

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'B' CHANDIGARH**

**BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 1153/CHD/2019**  
Assessment Year : 2012-13

Shri Ashish Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward-1(1), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AASPC4446N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Application for withdrawal of  
Power of Attorney).  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

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**आयकर अपील सं./ ITA No. 1155/CHD/2019**  
Assessment Year : 2012-13

Shri Suresh Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward-1(3), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AASPC4450C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Application for withdrawal of  
Power of Attorney).  
राजस्व की ओर से/ Revenue by : Shri M.P. Dwivedi, Sr. DR

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**आयकर अपील सं./ ITA No. 1157/CHD/2019**  
Assessment Year : 2012-13

Shri Amit Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward-1(3), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AASPC4449N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Application for withdrawal of Power of Attorney).

राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

तारीख/Date of Hearing : 06.12.2022

उद्घोषणा की तारीख/Date of Pronouncement : 07.12.2022

### **आदेश/ORDER**

#### **PER BENCH**

These are three appeals filed by different assessees wherein the correctness of the separate orders of CIT(A)-1 Ludhiana dated 04.06.2019 in ITA 1153/CHD/2019 & ITA 1157/CHD/2019 and dated 07.06.2019 in ITA 1155/CHD/2019 pertaining to 2012-13 assessment year is assailed on near identical grounds.

2. As the facts and circumstances are identical in all the appeals, therefore, these were heard together and are being decided by a common order.

3. At the time of hearing, no one was present on behalf of the assessee and an application was placed on record by the ld. AR in all these appeals stating as under :

*“I am compelled to withdraw my Power of Attorney from all the above three cases due to some compelling professional reasons. I request the Hon'ble Bench to kindly issue a fresh notice to the appellant and relieve me of my obligation. Inconvenience caused is highly regretted.”*

4. A perusal of the record shows that in the present appeals filed on 22.08.2019 initially time was sought over the years for obtaining relevant information which as per record had been

granted. Thereafter, various adjournments were moved during the Covid period wherein time was again granted to the assessee. However, thereafter it is seen that the present appeals have come up for hearing on more than half a dozen times and on all these occasions, adjournment was moved by the assessee's counsel. Specific reference is made to the hearings fixed on 05.05.2022, 09.06.2022, 12.07.2022, 02.08.2022 and 22.11.2022 which shows that adjournments were granted on the written request of the ld. AR. A perusal of the record further shows that notices sent to the assessee by the Registry have repeatedly come back unserved alongwith the acknowledgement with the comments 'Left'. Thus, where apparently relevant facts have not been made available to the counsel who after seeking time *ad infinitum* has ultimately withdrawn the Power of Attorney and also has not cared to be present before the ITAT to explain the circumstances and the assessee not in a position to receive notices on account of change of address etc. In the said backdrop, we can safely presume that the respective assesseees may not wish to pursue with the appeals filed as repeatedly despite opportunities, no effort has been made to assist the Tribunal in concluding the hearing. Accordingly, after hearing ld. Sr.DR Ms. Amanpreet Kaur for the Revenue in ITA 1153 and 1157/CHD/2019 and Shri M.P.Dwivedi in ITA 1155/CHD/2019, we propose to pass the

order ex-parte qua the respective assessee after hearing the Department.

5. The grounds raised in **ITA 1153/CHD/2019** which are more or less identical in the remaining two appeals except for the difference in the amounts. Accordingly, treating them as representative grounds for the remaining two appeals also, these are reproduced hereunder :

1. *That the impugned order of penalty is bad both on facts and Law.*
2. *That the re-opening, of the assessment proceedings u/s 147/148 are bad in Law illegal, without jurisdiction and merely on guess, surmises & conjectures against the facts & circumstances of the case and even the sanctions by the Ld. Principal Commissioner is in mechanical manner and without application of mind.*
3. *Ld. Appellate Authority wrongly & illegally upheld the rejection of claim u/s 10(38) ignoring the fact that the shares were sold through recognised stock exchange on which STT has been charged merely on the basis of guess, surmises and conjectures.*
4. *That the Ld. Appellate Authority wrongly and illegally confirmed the additions of an amount of Rs 23,80,602/- u/s 68 against the facts and circumstances of the case.*
5. *the Ld Appellate Authority has wrongly & illegally rejected the application for condonation of delay in filing appeal on account of technical glitches of income tax portal being in infancy stages of new e-filing procedure for filing appeals before Commissioner(Appeals).*
6. *That the interest u/s 234A, 234B, 234C and 234D have been wrongly and illegally charged.*
7. *That the Appellant craves permission to add, amend, elucidate any ground of appeal at the time of hearing*

6. The ld. Sr.DRs rely upon the orders.

7. In the facts of the present case, it is seen that ground No.1 is mis-conceived and does not arise in the present proceedings, hence, dismissed accordingly.

8. Ground No.2 raised in the present proceedings challenging the re-opening we find has not been agitated before the CIT(A). Copy of Form No. 35 available on record has been seen. Hence, no finding of the First Appellate Authority is available on the issue. We find from the record that before us despite providing more than adequate opportunities to the assessee, no attempt has been made to show how the ground is maintainable and allowable. Nothing has been placed before us to show that the assessment was bad in law. Accordingly, ground No.2 considering the record available is dismissed.

9. On Ground Nos. 3 and 4 on which challenge we find has been posed before the CIT(A) also, we find that before us nothing has been placed by the assessee to show that the finding arrived at in the orders vide para 6 addressing the backdrop, paras 7, 8 and 9 addressing the legal position and para 10 wherein the conclusion arrived at upholding the addition sustained is maintained. We find that para 12 of the assessment order which has been confirmed has not been shown to be an incorrect finding of fact. For ready reference, it is reproduced hereunder :

12. In view of above, as well as the fact that the assessee had failed to furnish any document during the course of assessment proceedings, not to speak of substantiating the genuineness of the claim of Long Term Capital Gain at Rs. 23,80,602/-, the same is held to be 'unexplained' in the light of provisions of section 68 of the I.T. Act, 1961 which reads as under:-

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year, "*

9.1 Since nothing has been placed before us to rebut the finding on fact or address the issue on facts for want of submission and supporting evidences, the additions sustained by the CIT(A) are upheld.

10. On a perusal of the record, it is seen that ground No. 5 does not arise in the present group of cases as in each of these appeals the issues have been decided by the First Appellate Authority on merits.

10.1 Ground No. 6 is consequential and ground No. 7 being a residuary ground requires no specific adjudication.

11. We find that the position qua the issues agitated before the First Appellate Authority and the additions sustained by the First Appellate Authority in the remaining two appeals also remain identical. In the absence of any rebuttal on facts and position of law applicable thereto, we uphold the additions and dismiss the appeals filed by the respective assesseees.

12. While so holding, we would like to set out herein that in the event the assessee is serious in pursuing the appeals filed and is ready to argue them on merits showing justifiable causes for not remaining present and keeping the Registry informed about the assessee's correct address, the assessee would be at liberty to pray for a recall of this order and disposal of the appeals on merit.

13. In the result, all the appeals of the assessee are dismissed.

Order pronounced in the Open Court on 07<sup>th</sup> December, 2022.

Sd/-

Sd/-

**(VIKRAM SINGH YADAV)**

**लेखा सदस्य/ Accountant Member**  
"Poonam"

**(DIVA SINGH)**

**न्यायिक सदस्य/ Judicial 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