 substantiate his aforesaid claim on the basis of fresh documentary evidence, if any. Although it is the claim of the Ld. AR that the assessee had made cash deposits of only Rs.20 lacs in his bank account during the subject year, but the said fact cannot be summarily accepted by us in the course of the present proceedings. Accordingly, the Addl./JCIT(Appeals) is directed to address the aforesaid claim of the assessee in the course of the set-aside proceedings. Also, the ADDL/JCIT(A) is directed to look into the Ld. AR's claim that the cash deposits of Rs.20 lacs made by the assessee in his bank account No. 1521000100984498 held with Punjab National Bank, Branch : Dallirajhara, District : Durg on 12.11.2016 was sourced from the cash withdrawals of Rs.20 lacs that was made by him on 06.09.2016 from his bank account No.10741297845 held with State Bank of India.

16. Before parting, we 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 the set-aside proceedings are dropped in the said email account i.e. aippm0087j@akpansari.in, then the same would duly be complied with.

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

Order pronounced in open court on 03rd day of February, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 03rd February, 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.