

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT  
AND SHRI SANJAY GARG, JUDICIAL MEMBER

**ITA No. 69/Chd/2018**

(Assessment Year: 2012-13)

Pension & Gratuity Fund Trust, Vs. The JCIT, R-2(Exemption)  
H.P. Board of School Education, Chandigarh  
Dharamshala, Dist: Kangra  
Himachal Pradesh

PAN No. AABTP9539N

**ITA No. 70/Chd/2018**

(Assessment Year: 2013-14)

Pension & Gratuity Fund Trust, Vs. The ACIT, C-2(Exemption)  
H.P. Board of School Education, Chandigarh  
Dharamshala, Dist: Kangra  
Himachal Pradesh

(Appellant)

(Respondent)

Assessee by : Shri. Ajay Vaidya, Advocate  
Department by : Shri. G.S. Phani Kishore, CIT DR  
Date of hearing : 27/03/2019  
Date of Pronouncement : 29/03/2019

**ORDER**

**PER N.K. SAINI, VICE PRESIDENT :**

These two appeals by the assessee are directed against the separate orders each dated 23/10/2017 of the Ld. CIT(A), Palampur for the Assessment Year 2012-13 & 2013-14.

2. Since the issues involved are common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. First we shall deal with ITA No. 69/Chd/2018 for the Assessment Year 2012-13 wherein assessee has raised the following grounds:

*(a) That the Ex-parte order passed by Respondent are highly illegal, arbitrary against the principle of natural justice hence are liable to be quashed and set aside.*

(b) That the impugned orders as passed by Respondent are without application of mind and the bare perusal of impugned orders would go to show that same has been passed in a very cursory and slipshod manner vitiating the same.

(c) That the basic principle of providing an ample opportunity of being heard has been bid goodbye while passing the impugned order as the Respondent has not intimated regarding the next date of hearing and in a hasty manner has passed the impugned orders which is liable to be quashed and set aside.

(d) That the bare perusal of annexure A-1 would go to show the relevant provisions of the Income Tax Act which governs the Trust has not been taken into consideration and the respondent without going through the records of the case, on some extraneous considerations has passed the impugned order which is liable to be quashed and set aside.

(e) The Ld. Assessing officer has erred in law and fact of the case by charging interest while passing the order with out considering the fact and circumstances of the case that no interest can be charged under the Act.

(f) That the order passed by Respondents are highly illegal, arbitrary against the principle of natural justice hence are liable to be quashed and set aside.

(g) That the Respondents had ignored the law lay down by the various court on the subject matter of the case and has not touched the same while passing the impugned order as a whole.

(h) That the Respondents has misinterpreted the pleadings/arguments of the appellant and traveled beyond the principals applicable to the case as also has committed serious illegality while coming to conclusion that the appellant was not wholly and substantially financed by the State Government. The appellant has been financed by the State Government which is evident from the various documents which were brought before the respondent at the time of the framing of the assessment.

(i) That the Respondents has erred in law and fact of the case by coming to the conclusion that the Board is not existing solely for Educational Purposes and is earning huge profit and that it is not controlled by the state Government.

(k) The appellant reserve the rights to add, amend, delete any or all grounds on or before the appeal is heard.

It is, therefore, respectfully prayed that this Appeal may kindly be allowed and the following reliefs may kindly be granted in favour of the Appellant:

i) That the impugned order as contained in Annexure A-2 and A-4 may very kindly be quashed and set aside.

ii) That records of the case may be summoned for the kind perusal of this Hon'ble Court.

iii) Such other or further order as may be deemed just and proper may also be passed in favour of the Appellant.

From the above grounds it is gathered that the grievance of the assessee relates to the exparte order passed by the Ld. CIT(A) and the Assessing Officer.

4. Facts of the case in brief are that the assessee filed return of income declaring NIL income which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') later on the case was selected for scrutiny.

5. The Assessing Officer passed the exparte order by observing that the Counsel for the Assessee was contacted telephonically and was asked to appear and the counsel stated that he would appear on 30/03/2015 but on the said date nobody appeared. The Assessing Officer passed the exparte order and assessed the income at Rs. 14,52,84,975/-.

