

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, "B", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &  
SHRI R.L NEGI, JUDICIAL MEMBER**

**आयकरअपीलसं./ITA No. 1062/CHD/2019**

निर्धारणवर्ष / Assessment Year : 2010-11

Shri Rajat Mehreja, #135, Sector 21A, Chandigarh	बनाम	The Income Tax Officer, Ward-3(2), Chandigarh
स्थायीलेखासं./PAN NO: AOKPM6016J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing through video Conferencing**

निर्धारितीकीओरसे/Assessee by : Shri Tejmoohan Singh, Advocate  
राजस्वकीओरसे/ Revenue by : Sh Ashok Kumar, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 08.04.2021  
उदघोषणाकीतारीख/Date of Pronouncement : .06.2021

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The assessee has filed the present appeal against the order dated 24.05.2019 passed by Commissioner of Income Tax (Appeals)-1, Chandigarh [for short 'the CIT(A)'] for the assessment year 2010-11, vide which, the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 [for short 'the Act'].

2. Brief facts of the case emanating from the record and pleadings of the parties are that the AO issued notice u/s 148 of the Act to the appellant/assessee for initiating proceedings u/s 147 of the Act

against him on the ground that during the year relevant to the assessment year under consideration he being an employee of a Bank received salary amounting to Rs. 8,66,126/-, however, did not file return of his income. No return was filed by the assessee in response to the notice u/s 148 of the Act. Thereafter the AO issued notice u/s 142(1) of the Act on 05.05.2017 and 15.11.2017. Since no response was received from the assessee, AO issued show cause notice along with notice u/s 142(1) of the Act, directing the assessee to show cause on or before 28.11.2017 as to why the assessment should not be completed u/s 144 of the Act and the amount received should not be treated as his taxable income. The said notices were served by affixing the copies thereof. However, on the said date neither anybody attended nor any application for adjournment was received by the AO. The AO in order to afford one more opportunity in the interest of justice, adjourned the proceedings and issued letter to the assessee to appear on the next date fixed for hearing and furnish reply if any. Since no response was received, AO decided to proceed *ex-parte* and completed the assessment u/s 144 r.w.s. 147 of the Act on the basis of material available on record and determined the total income of the assessee at Rs.8,66,126/-, treating the amount received by the assessee as his taxable income.

3. Aggrieved by the *ex parte* assessment order passed by the AO, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee dismissed the appeal and confirmed the action of the AO. Against the said order, the assessee is in appeal before this Tribunal.

4. The assessee has challenged the impugned order by raising the following grounds of appeal: -

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the best judgment assessment made u/s 144 rw 147 of the Act without affording a proper opportunity of hearing which is against "the Principals of Natural Justice and as such the assessment framed is illegal, arbitrary and unjustified.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the reopening the assessment by issuance of notice u/s 148 in as much as there has been no escapement of income and as such the assessment framed is illegal, arbitrary and unjustified.*
3. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs. 8,66,126/- for salary received from out of alleged undisclosed sources only for the reason that the assessee did not file an application for additional evidence which is arbitrary and unjustified.*
4. *That the salary has been received from M/s Standard Chartered Bank as is evident from Form 26AS which is part of Income Tax Record on which the due taxes have also been deducted which fact has not been verified by the Assessing Officer showing total non-application of mind while framing best judgment*

*assessment and upholding of the same by Commissioner of Income Tax (Appeals) on technical grounds is arbitrary and unjustified.*

5. *That the order of the Ld. Commissioner of Income Tax (Appeals) upholding the order passed under section 144/147 of the Act is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.*

5. At the outset, the Ld. counsel submitted the assessee does not want to press ground No 1 and 2 of the appeal, therefore, the same may be dismissed as not pressed. In view of the submissions made by the Ld. Counsel, we dismiss ground No. 1 & 2 of the appeal as not pressed.

6. Now the grievance of the assessee is that the Ld. CIT(A) has wrongly upheld the addition of Rs. 8,66,126/-made by the AO after rejecting the additional evidence produced during appellate proceeding for the reason that the assessee has not filed an application under Rule 46A of the Income Tax Rulers (Rules) for admission of additional evidence. The Ld. counsel further submitted that since the AO had passed the assessment order u/s 144 r.w.s. 147 of the Act without hearing the assessee, the Ld. CIT(A) ought to have taken into consideration the documents produced by the assessee during the course of appellate proceedings. The Ld. counsel further submitted that the Ld. CIT(A) has only endorse the *ex-parte* assessment order passed by the AO without pointing out any cogent

reason for not considering the documents placed on record during the appellate proceedings. The Ld. counsel further submitted that as per Form 16, during the previous year the assessee received gross salary of Rs. 7,84,650/- and after taking benefit u/s 10 of the Act and deduction u/s 80C of the Act, taxable income remained Rs. 6,41,700/- on which the M/s Standard Chartered Bank deducted tax at source amounting to Rs. 82,951/-. Since, the assessee has already paid the tax the Ld. CIT(A) has wrongly affirmed the action of the AO.

7. On the other hand, the Ld. Departmental Representative supporting the order passed by the Ld. CIT(A) submitted that since the assessee did not file proper application under Rule 46, the Ld. CIT(A) has rightly rejected the request of the assessee for admission of additional evidence.

8. We have considered the rival submissions of the parties and perused the material on record. The main grievance of the appellant/assessee is that the Ld. CIT(A) has wrongly declined to admit the additional evidence which the assessee wanted to rely during the appellate proceedings. Admittedly, in this case, the AO has passed the assessment order u/s 144 of the Act and the assessee could neither file any document in support of his contention nor argue his case personally or through his

representative. Under these circumstances the assessee had no option but to adduce additional evidence and plead his case before the appellate authority. Hence, the assessee requested the Ld. CIT(A) to admit the additional evidence. Under Rule 46A of the Rules, the CIT(A) has jurisdiction to allow additional evidence in the following circumstances:

*(a) where the AO has refused to admit evidence, which ought to have been admitted; or*

*(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO; or*

*(c) where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal: or*

*(d) where the AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

9. In the present case, since the assessment order had been passed u/s 144 of the Act, the assessee had no occasion to place on the record the relevant evidence essential for the just decision of the case. Further, it is not apparent from the assessment order that the notices issued/sent to the assessee were served upon him and the despite the service of notices, the assessee failed to appear before the AO. Under these circumstances, the assessee

had no option but to adduce additional evidence before the Ld. CIT(A). Hence, in our considered view, the Ld. CIT(A) ought to have admitted the additional evidence which the assessee intended to adduce. As pointed out by the Ld. Counsel the Ld. CIT(A) has declined to admit the additional evidence only for the reason that the assessee has not filed an application under Rule 46. We further notice that Ld. CIT(A) has not even discussed the nature of evidence which the assessee intended to place on record and its relevance in adjudication of the issues raised by the appellant.

10. The Hon'ble Supreme Court in the case of *Collector Land Acquisition vs. Mst. Katiji & others* 1987 SCR (2) 387 has *inter alia* held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

11. In view of the facts of the case and the circumstances under which the Ld. CIT(A) has dismissed the appeal of the assessee and the ratio laid down by the Hon'ble Supreme Court in the case referred above, we hold that the action of the Ld. CIT(A) is not sustainable in law. Hence, we are of the considered view that the assessee should get an opportunity to present his case before the Ld. CIT(A) on the basis of the additional evidence. We therefore, set aside the impugned order in the interest of justice and send the

appeal back to the Ld. CIT(A) for deciding the issues afresh after taking into consideration the additional evidence produced by the assessee during the appellate proceedings and further affording a reasonable opportunity of being heard to the appellant/assessee. Accordingly, we direct the assessee to appear before the Ld. CIT(A) and not to seek adjournments on any frivolous grounds.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 30<sup>th</sup> June 2021.

Sd/-  
(N.K. SAINI)  
उपाध्यक्ष /Vice President

Sd/-  
(R.L.NEGI)  
न्यायिकसदस्य/ Judicial Member

**Dated : 30.06.2021**

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar