

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH 'SMC' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य  
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 1500/CHD/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Shri Parminder Singh Grewal, S/o Shri Inder Pal Singh, St. No. 1, Officer Colony, Nankiana Road, Sangrur.	बनाम VS	The ITO, Ward, Sangrur.
स्थायी लेखा सं./PAN No: ABPPG0573J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : None (Adjournment application of  
Shri Sanket Singla, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 04.03.2021

उद्घोषणा की तारीख/Date of Pronouncement : 28.04.2021

**Hearing conducted via Webex**

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 12.05.2018 of CIT(A), Patiala pertaining to 2015-16 assessment year is assailed on the following grounds :

1. That the order of the Worthy CIT(A) insofar is against the appellant, is bad in Law, against the facts and circumstances of the case, Principles of Natural Justice, Equity and all other known Principles of Law.
2. That the order of the Worthy CIT (A) is not justified on the ground that the Worthy CIT(A) has failed to adjudicate the matter that compensation received amounting to Rs. 48,70,421/- on account of compulsory acquisition of land in question is covered under the provisions of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and is exempt from levy of Income Tax u/s 96 of the said act.

3. *That the Worthy CIT (A) is not justified in sustaining the addition of Rs. 3,20,183/- under the Head Income from Other Source without appreciating the fact that the appellant has inadvertently paid tax on the whole amount of compensation received amounting to Rs. 48,70,421/-. Thus has resulted in double taxation.*
4. *That the Worthy CIT (A) was not justified in clubbing the both grounds of appeal filed before him considering the same to be inter linked and taken up to together for Adjudication.*
5. *That the order of the Worthy CIT(A) not justified as the Worthy CIT(A) has failed to appreciate the revised computation of income sheet submitted before Worthy A.O. and Worthy CIT(A).*
6. *That the order of the Worthy CIT (A) is not justified as the Worthy CIT (A) has failed to adjudicate the matter that Section 96 of the RFCTLAAR Act exempts all the acquisitions from levy of Income Tax except the acquisition u/s 46 of the Act.*
7. *That the appellant craves leave to add or amend any ground of appeal.*

2. At the time of hearing, an adjournment application has been moved on behalf of the assessee. However, considering the specific ground Nos. 1, 4 & 5 it was deemed appropriate to proceed with the hearing after hearing the ld. Sr.DR and considering the material available on record.

3. A perusal of the grounds referred to for consideration, specifically ground No. 1, it is seen that the impugned order has been passed without hearing the assessee and therefore is contrary to the principles of natural justice.

4. The ld. Sr.DR was required to address the facts.

5. The Sr.DR submitted that written submissions made available to the ld. CIT(A) have been considered.

6. I have heard the submissions. It is seen that the assessee filed a Rectified Application requesting that the order passed by the First Appellate Authority dated 12.05.2018 in Appeal No. 10276/17-18 may be corrected. To make out its case as allowable in law, certain written

submissions were admittedly available. The application was dismissed without hearing the assessee. No specific notice appears to have been issued to the assessee informing him that relief claimed is not allowable. The assessee has assailed the order passed u/s 154 of the Act as being unsustainable in law as the assessee was not heard. In the said background, it is seen that no doubt the appeal has been decided on the basis of written submission of the assessee. However, it is seen that if the prayer in the written submissions was held to be not allowable, then it should have been conveyed to the assessee and it has not been so conveyed. **In terms of the due process of law, it goes without saying that the assessee was entitled to be put to such notice in all fairness. The principle that no one should be condemned unheard is inviolate. It is incumbent on the tax authorities to exercise their powers fairly and transparently.** It is seen that there is no waiver given by the assessee that the Right to be heard is being waived off and the written submissions instead be considered in substitution thereof. Reliance placed by a party solely on the written submissions in good faith **may emanate from a *sang frois* belief that the relief was so patently allowable that no arguments need be advanced to convince the Authority to grant the same.** Such belief cannot be so construed to conclude, hold and believe that the right to be heard is being waived off. **The waiver has to be conscious and with awareness that such a Right is vested and can be waived.** The decision to waive, hence needs to be a conscious waiver and not in ignorance of the foundational fact of active awareness that the Right to be heard exists and is

available under law. Right to be heard forms the bed rock of the principles of natural justice. The word natural justice is derived from the Roman word "*Jus naturale*" which presupposes the application of principles of natural law for determination of the dispute. Application of natural law as has evolved over the centuries in common law countries means and includes justice, equity, fair play and good conscience. Any exercise of power which is in conflict with these aims is open to the challenge of being arbitrary and unsustainable in law. The above list, it may be made clear is not exhaustive. **All actions which strike at the non negotiable axiom namely "justice should not only be done but seen to be done" are expected to be adhered to when the State acts exercising its vast powers over its citizens.** The actions are expected to be carried out in fairness. These are the bare minimum standards which are expected to be adhered to. **Fair play presupposes as has been oft laid down fair notice of charge, and place of hearing, opportunity of effective hearing to address the charge and speaking order addressing the reasons for agreeing or disagreeing with the claims put forth.** *Audi alterem partem* which is one of the foundational and fundamental bed rocks of natural justice means and includes that no one should be condemned un heard. Though these Rules are not necessarily codified however, they have evolved over the years and are read into not only when statutory provisions so provide but also in quasi administrative decisions whereby the rights / interests of the party is adversely effected. Thus, even in the absence of a clear legislative mandate, the Courts have repeatedly held that the procedure required to be adhered to envisage a right to be heard. No doubt a party may choose to waive the right to be

heard and instead choose to rely on written submissions. **However it is the duty of the Court to ensure that the waiver so made is consciously made with full knowledge and understanding i.e; with the foreknowledge that the right to be heard exists.** The record is silent on this aspect.

7. Accordingly since there is nothing on record to show that the right to be heard was consciously and knowingly waived, the impugned order is restored back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 28<sup>th</sup> April,2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member