

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: 477/RPR/2024
(निर्धारण वर्ष Assessment Year: 2015-16)

Kundan Singh Thakur, Karamachari Colony, Kushalpur, Raipur, - 492001, C.G.	V s	Income Tax Officer-4(1), (erstwhile I. T. O.-4(5), Aayakar Bhawan, Raipur, C.G.
PAN: AEKPT8654F		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Smt. Tarannum Verma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24.01.2025
घोषणा की तारीख/Date of Pronouncement	:	12.02.2025

आदेश / ORDER

Per Arun Khodpia, AM:

This captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 02.09.2024, for the Assessment Year 2015-16, which in turn arises from the order of Income Tax Officer-4(5), (in short "Ld. AO") u/s 143 of the Act, dated 13.12.2017.

2. The grounds of appeal raised by the assessee in ITA No. 477/RPR/2024, are as under:

1. *Ld. CIT(A) erred in confirming addition of Rs.8,90,000/- made by AO on account of sundry creditors reflected in balance sheet invoking sec. 68. The addition made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless and not justified.*
2. *Ld. CIT(A) erred in confirming addition of Rs.37,03,174/- made by AO on account of deposit/ investment/ balance in the saving account with Jila Sahakari Kendriya Bank invoking sec. 69. The addition made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless and not justified.*
3. *Ld. CIT(A) erred in confirming addition of Rs.1,81,691/- made by AO on account of saving bank interest. The addition made by AO and confirmed by Ld. CIT(A) is not justified.*
4. *Ld. CIT(A) erred in confirming addition of Rs.1,80,000/- treating agricultural income shown by appellant as unexplained cash credit invoking 68. The addition made by AO and confirmed by Ld. CIT(A) is illegal and not justified.*
5. *Ld. CIT (A) erred in confirming the additions made by AO without appreciating the fact that the issue relating to additions are not covered by scope of 'limited scrutiny'. The assessment order & addition made are illegal & without jurisdiction.*
6. *The assessment proceedings and the assessment order passed by AO is illegal, ab initio void inasmuch as notice u/s 143(2) was not issued by jurisdictional AO within prescribed time. The assessment order is illegal & unsustainable inasmuch as it is based on illegal notice issued u/s 143(2) and is liable to be quashed. Ld. CIT(A) erred in confirming addition made in an illegal order.*
7. *The appellant reserves the right to amend, modify or add any of the ground/s of appeal.*

Additional Ground of appeal:

“Assessment order passed by ITO-4(5), Raipur is illegal as much as no order u/s 127 was passed for transfer of case from ITO-2(1), Raipur to ITO-4(5). Assessment order is liable to be quashed.”

3. Concisely stated, assessee is an individual, who filed his Return of Income (ROI) electronically on 15.09.2015, declaring total income of Rs.3,14,880/- and agricultural income of Rs.1,80,000/- for the year under consideration i.e., AY 2015-16. The case of the assessee was selected for Limited Scrutiny on the reason- “Substantial increase in capital in a year”. Statutory notices u/s 143(2) dated 29.07.2016 and notice u/s 142(1) along with query letter were issued and served on the assessee on 11.04.2017. Further, due to change of incumbent letter dated 19.06.2017 and notice u/s 142(1) dated 04.07.2017 was issued along with along with questionnaire were issued. In response, requisite information was furnished through his Counsel. Further, query letter were raised vide notice u/s 142(1) dated 23.10.2017. Ld. Counsel for the assessee requested for adjournment of the case, thereafter, case was adjourned. In due course, a written reply was furnished on behalf of the assessee during the assessment proceedings, various issues were raised by the Ld. AO, which were responded by the assessee. However, being dissatisfied on certain issues, Ld. AO completed the assessment with the following additions:

	<i>Total income shown in the return</i>	<i>Rs.314880/-</i>
<i>Add-</i>	<i>1. As discussed in para (3) above Rs. 890000/- (Addition u/s 68, on account of bogus sundry creditors reflected in balance sheet)</i>	
	<i>2. As discussed in para (4) above Rs. 3703174/- (Addition u/s 69, on account of unexplained deposits / investment / balance in saving account of the assessee)</i>	
	<i>3. As discussed in para (5) above Rs. 181691/- (Addition on account of bank interest)</i>	
	<i>4. As discussed in para (6) above Rs. 180000/- (Addition u/s 68, treating the agriculture income of the assessee as unexplained cash credit)</i>	
		<i>Rs.4954865/-</i>
	<i>Total Income</i>	<i>Rs.5269745/-</i>
	<i>R.O.</i>	<i>Rs.5269750/-</i>

4. Being aggrieved with the aforesaid additions made by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein the assessee remain non-compliant towards all the notices issued on 25.01.2021, 07.12.2021, 23.03.2022, 24.04.2022 and 05.08.2024. In view of no representation on behalf of the assessee, Ld. CIT(A) presumed that the assessee chose not to pursue the appeal, therefore, he find it appropriate to dispose of the appeal on the basis of statement facts filed along with the Appeal memo in Form 35 and the Assessment order passed by the Ld. AO. Ld. CIT(A) deliberated upon the various ground raised by the assessee, however, in absence of any response by the assessee, it is presumed that the appellant/assessee is not interested in pursuing the appeal. Further, Ld. CIT(A)

discussed the merits of the issues based on information available with him and had upheld the additions made by the Ld. AO, as the assessee failed to justify the transactions based on which the addition was made. Consequently, all the grounds raised by the assessee before the Ld. CIT(A) are rejected. In totality, the appeal of the assessee was dismissed.

5. Dissatisfied with the aforesaid order of Ld. CIT(A), assessee preferred an appeal before us, which is under consideration in the present case.

6. At the outset, Shri R. B. Doshi, CA, Authorized Representative of the assessee (in short "Ld. AR"), submitted that reason for non-appearance before the Ld. CIT(A) was that the email ID preferred by the assessee while filing appeal memo in Form No. 35 was "*utpal_kitply@rediffmail.com*", whereas the emails were sent on "*utpalkitply@rediffmail.com*", on this issue Ld. AR placed his reliance on the case of Dinesh Saraogi vs ITO in ITA No. 417/RPR/2024 dated 21.10.2024. Wherein, under similar facts and circumstances, the assessee remains absent before the First Appellate Authority, because the notice u/s 250 providing opportunity to the assessee are not validly served upon him. Ld. AR further drew our attention to Form No. 35 filed before the Ld. CIT(A), wherein in response to the question, "Whether notices / communication may be sent on email?", the assessee opted "NO". Relevant portion of Form 35 is extracted as under:

FORM NO. 35 [See rule 45]			CIT(A)		Acknowledgement Number	
Appeal to the Commissioner of Income-tax (Appeals)			CIT (A), Raipur- 2		355407871040118	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)	
	KUNDAN	SINGH	THAKUR	AEKPT8654F		
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office		
	KARMCHARI COLONY			KUSHALPUR ROAD		
	Area/ Locality	Town/ City/ District		State	Country	
	KUSHALPUR	RAIPUR		CHHATISHGARH	INDIA	
	Pincode	Mobile No	STD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?	
	492001	9425566922	-	utpal_kitply@rediffmail.com	No	

7. Based on aforesaid submissions, it was the prayer by Ld. AR that, the opportunity notices issued by the office of Ld. CIT(A) are not validly served upon the assessee, as the same are send on an email ID other than the email ID preferred by the assessee and also on the count that the notices are preferred other than by way of an email, the assessee was under Bonafide belief to receive the notices through post in physical form, but such service was not effected by the revenue. Ld. AR submitted that it shall be treated as sufficient cause for which the assessee was unable to attend the proceedings before the Ld. CIT(A) on the appointed dates. It was the submission by Ld. AR that this issue is already covered by the order of this tribunal in the case of Dinesh Saraogi Vs. ITO(Supra). It was the prayer by Ld. AR that there was sufficient cause, beyond the control, for which the assessee was unable to substantiate his contention before the Ld. CIT(A), therefore, in all fairness, the matter may be taken up for adjudication on the grounds of appeal raised by

the assessee and the additional evidence furnished by the assessee u/r 29 may be considered to support the contentions of the assessee.

8. Per contra, Smt. Tarannum Verma, Ld. Sr. DR, vehemently supported the orders of Ld. CIT(A) and requested to sustain the same.

9. We have considered the rival submissions, perused the material available on record and the case law relied upon by the Ld. AR. Admittedly, in the present case the assessee in form No. 35 had opted for communications in a mode other than by way of an email, whereas it is transpired from the submissions by the Ld. AR that the communications are made on an email, that too was not the right email ID which assessee has mentioned in Form 35, therefore, the service of notice cannot be considered as have been validly made. Ld. AR placed his reliance on the order of this tribunal in the case of **Dinesh Saraogi Vs. ITO (supra)**, wherein the relevant observations *qua* condonation of delay permitted to the assessee are culled out as under for the sake of examining the applicability of the said judgment in the present case:

