

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 1182 & 1183/CHD/2018
निर्धारण वर्ष / Assessment Year : 2009-10, 2010-11

Shri Surinder Pal Singh, Flat No. 1, FF, Ekta Vihar, Simran Apartments, Zirakpur.	बनाम VS	The ITO, Ward 3(1), Chandigarh.
स्थायी लेखा सं./PAN No: ALZPS3021K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Ms. Deepika Gandhi, Office Employee
राजस्व की ओर से/ Revenue by : Smt. Chanderkanta, Sr.DR
सुनवाई की तारीख/Date of Hearing : 21.01.2019
उद्घोषणा की तारीख/Date of Pronouncement : 27.02.2019

आदेश/ORDER

The present appeals have been filed by the assessee assailing the correctness of the separate orders dated 29.06.2018 of CIT(A)-1, Chandigarh pertaining to 2009-10 and 2010-11 assessment years wherein the penalty imposed u/s 271B in the respective years has been upheld. At the time of hearing an adjournment application was moved on behalf of the assessee by the ld. AR stating that the complete documents are yet to be received. However, after hearing the ld. Sr.DR and considering the fact that the orders have been passed ex-parte where the assessee remained unrepresented, it was deemed appropriate after hearing the parties to reject the adjournment application and restore the issues back to the file of the CIT(A).

2. The relevant facts qua the issue under consideration are identical in both the years. For ready reference, these are extracted from ITA 1182/CHD/2018 :

"The appeal was fixed for hearing on 23.04.2018, which was not attended. Fresh notice was issued on 12.06.2018 fixing case for 22.06.2018, which also remained unattended. Final opportunity was given for 29.06.2018, All the notices were sent by speed post and duly served on the appellant as per confirmation available on the website of INDIA POST, but nobody attended on these dates. No adjournment application was filed and no written submission was received. Hence, it is presumed that the appellant

does not want to say anything and the appeal is decided on the basis of material available on record.”

3. It is seen that in the absence of any representation, the penalty order has been upheld. Accordingly, considering the fact that the assessee was agitated qua the grounds raised that the submissions and explanations of the assessee were not considered by the CIT(A). Para 2 of its order suggests that apparently no written submissions were also considered as no written submissions have been advanced on behalf of the assessee and the appeals have been decided considering the reply before the A.O. Accordingly, admittedly the assessee was not heard. In these peculiar facts and circumstances of the case in the interests of substantial justice, the impugned orders are set aside back to the file of the CIT(A) in order to grant the assessee an effective opportunity of being heard. It is hoped that the opportunity so provided to the assessee in good faith is availed of and utilized by the assessee by participating fully and properly by making proper submissions on facts and law before the CIT(A) and the opportunity is not abused. While so restoring, it is made clear that in the eventuality of abuse of the trust reposed, the CIT(A) would be at liberty to pass an order on the basis of material available on record.

4. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 27.02.2019.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

“पूनम” / Ravi Kumar, PS (Hyderabad)

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

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar