

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 507 to 512/Chd/2019
निर्धारण वर्ष / Assessment Year : 2010-11 to 2015-16

M/s Talwar Jewellery House C/o Parikshit Aggarwal, Chartered Accountant, H.No. 1238, Sector 22-B, Chandigarh	बनाम	The DCIT CC-II, Central Circle-II Chandigarh
स्थायी लेखा सं./PAN NO: AAAFT6433E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Shri Ritesh Parmar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/09/2019
उद्घोषणा की तारीख/Date of Pronouncement : 26/09/2019

आदेश/Order

PER BENCH:

All the above appeals by the assessee are directed against the common order dated 28/02/2019 of the Ld. CIT(A)-3, Gurgaon.

2. Since the issues involved in all the above appeals 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. At the first instance, we shall deal with the appeal in ITA No. 507/Chd/2019 for the A.Y. 2010-11 wherein Assessee has raised the following grounds:

1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 86/CIT(A)-3/GGN/2017-18 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.

2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO wherein he made addition of Rs.

30,00,000/- u/s 68 of the Act on account of non-furnishing of confirmations from the person from whom advance was taken by the appellant.

3. That on law, facts and circumstances of the case, the impugned order passed by Worthy CIT(A) deserves to be set-aside since the same was passed without affording reasonable opportunity of being heard to the appellant and also since there existed reasonable cause for non-appearance before the Worthy CIT(A) on the appointed date(s).

4. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

4. Vide Ground No. 3 the grievance of the assessee relates to the ex-parte order passed by the Ld. CIT(A) without providing reasonable opportunity of being heard.

5. Facts of the case in brief are that a search operation under section 132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was carried out at the residential / business premises of Talwar Group of Cases including the assessee by Investigation Wing, Chandigarh on 24/07/2009. The assessment in the hands of the assessee was framed under section 153B(1)(b) r.w.s 143(3) of the Act on 23/12/2011 at an income of Rs. 7,86,53,067/- against the returned income of Rs. 5,73,10,560/-. Thereafter the case was reopened under section 148 of the Act and the A.O. made the addition of Rs. 30,00,000/- which was found credited in the books of the assessee in which no explanation was offered about nature and source.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who passed the impugned order ex-parte and sustained the addition made by the A.O.

7. Now the assessee is in appeal.

8. Ld. Counsel for the Assessee submitted that the Ld. CIT(A) framed the assessment ex-parte and there was a reasonable cause for non appearance of the authorized person of the assessee who got involved in some personal

litigation at the time when the appellate proceedings were going on before the Ld. CIT(A). In support of the above the Ld. Counsel for the assessee furnished an Affidavit of the then Counsel of the assessee which is placed on record.

9. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that ample opportunities of being heard were provided to the assessee but there was no compliance therefore the Ld. CIT(A) had no alternative except to decide the matter ex-parte.

10. We have considered the submissions of both the parties and also perused the material available on the record. In the present case it is noticed that the Ld. CIT(A) decided the appeal of the assessee ex-parte. He mentioned that many opportunities were given and the last being on 16/10/2017, he also mentioned that the hearing was fixed on 04/10/2017 and adjournment was sought telephonically for 06/10/2017 on the said date nobody appeared and the case was adjourned to 10/10/2017, another opportunity was given for 16/10/2017, However nothing is brought on record to substantiate that the notice for hearing on 16/10/2017 was served upon the assessee. In the present case the Ld. Counsel for the assessee furnished the Affidavit of Shri Rajeev Singhi S/o Shri Kishan Lal Singhi who was the Counsel for the assessee at the relevant time before the Ld. CIT(A), the contents of the said Affidavit read as under:

- 1. That I am a permanent resident of H.No 1369, Sector 15, Panchkula.*
- 2. That I am a Practicing Chartered Accountant and my office address is H.No 1801, Sector 22, Chandigarh*
- 3. That I am the counsel in the Income Tax case of Talwar Jewellery House, SCF 13, Sec 22D, Chandigarh (hereinafter referred to as "concern") for AYs 2010-11 to 2015-16.*
- 4. That I filed appeals in above cases of above referred concern before the Worthy CIT(A)(Central), Gurgaon for respective years.*
- 5. That the above referred concern engaged me to argue these cases before the Worthy CIT(A)(Central). I sought adjournment on 1st date of hearing before him on 26.9.18 and thereafter I could not attend to the hearing due to bonafide and genuine reasons stated below which ultimately resulted into passing of ex parte appellate orders on 28.02.2019 by Worthy CIT(A) (Central) for all the years above-mentieond.*

6. That there arose some litigation in 2 faction groups of one of my other client and one group, apart from accusing the other group, made many persons including me (the auditor) as party to the litigation and raised various allegations against me.

7. That to defend the above litigation instituted against me in my personal capacity, I approached before the Hon'ble Trial Court where my bail was rejected, then I approached the Hon'ble P&H High Court and then before the Hon'ble Apex Court with the same final fate and I was relegated back to the Trial Court to participate in the ongoing investigation. That the cause Title before the Hon'ble P&H HC was Rajeev Singhi us. State of Punjab CRM-M-4155/2018.

8. That I was relegated back to face Investigation and I was granted regular bail only on 18/09/2019 by the Hon'ble P&H HC in CRM-M-10504/2019.

9. That during the period September 2018 to Mar 2019, I and my entire family was totally, mentally, physically and financially involved in handling and pursuing the above litigation and ordeal and due to being involved in this situation, I could not attend to the hearings fixed by the Worthy CIT(A) in cases of above concern during the period Oct. 2018 to Feb 2019 which resulted into passing of ex-parte appellate orders by him on 28.02.2019.

10. That there was reasonable and bonafide cause in non appearance before the Worthy CIT(A) (Central) However, it is not that the appellant was not interested in prosecuting the appeals. The disposal of the appeals on ex-parte basis occurred due to non-appearance which was due to above reasons. But even this was bonafide and unintentional.

11. From the aforesaid contents of the Affidavit furnished by the then Counsel of the Assessee, it is clear that family of the assessee was mentally, physically and financially involved in handling and pursuing the litigation of the Counsel Shri Rajiv Singhi, so there was a reasonable cause for non appearance before the Ld. CIT(A). Moreover, it is not clear as to whether the notice for hearing on 16/10/2017 was served upon the assessee. It is well settled that nobody should be condemned unheard as per the maxim "*audi alteram partem*". We therefore, keeping in view the principles of natural justice deem it appropriate to set aside this case back to the file of the Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. The assessee is also directed to cooperate and not to seek undue or unwarranted adjournments.

12. The facts in all other appeals for the A.Y's 2011-12 to 2015-16 in ITA Nos. 508 to 512 /Chd/2019 are similar as were involved in ITA No. 507/Chd/2019 for

the A.Y. 2010-11, which we have already adjudicated in the former part of this order therefore our findings given therein, shall apply mutatis mutandis for all the above mentioned appeals under consideration.

13. In the result, all the above appeals of the Assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 26/09/2019)

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 26/09/2019

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

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