13. *We have considered the rival submissions, perused the material available on record and the orders of Ld. Revenue Authorities. In present case, while deliberating upon the assertions by the Ld. AR qua the delay involved in filing of the appeal, it is noted that there was an option in appeal memo in form no. 35 for filing of appeal before the first appellate authority, wherein the assessee is required to furnish an email ID, in this case the Email ID furnished by the assessee was saraogidinesh@yahoo.co.in (as evident from the copy of Form 35 submitted before us, relevant portion extracted supra). Further, the*

assessee has been provided with the option that “**whether notices / communication may be sent on email?**”, in present case to answer the said option the assessee filled / opted “**NO**”. The aforesaid two facts borne out from records are not disputed by either party. It is further brought to our knowledge by way of placing the copies of screen shot of the web portal of the Income Tax Department, extracted therefrom copies of notices / communications bearing reference ID 100031040998 & 100027104746 both dated nil, having attachments “Hearing Notice us 250_1030358387(1)_04022021.pdf” & “Hearing Notice us 250_1027160342(1)_27052020.pdf” respectively, such documents shows that the notices for hearing dated 04.02.2021 & 27.05.2020 were issued to the assessee, however in both the aforesaid notices the email ID mentioned was saraogidinesh@gmail.com, which is not the email ID mentioned by the assessee in Form No. 35.

14. In view of aforesaid admitted facts of the present case, we find force in the contentions of the Ld. AR that there was bonafide and sufficient reasons for the assessee justifying the delay in filing of the appeal, as the communications were sent on a different email ID, than the email ID preferred by the assessee in form no. 35, moreover, the option for communications though email was opted with “**NO**”, assessee’s belief to receive the communication, other than through email as mandated in law cannot be brushed aside. We, therefore, are of the considered view that there was no intentional lapse or negligence on the part of assessee in the delay involved in filing of the present appeal, therefore, we allow the condonation of delay.

10. Following the aforesaid analogy drawn by us in the case of **Dinesh Saraogi Vs. ITO(Supra)**, as under the identical circumstances, akin to the case relied upon by the assessee, wherein, we have considered the plea of assessee that if the communications are not made on the preferred ID or in the mode preferred by the assessee, which is an option provided by the revenue itself to the assessee in Form No. 35, the assessee cannot be

treated to be on default, in case he was unable to receive such communications and to respond against the same.

11. In backdrop of aforesaid facts and circumstances, we find substance in the contention of Ld. AR that there were plausible reasons for non-appearance of the assessee before the Ld. CIT(A). Regarding the additional evidence consisting of 97 pages furnished before us by the assessee to support the contentions raised, however, we are afraid to deal with all these documents, which admittedly are not available to the revenue authorities to examine the same in light of the additions made and to deliberate upon the controversies raised against such additions by the assessee. Though, the assessee was not afforded with reasonable opportunities to represent its case before the First Appellate Authority and prevented on account of sufficient causes to furnish his submissions or any evidence in support of the issues raised before Ld. CIT(A), we observe that the Appellate Authority was also constrained to decide the appeal based on material available before him. Under such facts and circumstances, after giving a thoughtful consideration to the entirety of issues raised before under this appeal, we are of the considered view that the order passed by Ld. CIT(A) was not framed under due consideration to the totality of facts, as the same not before him on account of assessee's non-prosecution on account of invalid service of notices. Therefore, the matter needs to be restored back to the

file of Ld. CIT(A) for *denovo* adjudication after considering the complete factual matrix of the present case, for which the assessee needs to be provided with reasonable opportunity of being heard and liberty to furnish requisite explanations, evidence or material in the interest of substantial justice. Consequently, the matter is restored back to the file of Ld. CIT(A) for *denovo* adjudication of the appeal.

12. Herein, we may also observe that scope of this tribunal to deal with the matters is limited as an adjudicator and the same cannot be broadened to become an investigator, for this reason we refrain to deliberate upon the additional evidence furnished by the assessee, which were not available there before the lower authorities. Our view is supported with the observation of Hon'ble Delhi High Court in the case **CIT Vs. Kamdhenu Steel & Alloys Ltd. (2014) 361 ITR 220 (Delhi)**, that it is not for the Tribunal to start investigation, as it is only to see as to whether the additions are sustainable and there is adequate material to support the same; and if not the addition is to be deleted. Respectfully following the view of Hon'ble Delhi High Court in the aforesaid judgment, we are not inclined to examine or verified the facts through the documents additionally furnished before us, the matter, therefore, meets the requirements to be restored back to the file of Ld. CIT(A) for fresh adjudication, thus, we do so.

13. Since, we have directed to restore the matter back to the file of Ld. CIT(A), therefore, we refrain from advertng to and to deal with grounds of present appeal either on merits or challenging the legality of the jurisdiction, for which the assessee is permitted to raise the same before First Appellate Authority.

14. In result, the appeal of assessee is partly allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 12/02/2025.

Sd/- (RAVISH SOOD) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ARUN KHODPIA) लेखा सदस्य / ACCOUNTANT MEMBER
रायपुर/Raipur; दिनांक Dated 12/02/2025 Vaibhav Shrivastav	

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

1. अपीलार्थी / The Appellant- Kundan Singh Thakur
2. प्रत्यर्थी / The Respondent- ITO-4(1), (Erstwhile-ITO-4(5), 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