

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

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VP & SHRI , RAJPAL YADAV, VP

आयकर अपील सं./ ITA NO.58/Chd/2020
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Harjeet Singh Shri Harpreet Singh, 3146, Sector- 125, New Sunny Enclave, Kharar Mohali-140301, Punjab	बनाम	The ITO Ward-6(4), Mohali- 140301 Punjab
स्थायी लेखा सं./TAN NO: BGXPS5337J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri Ashok Kumar Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 19/11/2020
उद्घोषणा की तारीख/Date of Pronouncement : 19/11/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the assessee against the order dt. 17/10/2019 of Ld. CIT(A)-2, Chandigarh.

2. Following grounds have been raised in this appeal :

1. That the Ld. Commissioner of Income Tax (Appeals)-2, Chandigarh as erred in passing ex-party order and confirming the order of Assessing Officer.
2. Notwithstanding the above said grounds of Appeal, the addition as confirmed by the Ld. CIT(A) is against the facts and circumstances of the case.
3. That the appellant crave leave to add or amend the grounds of appeal before the appeal if finally heard or disposed off.

3. The main grievance of the assessee relates to the exparte order passed by the Ld. CIT(A) without providing due and reasonable opportunity of being heard.

4. Facts of the case in brief are that the A.O. on the basis of information received that the assessee had deposited cash of Rs. 13,19,000/- in his bank account maintained with ICICI Bank, Chandigarh and paid Rs. 17,56,482/- against credit bills during the F.Y. 2009-10 relevant to the A.Y. under consideration and that no return of income was filed by him. He therefore initiated the proceedings under section 147 r.w.s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The A.O. observed that whenever the case was fixed either the assessee sought adjournment or did not attend. And whenever the assessee attended and filed written submission those were placed on record. The A.O. framed the assessment *ex parte* and made the addition of Rs. 30,75,482/- (Rs. 13,19,000 + 17,56,482) by observing that in the absence of any explanation the said amount stood unexplained.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who dismissed the assessee's appeal by passing the impugned order *ex parte*.

6. Now the assessee is in appeal.

7. The main grievance of the assessee relates to the *ex parte* order passed by the Ld. CIT(A).

8. Ld. Counsel for the Assessee submitted that the notice for hearing issued by the Ld. CIT(A) was not received by the assessee, therefore the Ld. CIT(A) was not justified in passing the impugned order and confirmed the addition made by the A.O. without providing due and reasonable opportunity of being heard to the assessee. It was submitted that the assessee had all the evidences to prove his case.

9. In his rival submissions the Ld. DR supported the impugned order passed by the Ld. CIT(A) and further submitted that the assessee was non cooperative and never attended, therefore there was no alternative except to decide the case of the assessee *ex parte*. In his rejoinder the Ld. Counsel for the Assessee furnished the copy of the assessment order dt. 26/10/2018 for the subsequent A.Y. 2011-12 wherein similar type of credit card payment were accepted by the A.O. while framing the assessment under section 143(3) r.w.s 147 of the Act.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is an admitted fact that the A.O. framed the assessment *ex parte* under section 144 r.w.s 147 of the Act and the Ld. CIT(A) also dismissed the appeal of the assessee *ex parte*, he simply stated that the various notice for hearing were issued on different dates to the assessee by speed post and none appeared. However nowhere he brought on record that the notice for hearing was served upon the assessee. It is well settled that nobody should be condemned, unheard as per the maxim, "audi alteram partem".

11. We therefore keeping in view the principles of natural justice deem it appropriate to set aside this case back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 19/11/2020).

Sd/-
राजपाल यादव
(RJAPAL YADAV)
उपाध्यक्ष / VICE PRESIDENT

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

AG

Date: 19/11/2020

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