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. 1261/CHD/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Vishal Bhalla, C/o M/s Shivalik Fibres P.Ltd., Bharatgarh Road, Randuwal, Nalagarh, Distt. Solan (HP).	बनाम VS	The ITO, Baddi.
स्थायी लेखा सं./PAN No: AAOPB8415G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 1262/CHD/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Ritu Bhalla, C/o M/s Shivalik Fibres P.Ltd., Bharatgarh Road, Randuwal, Nalagarh, Distt. Solan (HP).	बनाम VS	The ITO, Baddi.
स्थायी लेखा सं./PAN No: AAOPB8416F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal,C.A.
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 10.05.2021
उदघोषणा की तारीख/Date of Pronouncement : 28.05.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeals have been filed by the different assessees assailing the correctness of the common order dated 26.11.2018 of CIT(A), Shimla pertaining to 2014-15 assessment year. A common order is being passed in these two appeals filed by different assessees in view of the fact that in both the appeals on identical grounds in same sets of facts and circumstances, the arguments of the parties remain same.

2. However before addressing these it may be relevant to mention that at the time of hearing identical adjournment applications had been moved by the counsel in both the appeals seeking time to file necessary documents. On enquiring about the nature and need of documents, the ld. counsel elaborating the request submitted that against the order of the AO the assessee had come in appeal before the CIT(A) and filed written submissions and since opportunity to file further documents was not available hence time was sought. Referring to the impugned order it was submitted that lack of further supporting documents have been questioned by the CIT(A), hence this was the reason for

seeking time. The request seeking time in both the appeals was accordingly withdrawn orally and the appeals were argued. Referring to the record it was submitted that written submissions had been filed before the CIT(A) and if further documents were necessary then the opportunity to file these should have been provided. Referring to the record it was submitted no such opportunity was provided. Accordingly Ground No. 1 raised in both the appeals was argued. For the sake of completeness it is being reproduced from ITA 1261/CHD/2019 :

> *"1. That the Learned Commissioner of Income Tax (Appeals) Shimla, Himachal Pradesh has erred in sustaining the order passed by the Learned Assessing Officer, Baddi as the order has been passed without any basis and without considerant the facts of the case and has* ***been passed without giving any proper opportunity to the appellant.*** *Therefore, Assessment Order passed by the ld. Assessing Officer Baddi and confirmed by the ld. CIT(A) Shimla, HP is illegal, unwarranted, uncalled for and needs to be quashed."*

3. It was stated that similar ground has been raised in ITA 1262/Chd/2019 also.

4. Reverting to the arguments and referring to the order it was submitted that the assessee had argued that deductions us 57 (iii) claimed were allowable. Reliance had been placed on the decision of the Apex Court in the case of Rajendra Prasad Modi (1979) AIR 373 (S.C) which has been referred to before the CIT(A) as well as before the AO as found

mentioned at unnumbered page 4 of the Assessment Order also. Referring to the decision it was submitted that the Apex Court clearly held that for allowability of the expenditure it is not necessary to demonstrate the earning of income. It was submitted that similar deductions on same set of facts have been allowed in the earlier years and supporting documents were questioned. The applicability of the decision relied upon remaining unaddressed on facts. Thus in the circumstances where admittedly fair hearing has not been given by the CIT(A) and further documentary evidence is necessary then it was his prayer that documents filed since have not been considered by the AO and the CIT(A) thus allowing the ground the order may be set aside and the matter may be remanded to the A.O. for verifying the record, past history and supporting documents etc. in the light of the decision of the Apex Court.

5. Said request on a consideration of facts was not opposed by the Sr.DR as admittedly the order under challenge in both the appeals had been passed considering written submissions. The documentary evidence and past history necessarily to be considered for deciding the issue, it was agreed needs to be addressed by the A.O. first.

6. I have heard the parties and perused the material available on record. In the facts of the present case. It is seen that in the facts of the present cases, the assessee apparently was not heard. No doubt the written submissions were available on record, however, they were not considered sufficient for warranting a relief on merits as prayed for. It is not evident from the body of the orders that the assessee was confronted with the fact that these written submissions were not sufficient for the relief prayed for and consequently admittedly no opportunity to support the claim was made available as held **in order dated 29.04.2021 in ITA No. 1089/CHD/2019 in the case of Shri Amrik Singh Bhullar Vs. ITO :**

> *"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" hich presupposes principles of natural law including justice, equity, fair play and good conscience. Fair play pre supposes 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 that no one should be condemned un heard. Though these Rules are not necessarily codified, however, these have evolved over the years and are expected to be adhered to not only when statutory provisions so provide but have also been impliedly read into and necessarily required to be adhered to also in quasi administrative decisions whereby the rights / interests of the party are adversely effected.* ***In such circumstances, fair play and Rule of law***

necessitates that the procedure required to be adhered necessarily envisages a right to be heard.

7. Similarly, a reference may also be made to **order dated 28.04.2021 in ITA 1500/CHD/2019 in the case of Shri Parminder Singh Grewal Vs ITO.** It has been held that once written submissions made available do not warrant the relief prayed for, then this fact should be conveyed to the assessee so as to provide an opportunity to make good any shortcoming on facts and law noticed. In the said decision, it has been clearly held as under:

> ***"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 pre supposes 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."*

8. Accordingly, it is seen that since in the facts, the written submissions were not sufficient to grant a relief, then notice to the said effect necessarily should have been given to the assessee. It is evident that the opportunity of placing supporting facts or arguments admittedly has not been provided. In these circumstances, considering the prayer of the parties, the issue is remanded back to the file of the AO with a direction to pass a speaking order in accordance with

law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is advised to make full and proper compliances before the said authority as failing which it is made clear that the AO shall be at liberty to pass an order on the basis of the material available on record. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

9. In the result, both the appeals of the assessees are allowed for statistical purposes.

Order pronounced on 28th May, 2021.

Sd/-

(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

"पूनम"
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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar