

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

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. SUDHANSHU SRIVASTAVA, JM

आयकर अपील सं./ ITA NO. 375/Chd/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Jagmohan Singh # 2409, Krishna Nagar Ludhiana	बनाम	The DCIT Central Circle-1 Ludhiana
स्थायी लेखा सं./PAN NO: AEHPS2203N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmoohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Smr. Priyanka Dhar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 22/02/2022

उद्घोषणा की तारीख/Date of Pronouncement : 22/02/2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 16/02/2016 of Ld. CIT(A)-5, Ludhiana.

2. Following grounds have been raised in this appeal :

1. That the impugned order has been passed by the Ld. Commissioner of Income Tax (Appeals) without proper application of mind, as such it is not sustainable in law and facts of the case.

2. That under the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) is not justified in dismissing appellant's appeal and holding that the Penalty imposed U/S 271 (1) (c) of the IT. Act, 1961 by the Assessing Officer in this case is held to be justified. The Penalty levied amounting to Rs. 13,13,910/- confirmed by the Ld. Commissioner of Income Tax (Appeals) is misplaced, untenable and contrary to law.

3. That the Penalty levied is based on misplaced and untenable notice. Provisions of Section 271(1) (c) of the Income Tax Act, 1961 have been misconstrued and misapplied in the Appellant's case.

4. The Appellant craves leave to add, amend, modify and/or add new grounds of Appeal before the Appeal is heard and disposed off.

3. The assessee also moved an application dated 22/12/2021 for admission of the additional ground which read as under:

In the matter of ITA No.375/Chandi/2016 relating to the Assessment Year 2009-10 - PAN AEHPS2203N

Application for admission of additional ground of appeal for purposes of adjudication.

Respectfully showeth as under:

The abovementioned appeal stands fixed on 04.01.2022. The appellant craves leave for admission of the following additional ground of appeal which may please be admitted as it goes to the root of the matter.

"That the Ld. Assessing Officer has erred in law in failing to mention whether notice issued under section 271(1)(c) was for concealment of income or for furnishing inaccurate particulars of income and as such penalty imposed in pursuance of an invalid notice is illegal, arbitrary & unjustified."

It is, therefore, respectfully prayed that the additional ground being raised now which are purely legal in nature may please be admitted and adjudicated upon.

Sd/-

(Jagmohan Singh)

Place: Ludhiana.

Date: 22.12.2021

4. During the course of hearing the Ld. Counsel for the Assessee submitted that the additional ground now raised is purely legal ground which goes to the root of the matter, therefore, it may be admitted. The reliance was placed on the judgment of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd v. Commissioner of Income-tax, (1998) 229 ITR 383 (SC) . The Ld. Counsel for the Assessee however admitted that the additional ground now raised was not

before the Ld. CIT(A). He also submitted that the matter may be set aside to the Ld. CIT(A) to decide this legal ground which was not earlier raised before him.

5. In her rival submissions the Ld. Sr. DR although opposed the admission of the additional ground but could not controvert the aforesaid contention of the Ld. Counsel for the assessee.

6. We have considered the submissions of both the parties and perused the material available on the record. In the present case, the assessee has raised additional ground first time before this Bench of ITAT, the said ground is purely a legal ground and no further investigation is required, therefore, it can be admitted in view of the ratio laid down by the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd v. Commissioner of Income-tax (supra) wherein it has been held as under:

" The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) is too narrow a view to take of the powers of the Tribunal."

It has further been held that :

Undoubtedly, the Tribunal has the discretion in allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

6.1 In the present case it is an admitted fact that the legal ground now raised by the assessee although goes to the root of the matter but the same was not raised before the Ld. CIT(A). We therefore deem it appropriate to set aside this issue back to the file of the Ld. CIT(A) to be decided afresh after considering the

additional ground raised by the assessee and by providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 22/02/2022)

Sd/-

सुधांशु श्रीवास्तव
(SUDHANSHU SRIVASTAVA)
न्यायिक सदस्य/ JUDICIAL MEMBER
AG
Date: 22/02/2022

Sd/-

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

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