

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. 164/CHD/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Shri Shyam Lal, House No. 645, Village Chuhar Majra, Tehsil-Kaithal (Haryana).	बनाम VS	The ITO, Ward - 2, Kaithal.
स्थायी लेखा सं./PAN No: ACKPL5615J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vineet Thakral, Advocate

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 04.05.2022

उद्घोषणा की तारीख/Date of Pronouncement : 10.05.2022

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 11.08.2020 of CIT(A), Karnal pertaining to 2016-17 assessment year is assailed on the following grounds :

- 1. That the Learned Assessing Officer and Ld. Commissioner of Income Tax (Appeals) has failed to appreciate the materials on the record and facts of the case.*
- 2. That the order of Learned Commissioner of Income Tax (appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus untenable.*
- 3. That the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeals) has further erred in passing a non-speaking order of the principals of Natural Justice.*

4. The Ld. Assessing Officer has illegally, wrongly, arbitrarily and without any basis added Rs. 20,90,396/- to the returned income of the assessee and created demand of Rs. 7,61,452/-.

5. Any other ground which may be taken up at the time of herring of appeal with the kind permission.

2. However, before addressing the grounds raised, the Id. AR invited attention to the condonation of delay application placed on record wherein a delay of 255 days has been pointed out by the Registry. Addressing the same, the Id. AR relying upon the application submitted that no doubt there was a delay in the filing of the present appeal which was filed on 22.06.2021 however, the period is covered by the order of the Apex Court during the Pandemic. Even otherwise, it was submitted that the delay is incorrectly calculated by the Registry. Referring again to the application on record, it was submitted, that the impugned order is dated 11.08.2020 and the last date for filing of the appeal was 10.10.2020 and the appeal was filed on 22.06.2021. Hence there is a delay of 110 days not 255 days as pointed out by the Registry. Addressing the specific period, it was submitted that the appeal may not be treated as time barred as the specific period was already extended by the Hon'ble Apex Court due to COVID reasons. Attention was invited to order dated 10.01.2020 passed in the case of M.A. No. 21 of 2020 and others in suo-moto Writ Petition(C) No. 3 of 2020. Relevant paras of the same, relied upon are extracted hereunder :

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. *As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn."*

2.1 Accordingly, it was his prayer that the delay, if any may be condoned.

3. The ld. Sr.DR considering the record had no objection to the delay being condoned.

4. I have heard the submissions and perused the material on record. Considering the facts and the explanation, the

delay pointed out by the Registry stands addressed. The delay is condoned. Ordered accordingly.

5. The parties were, accordingly, directed to argue the appeal on merits.

6. The ld. AR invited attention to the assessment order and the impugned order and submitted that the detailed submissions made available to the ld. CIT(A) have been dismissed in a summary manner without addressing the facts. Attention was invited to the six paged impugned order wherein from page 2 to page 6, the assessment order is extracted and the appeal of the assessee has been dismissed in a cryptic manner ignoring the reply of the assessee available on e-portal holding as under :

“The appellant, even at the appellant stage has merely stated that he is working as a general commission agent and trading in shares in a personal capacity. None of his statements are bolstered by any evidence. In the absence of any plausible effort to controvert the A.O.'s findings I sustain the addition made by the A.O.

4. In the result, the appeal is dismissed.”

6.1. Attention was invited to the copy of e-mailed written submissions stating that reply had been filed and transaction details had been shared through e-mail on 31.07.2020 alongwith attachments. The reply and the details, it was submitted, remained unaddressed. It was his submission that the impugned order is a non speaking order.

6.2 Accordingly, in the face of these facts, it was his limited prayer that the impugned order may be set aside and the issues be restored to the CIT(A) for a fresh consideration on facts.

7. The ld. Sr.DR considering the record posed no objection to the prayer for remand.

8. I have heard the submissions and perused the material on record. In the light of the prayer of the parties before the Bench, the issue is set aside back to the file of the CIT(A). The First Appellate Authority is directed to pass a speaking order in accordance with law after considering the evidences relied upon. In case there is any shortcoming in the evidences, it is hereby directed that the said shortcoming be communicated to the assessee and an opportunity to make good the evidence/submissions so as to provide an effective opportunity of being heard be provided. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 10th May,2022.

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

“पूनाम”

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