

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'A', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos.1300 to 1303/Chd/2019
निर्धारण वर्ष / Assessment Years : 2005-06 to 2008-09

M/s Creative Capital Services Pvt. Ltd., SCO 141-143, Sector 43-B, Chandigarh.	बनाम	The D.C.I.T., Central Circle -1, Chandigarh.
स्थायी लेखा सं./PAN NO: AACCS5540L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tej Mohan Singh, Adv.
राजस्व की ओर से/ Revenue by: Smt.C.Chandrakanta, CIT DR
& Smt.Meenakshi Vohra, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 13.07.2021

उद्घोषणा की तारीख/Date of Pronouncement: 16.07.2021

आदेश/ORDER

PER BENCH:

All the above appeals have been preferred by the same assessee against separate orders of the Commissioner of Income Tax (Appeals)-3, Gurgaon [(in short 'CIT(A)'] all dated 22.06.2019 relating to assessment years 2005-06 to 2008-09 respectively, confirming the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The appeals in ITA Nos.1300 & 1301/Chd/2019 were delayed for filing by 25 days. An application seeking condonation of the delay was filed by the assessee dated 10.07.2021 stating therein that the delay was on account of fault at the end of his office only since the appeals had been handed over to an employee of his office Shri Rajkumar Rawat but could not be filed in time since he had to proceed on leave to attend to his ailing mother. That even the counsel was travelling consistently in that period on account of the treatment of his nephew who was suffering from cancer and only when Shri Rajkumar Rawat returned, after attending to his mother ,that the appeals were found to have not been filed and accordingly corrective measures were taken and the appeals filed belatedly on 03.10.2019. An affidavit of Shri Rajkumar Rawat was filed before us stating the above facts on oath. The Ld.Counsel for the assessee pleaded that there was no malafide intention in not filing the appeals in time and the delay, therefore, be condoned.

3. The Ld. DRs in the two appeals, Smt.C.Chandrakanta and Smt.Meenakshi Vohra, stated before us to have no objection to the delay being condoned.

4. Accordingly, noting that there was sufficient and bonafide cause for the delay of 25 days, the same was

condoned and the order pronounced in open court itself during the course of hearing.

5. Thereafter the Ld.Counsel for the assessee contended that the issue involved in all the appeals was identical relating to penalty levied u/s 271(1)(c) of the Act ,which was confirmed by the Ld.CIT(A). The Ld.Counsel for the assessee contended that the grounds raised in all the appeals were identical and that his primary argument was that the CIT(A) had passed an exparte order, without granting due opportunity of hearing to the assessee, in gross disregard of the principles of natural justice.He drew our attention to ground No.1 of the appeals ,in this regard,as under:

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred in passing an ex-parte order which is against the Principals of natural justice and as such the order passed is illegal, arbitrary and unjustified.”

6. The Ld.Counsel for the assessee pointed out that the while passing the exparte order,the Ld.CIT(A) had noted non compliance of the assessee to various notices of hearing issued to it.He drew our attention to para 4.1 of the order wherein the same was stated to be recorded and which reads as under:

“4.1. Notice u/s 250 of the Act was issued in the appellate proceedings for the year under consideration, fixing the case for hearing on 20.02.2019. None appeared on this date. Another notice was issued fixing the case for

hearing on 23.04.2019. In response to this, Sh. Tej Mohan Singh, AR of the appellant appeared and requested for adjournment and the case was adjourned to 24.05.2019. None appeared on behalf of the appellant on said dated. Another notice was issued fixing the case for hearing on 07.06.2019. None appeared on this date nor submissions were filed by the appellant during the entire appellate proceedings.”

7. He contended that in fact except for the opportunity of hearing granted on 24.05.2019 ,as noted in para 4.1, above no other notices were received by the assessee. He pleaded, therefore, that the appeal be restored back to the Ld.CIT(A) for adjudication afresh after granting due opportunity of hearing to the assessee. He pointed out that the assessee had raised legal grounds before the Ld.CIT(A) challenging the validity of the order passed u/s 271(1)(c) of the Act in ground No.1-4 ,which had not been adjudicated by him and, therefore, he pleaded the appeals be restored to the Ld.CIT(A) for adjudicating the legal grounds raised as well as those on the merits of the case.

The Ld. DRs did not object to this plea of the Ld.Counsel for the assessee.

8. In view of the above since all the orders passed by the Ld.CIT(A) are ex-parte order ,and though the Ld.CIT(A) has listed four notices issued to the assessee for grant of hearing in the appeals,and the Ld.Counsel has stated that except for one notice , he did not receive any other notice, be that so, it is a basic principle of natural justice that no

person should be condemned unheard. Considering the facts before us, we are of the view that interest of justice will be well served by restoring all the appeals back to the Ld.CIT(A) for adjudication afresh in accordance with law, after granting due opportunity of hearing to the assessee.

9. In the result, all the above appeals filed by the assessee are, therefore, allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-

दिवा सिंह

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

दिनांक/ Dated: 16th July, 2021

रती

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

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