

**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. 95/CHD/2022  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shiv Nath S/o Shri Amar Nath, House No.998, Behl Gadhan Street, Jagadhri, Distt. Yamunanagar.	Versus	The ITO, Ward-4, Yamunanagar.
स्थायी लेखा सं./PAN No: AIVPN1029M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Avneet Singh, Advocate  
राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08.06.2022  
उद्घोषणा की तारीख/Date of Pronouncement : 05.09.2022

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 29.12.2021 of CIT(A) (NFAC i.e. National Faceless Appeal Centre) Delhi pertaining to 2011-12 assessment year is assailed on the following grounds :

- 1. That the CIT (A) has erred in facts, by not considering that the Appellant is a low educated person doing petty labour jobs and not usual with the legal proceeding under the Income Tax Act and the non-compliance of the notices was not a deliberate act of the Appellant.*
- 2. That the CIT (A) has erred in facts, by not considering the explanation given by the Appellant that the cash deposited amounting to INR 4,31,000/- in his bank*

*account and also INR 2,69,000/- by cheque received from relative and used to deposit in FDR amounting to INR 7,00,000/- to meet the study visa requirement for his son. Regarding source of deposits, the appellant explained it as the savings of all the family member, as including him, his wife and daughters were also working and earning and each had used their savings and also borrowed the remaining fund from relatives to support the education of his son.*

3. *That the CIT (A) has erred in law, by disregarding the Principle of Natural Justice by not providing the proper opportunity of being heard.*
4. *That the CIT (A) has erred in facts, by not considering the difficult time of COVID-19 pandemic.*

*It is hereby requested before your Goodself to kindly provide the opportunity of being heard since the non-compliance of the notices was not a deliberate act of the Appellant. As a matter of natural justice and to ensure that there is no failure of justice the appellant shall be provided with an opportunity of being heard and represent his case.*

*The Appellant reserves the right to add, alter or amend any of the grounds of appeal at any time before or during the hearing of appeal.*

2. The relevant facts of the case are that the proceedings u/s 147 of the Act were initiated in the case of the assessee in view of the fact that certain deposits were found to have been made in the assessee's bank account.

2.1 In response to the notice issued, the assessee filed a return declaring total income of Rs.76,600/-. The AO considering the reply as unsatisfactory made the addition of Rs.3,31,000/-.

3. The assessee carried the issue in appeal before the First Appellate Authority. The appeal filed was dismissed in limine. The explanation offered for the delay in Column No.15 in the Memo of Appeal as per Form No.35 pleading lack of exposure etc. was rejected.

4. Aggrieved the assessee is in appeal before the Tribunal.

5. The ld. AR referring to the pleadings made in Ground No. 3 & 4 above prayed for a set aside of the order wherein the appeal was dismissed in limine. Prayer for a remand back of the issues for a proper consideration on facts was made.

5.1 Referring to the record it was submitted that there was a delay of 29 days on account of COVID related issues.

5.2 On merits, it was his submission that the impugned order may be set aside and the issues be restored to the AO.

5.3 Referring to the record, it was submitted that the assessee has explained that the deposits were from the past savings and earnings of the entire family. These had been pooled together but the explanation had not been considered. The availability of funds with the assessee was necessitated for sending his child to Australia for further studies.

5.4 The visa application on query, it was stated was rejected.

5.5 It was submitted that since the earnings of the assessee or his family members was limited and did not require the filing of tax returns, hence he is not in a position to file any such document. The earnings of the family members were

much below the taxable limits. Accordingly, it was his prayer that remand back for a fair appreciation of facts be directed.

6. The ld. Sr.DR appearing for the Revenue initially took the position that remand be made to the CIT(A), however, considering that facts and issues were required to be enquired into by the AO agreed for a remand back to the AO for considering the issues.

7. A perusal of the record shows that the Assessing Officer rejected the explanation of the assessee in part for want of documentary evidence. The appeal of the assessee was dismissed by the First Appellate Authority on the grounds of limitation. I find on going through the order that there is no discussion therein to the relevant fact namely whether any specific notice was issued to the assessee to address the delay or not ? No mention is found made in the order to the number of days by which the appeal was noticed to be time barred by the ld. First Appellate Authority. It is seen that the assessee on the other hand had appended an explanation to the delay in the Memo of Appeal filed suo-moto. The First Appellate Authority dismissed the explanation appended in the Memo of Appeal filed holding " *that the law assists those who are vigilant and not those who sleep over the night as found in the maxim "Vigilantibus, non dormientibus jura subveniunt"*. The following explanation that the

delay had occurred “*due to little knowledge and having no exposure of any person dealing in his totally afraid of income tax demand due on me. **My circle is also of illiterate people***” was scoffed at and dismissed holding that it was questionable as he was represented by an Advocate and a C.A. at the assessment/First Appellate stage holding that, “*the rule 'ignorance of the law is no excuse or 'ignorantia juris non-excusat,' or ' ignorantia legis neminem excusat' .* The said conclusion on facts as available on record cannot be upheld. The hypertechnical view taken in the case of a daily labour to whom admittedly access to legal remedies etc. cannot be said to be readily available and possibly could be availed of only on account of personal obligations etc. Possibly there is no free legal aid available for tax litigation. Thus, this abrupt dismissal of the appeal ignoring the facts and without affording an opportunity to meet the charge, it is my painful duty to record cannot be upheld. The Tax Authorities like every other Government servants/agency performs State functions for the Government. The Government exists and functions for its citizens. The citizens are taxpayers as well as the marginalized hardworking toiling masses engaged in building a fulfilling life for themselves. Thus, the arbitrary order where without giving notice the explanation appended in the Memo of Appeals was not going to be accepted cannot be

upheld. The assessee's appeal has been thrown out noticing that before the Assessing Officer as well as the First Appellate Authority the assessee was represented by a counsel and appeal was filed by a C.A. Such a biased reasoning in a case like the present case reeking of prejudices cannot be upheld. The facts on record cannot be allowed to remain ignored. The said reasoning keeping the social, educational and financial background of the assessee working as a daily wage labourer is patently a very unfair exercise of power to reject the Condonation of delay of a few days ignoring the prayer made in the Memo of Appeal itself. Explanation is on record. Atleast give a fair hearing. Arbitrary and unfair actions by the Authorities can have serious consequences wherein the marginalized may consider themselves alienated from the system. Such an outcome should be actively avoided. I find that admittedly, no advantage has been derived by the assessee by filing the appeal late. Nor any vested right of the Revenue has been upset if the delay in a case like the present case is condoned. Explanation is available on record. Keeping in view the limitation of the assessee pleaded as per record, the summary dismissal of the appeal without even caring to put the assessee to any notice of the specific delay, in these peculiar facts and circumstances as per record, I am of the

view, cannot be sanctioned. The order, accordingly cannot be sustained. The delay during COVID period stands addressed.

8. The hearing in the present appeal was re-fixed as in the appeal as argued on 18.05.2022 the only prayer of the assessee was for a remand back. However, while finalizing the order considering the facts as consistently available on record, the hearing was re-fixed for the benefit of the Revenue to argue why the appeal on facts instead of remand back as per the counsel's prayer infact should not be allowed.

8.1 Accordingly, the hearing was re-fixed in order to afford an opportunity to the Revenue to defend the order.

8.2 The reasoning for the said conclusion was on account of the peculiar facts on record where admittedly in a case like the present case, the assessee will possibly never be in a position to file "clinching evidences" like the evidences of filing of returns etc. by his family members. The assessee, as noticed is a daily wage worker and cumulatively and individually the income of the family has never been anywhere close to the taxable limits. The fact remains on record that the resources/savings from all sources were pooled in by the assessee to ensure financial viability for

availing a Student Visa for a daughter which ultimately also stood rejected. These facts remain unrebutted on record. Accordingly, the Revenue was put to notice to defend the order.

9. The ld. Sr.DR relied upon the order and submitted that the evidences of tuition/coaching and other incomes of the family members could not be satisfactorily demonstrated by the assessee and these may be verified.

10. No further arguments were made.

11. I find on a consideration of the facts on record and addressing the social milieu from which the assessee comes from, that to further burden the assessee or the tax administration in the peculiar facts would not only be an unfair order but also be detrimental and wasted exercise for all concerned. Keeping in view the realities and aspirations of the rising India and the efforts of the toiling masses where certain families instead of sitting in apathy for the State Administration to dole out State largesse the enterprising self respecting population also consists of such citizens who instead choose to make their own efforts to avail of the opportunities and advantages provided by educating their children. There are sections of Society who choose to involve every family member in industriously working and to

simultaneously studying to ensure a proper and a decent livelihood for the next generation. To my mind, this spirit of the rising India should not be crushed by a mechanical effort of looking for evidences in 2022 for an activity which culminated in rejection of visa application of assessee's daughter on 15<sup>th</sup> July, 2010. As per record, the assessee has explained the deposits stating that these were made to *“meet study visa requirement on the basis of New FDR made on 15.04.2010, we have opened Overdraft Account no.. 65082236095 with same Bank on 16.04.2010 for Rs. 6,30,000/ from which Cash is withdrawal on 17.04.2010, 22.04.2010 and 21.07.2010. Similarly cash is deposited on 01.06.2010 against cash withdrawals on 17.04.2010 & 22.04,2010. This overdraft account is closed on 15.10.2010 by closing FDR made on 11.04.2010. Balance amount was withdrawal in cash (Copy of overdraft account is being enclosed herewith). My daughter was not able to get opportunities to go abroad for student visa. (Copy of rejection letter issued by Australian Government on July 15, 2010 is also being enclosed herewith). The sources are explained; I have two daughters one of which was Post Graduate at the time. The second daughter was also doing private job. My wife was also doing household job, As my source of earning is limited my daughter Shilpa was also doing coaching work from the home for last many years. So on the basis of old savings of all member and my saving we have deposited Rs. 4,31,000/- as cash in my saving account with State Bank of India as above mentioned. As income of all the members were below taxable limit so no return was filed. It has also been explained that; We have also taken as Rs. 2,69,000/- as loan from our relative by cheque. On same date*

*we have made FDR Rs. Seven Lacs from my saving account. (Copy of Educational certificate of my daughter is enclosed herewith).*

12. I find on a consideration of the facts and circumstances consistently available on record that the benefit of past savings of the assessee's family consisting of assessee's wife; two educated daughters and educated son to the tune of Rs. 3,31,000/- rejected by the AO and sustained by the CIT(A) cannot be upheld looking at the target which the assessee was aspiring for i.e. sending his daughter abroad for further studies. Looking at his background, it was a salute worthy ambition. The wife of the assessee as per pleadings before the AO also was working in other persons' households; one Post Graduate daughter was giving tuitions and another Post Graduate daughter was in private employment and the educated son was also gainfully employed. Accordingly, the argument that there were past savings which were pooled in and collected and deposited keeping the purpose for which the assessee was working to achieve the claim has been discarded without any basis except the reasoning that it is very/highly improbable that such a huge amount can would be lying with him idle. Therefore, the assessee's contention is not acceptable". Keeping in view the purpose for which the assessee was working hard, the claim was justified on facts. Accordingly, the respective orders are set aside and

addition is directed to be deleted. Said order was pronounced in the Open Court at the time of hearing itself.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 5<sup>th</sup> September,2022.

Sd/-

(दिवा सिंह)

**(DIVA SINGH)**

**न्यायिक सदस्य/Judicial Member**