

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.296/Chd/2019  
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Sewa Singh #324, Guru Nanak Colony Badala Road, Kharar, Mohali	बनाम	The ITO, W-6(4), Mohali
स्थायी लेखा सं./PAN NO: ABNPS9889H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tejmohan Singh, Advocate  
राजस्व की ओर से/ Revenue by : Smt. Geetinder Mann, JCIT(DR)

सुनवाई की तारीख/Date of Hearing : 21/01/2020  
उदघोषणा की तारीख/Date of Pronouncement : 21/01/2020

**आदेश/Order**

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

This is an appeal by the Assessee against the order dt. 21/12/2018 of Ld. CIT(A)-2, Chandigarh.

2. Following grounds have been raised in this appeal:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in dismissing the appeal ex-parte in limine which is arbitrary and unjustified.

2. That the Ld. Assessing Officer has erred in reopening the assessment by issuance of notice u/s 148 in as much as there has been no escapement of income and non-compliance with the mandatory statutory requirements and as such the assessment framed which has been upheld by the Commissioner of Income Tax (Appeals) is illegal, arbitrary and unjustified.

3. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in law as on facts in upholding the addition of Rs. 62,80,000/- which is arbitrary and unjustified.

*4. That the Ld. Commissioner of Income Tax(Appeals) has further erred in upholding the addition of Rs. 2,883/- being interest received on saving bank which is arbitrary and unjustified.*

*5. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.*

3. The main grievance of the assessee in this appeal relates to the ex-parte order passed by the Ld. CIT(A) without giving proper and reasonable opportunity of being heard to the assessee.

4. Facts of the case in brief are that the assessee had deposited cash amounting to Rs. 12,80,000/- in his Punjab National Bank Account No. 02660001000095861 in the F.Y. 2009-10 relevant to A.Y. 2010-11. The A.O. observed that the assessee had not filed his return of income for the assessment year 2010-11, therefore the sources of cash deposits of Rs. 62,80,000/- was unexplained. The A.O. reopened the assessment proceeding for the A.Y. 2010-11 by issuing notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Since there was no compliance to the notice issued by the A.O. the assessment order was passed ex-parte and the assessment was framed at an income of Rs. 64,19,823/- by treating the amount of Rs. 62,80,000/- as unexplained income earned from undisclosed sources.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who passed the impugned order ex-parte by observing that the notices were sent through speed post but nobody appeared in response to those notices. Ld. CIT(A) sustained the addition made by the A.O.

6. Now the assessee is in appeal.

7. Ld. Counsel for the assessee submitted that no notice for hearing was served upon the assessee therefore the Ld. CIT(A) was not justified in sustaining the penalty levied by the A.O. by passing the ex-parte order.

8. In his rival submissions the Ld. DR supported the impugned order passed by the Ld. CIT(A).

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case nothing is brought on record to substantiate that the notice for hearing although claimed to be sent by speed post was served upon the assessee. It is well settled that nobody should be condemned, unheard as per the maxim, "audi alteram partem". We, therefore by keeping in view the principle of natural justice, deem it appropriate to set aside this case back to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 21/01/2020)

**Sd/-**  
**संजय गर्ग**  
**(SANJAY GARG)**  
 न्यायिक सदस्य/ Judicial Member  
 AG  
 Date: 21/01/2020

**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