6. Being aggrieved the assessee carried the matter to the Ld.CIT(A) who passed the impugned order exparte. The Ld. CIT(A) mentioned the sequence of events in para 2 of the impugned order which read as under:

*2. The appeal was fixed for hearing on 02-12-2016, 18-01-2017, 25-01-2017, 17-03-2017, 05-04-2017, 19-05-2017 & 27-07-2017. On 19.01.2017, the assessee sought adjournment on the ground that its counsel had to attend proceedings at H.P. High Court at Shimla before the vacation judge and requested that the case may be adjourned to 25.01.2017. None attended on 25.01.2017. On 17-03-2017, the assessee again sought adjournment on the ground that its CWP 3288 / 2015 against recovery of demand filed before Hon'ble H.P. High Court was pending, in which stay has been granted and the next date was fixed for 3.03.2017. A request was made that the matter may be taken for hearing on 14.04.2017. Vide this office letter dated 21.03.2017, the appellant was informed that the said CWP was for stay of recovery proceedings only and that the appeal was being fixed for hearing on 05.04.2017. It was also specifically informed that this may be treated as the last opportunity being given to the appellant. On 05.04.2017, the appellant again sought adjournment which was granted for 17.04.2017. On 17.04.2017, Ld. counsel for the appellant appeared and was asked to file written submissions within one week. No compliance was made. A fresh notice of hearing was issued for 19.05.2017, on which date again none attended. The appeal was again fixed for hearing for 27.07.2017. On 27-07-2017, Sh. Rajinder Sharma, Section Officer, appeared and filed copy of the Form No-IOB and audited accounts as on 31.03.2012 (no Schedules were filed). No written submissions have been filed during appeal nor any arguments have been made on the grounds of appeal despite repeated opportunities of hearing as above.*

7. Ld. CIT(A) thereafter dismissed the appeal of the assessee and upheld the view taken by the Assessing Officer by observing that no written or oral submission had been filed by the assessee.

8. Now the assessee is in appeal.

9. Ld. Counsel for the assessee submitted that neither the Assessing Officer nor the Ld. CIT(A) had given appropriate opportunity of being heard to the assessee which is in violation of the principles of natural justice. He requested to restore the case back to the file of the Assessing Officer to be decided in accordance with law after considering the documents furnished by the assessee and by giving the opportunity of being heard. It was further submitted that when the Assessing Officer contacted the counsel for the assessee on 30/03/2015 on telephone it was informed that counsel for the assessee was at Shimla and it was not possible to come at Chandigarh on such a short notice, therefore the exparte order passed by the Assessing Officer on 31/03/2015 was in gross violation of the principles of natural justice. It was further submitted that

the Ld. CIT(A) has also not provided proper opportunity of being heard to the assessee.

10. In his rival submissions the Ld. CIT DR strongly supported the orders of the authorities below.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is an admitted fact that the Assessing Officer as well as the Ld. CIT(A) passed their respective orders exparte. It is well settled that nobody should be condemned, unheard as per the maxim, "audi alteram partem". We therefore set aside the impugned order and remand the matter back to the file of the Assessing Officer to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to cooperate and not to seek undue or unwarranted adjournments.

12. In ITA No. 70/Chd/2018 for the Assessment Year 2013-14 the facts are similar as were involved in ITA No. 69/Chd/2018 for the Assessment Year 2012-13. In this year also the Assessing Officer as well as the Ld. CIT(A) passed their respective orders exparte, therefore our findings given in the former part of this order for the assessment year 2012-13 shall apply mutatis mutandis for the assessment year 2013-14.

13. In the result both the above appeals of the assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 29/03/2019 )

**Sd/-**

**(SANJAY GARG)**  
**JUDICIAL MEMBER**  
Dated : 29/03/2019  
AG

**Sd/-**

**(N.K. SAINI)**  
**VICE PRESIDENT**

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR