

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM**

आयकर अपील सं./ITA No. 1038/CHD/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Achal Jain, S/o Late Shri Kewal Krishan Jain Prop. M/s Avon Steels, Opp. Bus Stand, Mandi Gobindgarh.	बनाम VS	The ITO, Ward-2, Mandi Gobindgarh.
स्थायी लेखा सं./PAN No: AGJPJ1076E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Navdeep Monga

राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06.02.2019

उद्घोषणा की तारीख/Date of Pronouncement : 11.03.2019

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 23.03.2017 of CIT(A) Panchkula pertaining to 2012-13 assessment year on various grounds. However, since the parties were heard only in respect of ground No. 2, the same reads as under :

"That further, the order passed by the Ld. CIT (Appeals), Patiala was not a speaking order and dismissed the appeal without giving any detailed reasons for dismissing the appeal except mentioning that no intervention is called for with the finding given in the assessment order. Reliance is placed upon in the judgment of Hon'ble Supreme Court in the case of M/s Kranti Associates Pvt. Ltd. and another v. Shri Masood Ahmed Khan and others (2010) 9 SCC 496."

2. Before addressing the specific facts of the present case, it is noticed that the assessee's appeal was earlier dismissed by the ITAT for non-representation vide order dated 27.11.2017. Subsequently, vide order dated 29.08.2018 in M.A. 44/CHD/2018, satisfied by the explanation of the assessee for remaining unrepresented, the aforesaid order of dismissal was recalled. In the said background, ld. counsel for the assessee inviting

attention to the impugned order which was passed ex-parte without hearing the assessee stated that no doubt as per record the assessee despite issuance of notice remained unrepresented however the reason for non-appearance was on account of peculiar facts where the assessee had shifted from the said address i.e. Mandi Gobindgarh on account of closure of its business and subsequently was doing a private job at Ghaziabad (U.P.) and facing financial hardships. Notices sent to the address where the family members of the assessee were located, were not further communicated to the assessee. The lapses, it was submitted, were unintentional. Accordingly, the ld. AR relying upon affidavit filed by the assessee prayed for a remand to the CIT(A). The affidavit of Shri Achal Jain S/o Late Shri Krishan Chand, Resident of C-4-517, Gulmohar Enclave, Nehru Nagar is available on record. A perusal of the same shows that the following facts have been deposed by the deponent :

1. That the deponent in the present case has filed an appeal on 22.06.2017 before this Ld. Tribunal against the order dated 23.03.2017 passed by the Commissioner of Income Tax (Appeals), Patiala. The said appeal is registered as ITA No. 1038/Chd/2017.

2. That since the closure of its business in the name of and style of M/s. Avon Steels, Mandi Gobindgarh after F.Y. 2011-12, the deponent is doing a private job at Ghaziabad (U.P.) and faces strong financial hardship.

3. That in fact, the deponent moved to Ghaziabad after closure of its business and the notices with regard to appellate/ assessment proceedings were served on family members of the deponent at Mandi Gobindgarh. Sometimes the family members unintentionally or with unconscious mind forget to inform about notices which renders the deponent to defend its cast. That indeed, the ex-parte impugned order is only the carbon copy of the assessment order and nothing new has been observed. Further, on the perusal of impugned order passed by the First Appellate Authority, it is clear that the grounds taken in the appeal was not properly dealt with.

3. The ld. Sr.DR considering material available on record had no objection to the prayer for remand to the CIT(A).

4. We have heard the rival submissions and perused the material on record. It is seen that the additions made by the AO were challenged in appeal by the assessee before CIT(A), however, despite issuance of notice on various dates, assessee remained unrepresented. Accepting the oral undertaking given by the ld. AR who was required to point out as to at which address the notices to the assessee may be sent by the CIT(A) as the address available in the impugned order as well as assessment order is the Mandi Gobindgarh address. The ld. AR referring to the Memo of Appeal filed by the assessee stated that notices may be sent to address given in column No. 10 in the Memo of Appeal filed which is the address of the counsel, the

same reads as under :

Shri Achal Jain
C/o Anand Khosla & Associates,
554, Sector 8-B, Chandigarh.

5. Accordingly, accepting the oral undertaking given by Id. AR and considering the material available on record, it is evident that effective opportunity of being heard has not been made available to the assessee on account of the mis-communication with assessee's family members etc. In the interest of substantial justice the impugned order is set aside and the issues are restored back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. At the same time, it is made clear that in the eventuality of abuse of the trust reposed in the assessee, the Id. CIT(A) would be at liberty to pass an order on the basis of the material available on record. Said order was pronounced in the Open Court at the time of hearing itself.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 11.03. 2019.

Sd/-
(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant 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

Sd/-
(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar