

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, "SMC", CHANDIGARH

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No. 468/CHD/2022**

निर्धारणवर्ष / Assessment Year : 2012-13

Smt Karamjit Kaur, W/o Shri Darshan Singh, Village Rurkee kham, P.O. Palheri, Mohali, Punjab	बनाम	The ITO, Ward-6(4), Mohali
स्थायी लेखा सं./PAN NO: BPNPK6941M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. S.K. Sharma, ITP

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

सुनवाई की तारीख/Date of Hearing : 06.09.2022

उदघोषणा की तारीख/Date of Pronouncement : 06.09.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal has been preferred by the assessee against the order dt. 26.03.2022 passed u/s 250 of the Income Tax Act, 1961 [in short 'the Act'] by the National Faceless Appeal Centre, Delhi [NFAC] for assessment year 2012-13.

2.0 The brief facts of the case are that as per the information available with the Income tax Department on the Non-Filers Monitoring Scheme (NMS) Module, the assessee had deposited cash totalling to Rs. 47,01,000/- in her bank account maintained with Punjab National Bank during the captioned assessment year. Since the assessee had not filed any return of income, the assessee's case

was reopened by issuance of notice u/s 148 of the Act. However, the assessee did not file any return in response to the said notice nor did she submit any reply to the various notices issued by the Assessing Officer (AO) from time to time. Accordingly, the AO proceeded to treat the cash deposit of Rs. 47,01,000/- as unexplained in terms of section 69A of the Act and completed the assessment u/s 144 of the Act at total income of Rs. 47,01,000/.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the ex-parte assessment order. The Ld. NFAC however, dismissed the appeal of the assessee by confirming the assessment order.

2.2 Now, the assessee has approached this Tribunal challenging the order of the Ld. NFAC by raising the following grounds of appeal:-

1. *Ld. CIT(A) is not justified in passing ex-parte order u/s 250 as fixation notices were not served on the assessee physical though it was specifically mentioned in form No.35 that the notices may be issued physically. The assessee is illiterate and not familiar with on line procedure.*
2. *Ld. CIT(A) has erred in not adjudicating the issue raised in ground No.2 which stated "That the assessment made u/s 144 is bad in law and void abinitio as not notice u/s 148 of the Act was ever served on the assessee". This ground may be adjudicated now.*

3. *Ld. CIT(A) has erred in not adjudicating the issue raised in ground No.3 which states "That return was filed on 23.11.2019 but no notice u/s 143(2) issued, hence assessment made is invalid in view of the decision of Hon'ble Apex Court in the case of ACIT Vs. Hotel Blue Moon reported in 312 ITR 362 (2010)". This ground may be adjudicated now. The return was filed electronically and e-filing acknowledgement No is 266991500041219.*
4. *On the facts of the case the Ld. CIT(A) has erred in confirming / sustaining the addition of Rs. 47,01,000/- made by the AO u/s 69A of the I.T. Act on account of unexplained cash deposited by the assessee in her bank account. The cash deposited in the bank account was from known sources and is explainable.*
- 5 *The appellant craves leave for any addition deletion of amendment in the grounds of appeal on or before disposal of appeal.*

3.0 The Ld. AR submitted that the assessee was an illiterate person not familiar with the provisions of the Income Tax law. It was submitted that the assessee had, at the time of assessment proceedings engaged one Shri Kulbir Singh to represent her case but later on it transpired that Shri Kulbir Singh had not attended the proceedings before the AO and, therefore, the assessee's case was dismissed ex-parte without being properly represented before the AO. The Ld. AR further submitted that the Ld. NFAC also had not adjudicated the issue on merits but had simply upheld the order of the AO without any sound reasoning. The Ld. AR prayed that the case

may be restored to the file of the AO so that the assessee may file the required evidences and explanations before the AO.

4.0 Per contra, the Ld. Sr. DR opposed the prayer of the Ld. AR for restoration of the appeal to the file of the AO and argued that the assessee had the duty to ensure that due compliance is made vis-a-vis the various notices issued by the Income Tax Department and that she cannot escape the tax liability by alleging that the person appointed to represent her case did not do so. It was further submitted that even before the Ld. NFAC, the assessee had not submitted any documentary evidences, as was evident from the perusal of the impugned order, and, therefore, the Ld. NFAC had rightly dismissed the assessee's appeal. It was prayed that the appeal of the assessee be dismissed.

5.0 I have heard the rival submissions and have also perused the material on record. Admittedly, the order by the AO has been passed ex-parte on the ground that neither did the assessee filed any return of income in response to the notice issued u/s 148 of the Act nor did the assessee submit any documentary evidences or explanations vis-a-vis the cash deposits in her bank account. However, it is the submission of the Ld. AR that the assessee is a illiterate lady who is not well versed with the intricacy of the Income Tax law and it has also been submitted that the assessee had engaged one Shri Kulbir Singh to represent her before the AO who did not attend the

proceedings before the AO while she was under the impression that she was being duly represented before the AO. Although, the Ld. Sr. DR has argued that the assessee does not deserve a second chance, I am of the considered opinion that interest of substantial justice requires that the assessee should be given proper opportunity to explain the various entries prior to imposition of tax. I also note that the Ld. NFAC has not adjudicated on the issue before it but has simply confirmed the order of the AO by holding that under the circumstances narrated in the assessment order, recourse to the provisions of section 144 of the Act by the AO was proper. The impugned order also does not mention as to whether the assessee had filed any documentary evidences before the Ld. NFAC or not. The Ld. AR also could not give a definite answer in this regard and it was submitted that he also did not have the complete set of papers which had been earlier handed over to Shri Kulbir Singh, who was eventually murdered. Therefore, looking into the entirety of facts and in the interest of substantial justice and also considering the fact that the assessee is an illiterate lady, I deem it appropriate to restore the appeal to the file of the AO with a direction to examine the issue afresh after giving adequate opportunity to the assessee to present her case. I also direct the assessee to duly comply with the notices issued by the AO in this regard and also submit the relevant details and documents as well as explanations with regard to the impugned amount of cash deposits. I also direct the assessee to actively keep a track of the

second round of assessment proceedings and duly comply with the directions of the AO in this regard.

6.0 In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 06.09.2022.

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

Dated : 06.09.2022

“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