

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 108/Asr/2022
Assessment Year: 2016-17

Sh. Swaranjeet Singh
Vill. Kharabad,
Vill. Kharabad
Ajnala Road 143001,
Punjab

[PAN: DKGPS 7916J]
(Appellant)

V. Income Tax Officer,
Ward 4(5), Amritsar

(Respondent)

Appellant by : Sh. U. S. Arora, CA

Respondent by : Mrs. Kanchan Garg, Sr. DR

Date of Hearing : 15.02.2023

Date of Pronouncement : 28.02.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi [(In short “the CIT(A)”) dated 24.03.2022 in respect of Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

- “1. *That on the facts and the circumstances of the case, the Ld. CIT (A) has erred in upholding the addition made by AO. The order of the CIT(A) has been passed, without giving a proper opportunity of hearing to the appellant- assessee. The CIT (A) should not have passed on ex-parte order. The notice dated 16.03.2022 fixing the hearing on 23.03.2022 was too short and the appellant-assessee had applied for adjournment. The CIT(A) should have allowed the appellant’s request dated 21.03.2022 for adjournment. The request for adjournment was made on the ground that the last week of March was peak pressure period since March 31 st was the statutory deadline for filing returns of Income for AY 2021 -22. It was on this ground that the adjournment was sought. Instead of allowing the appellant some more time to file the reply, the appeal was decided ex-parte and addition made by AO was sustained. In any case, the addition sustained is excessive.*
2. *The assessment is void -ab-inito for want of jurisdiction. The CIT(A) has not decided this issue.*
3. *Any other ground which may be taken during the hearing of the appeal.”*

3. At the outset, the Id. counsel for the assessee submitted that the AO and the Id. CIT(A) has passed the order ex-parte qua the assessee without giving proper opportunity of being heard to the appellant assessee. He contended that the Id. CIT(A) has fix up the date of hearing on 23.03.2022 vide notice dated 16.03.2022. Thus, he has allowed too short time, in the last week of March, which was statutorily deadline for filing the return of income for assessment year 2021-22 and hence the assessee has requested for the adjournment vide application dated 21.03.2022, however, the Id. CIT(A) has not accepted the requested for the adjournment but he

has rejected the assessee's request for adjournment and passed impugned order ex-parte qua the assessee. The Id. counsel has filed on additional evidence under Rule 29 of ITAT Rules, 2963 in the form of paper book (1) comprising pg. 1 to 57 and paper book (2) pg. 1 to 19 which are very vital and crucial evidence for determination of assessee's income which could not be filed before the AO and the CIT Appeal (NFAC), in the absence of adequate opportunity of being heard, to the assessee by the authorities below. In support, the counsel has filed a written note which reads as under:

Submissions:

This is submitted that the assertion of learned CIT(A), NFAC that the assessee did not file any request seeking adjournment is not correct. Notice dated 29.12.2020 was never served on the assessee. It was rather sent on the email ID of the old counsel. Remaining 3 notices mentioned by the CIT(A), NFAC in the appellate order were responded to by the assessee and more time was sought to file the reply. The dates on which responses were filed are given below:

Notice	Issue	Response Due Date	Date of request seeking Adjournment
29-12-2020		14-01-2021	Notice not received. It was rather served on the email ID of the old counsel.
10-12-2021		22-12-2021	21-12-2021
24-12-2021		10-01-2022	10-01-2022
16-03-2022		23-03-2022	21-03-2022

Since the matter was complicated and involved preparation of lengthy cash flow statement it took time to collect the necessary information. Moreover, the notices were short. The assessee had engaged a new counsel who needed time to familiarize himself with the facts of the case. The old counsel was not

cooperating and the assessee had to collect the entire information from different banks and other sources afresh. Most of the notices were issued by CIT(Appeals), NFAC during the last quarter of the year the last notice being for 23rd March 2022. This is submitted that the last month of the March was the busiest period for Chartered Accountants as 31st March 2022 was the statutory deadline for filing returns of income for the assessment year 2021-22. The adjournment on this ground was sought on 21st March 2022. Another reason for seeking adjournments was that since it was a complicated matter, assessee wanted to avail an opportunity of personal hearing through video conferencing which Faceless Appeal Scheme 2020 did not provide. However, the said provision of seeking personal hearing was incorporated in Faceless Appeal scheme 2021 though the modalities were yet to be notified.

This is submitted that as per the Faceless Appeal scheme the communication from appellant is transmitted electronically to NFAC which in turn sends it to the appeal unit. It seems that in the instant case, probably due to technical glitches, adjournment requests filed by the assessee were not properly communicated to the appeal unit by NFAC leading the CIT(A),NFAC to draw the conclusion that the appellant assessee has not filed any request seeking adjournment. As such this is submitted that CIT(A) NFAC has erred in confirming the addition without hearing the assessee. Moreover, CIT(A) NFAC has also not adjudicated the issue of jurisdiction raised by the appellant in his ground of appeal.

As such in the light of the above, this is submitted that the assessment has been made by the Assessing Officer without hearing the assessee. Huge demand of Rs 63,99,371/- has been created on an ex-serviceman who is barely able to make his both ends meet. . The AO framed the assessment on the date which was prior to the date of hearing communicated to the assessee. His appeal has also been dismissed by CIT(A) without hearing him. Adjournment requests filed by the appellant never reached CIT(A). This is against the rules of natural justice and strikes at the root of the principle of audi alteram partem. This will cause irreparable damage, pain and anguish to the appellant. The appellant assessee can explain the sources of amount deposited in the bank accounts. The cash flow statement is being submitted separately before this hon'ble bench and permission of this hon'ble bench is sought to file this. This is further submitted that even the best judgment assessment has to be fair and honest and to the best of AO's judgment. It can't be exaggerated and capricious. In the instant case the AO has added all the amounts deposited in cash by the

appellant assessee to his income without giving him credit for the withdrawals made from the same bank account for the same financial year. Under no circumstances, amounts withdrawn from the bank can be ignored as this information was available with AO while framing the assessment.

This is therefore prayed that to meet the ends of justice, the orders of the authorities below may please be quashed. In the alternative, the matter may please be restored to AO with directions to allow the assessee to file cash flow statement and other evidence to explain the sources of cash deposited in the bank(s).

4. Per contra, the Ld DR although supported the impugned order, however, he has not filed any rebuttal to the contention raised by the counsel.

5. Heard rival contentions, perused the material on record, impugned order, and written submission filed before us. Admittedly, the AO and the Id. CIT(A) has passed the orders ex-parte qua the assessee without granting proper opportunity of being heard. The order of the CIT(A)/NFAC has been passed, without giving a proper opportunity of hearing to the appellant- assessee. The Ld. CIT(A) ought to have not passed an ex-parte order. In our view, the notice dated 16.03.2022 fixing the hearing on 23.03.2022 was too short to make requisite compliance by the appellant. The CIT(A) should have allowed adjournment at the request of the appellant's vide application dated 21.03.2022 for adjournment was being

made on the ground that it was the last week of March, the statutory deadline for filing returns of Income for AY 2021 -22. Such a decision of the Ld CIT(A) in deciding the appeal ex-parte is in violation of the principles of natural justice. The counsel contended that appellant assessee can explain the sources of amount deposited in the bank accounts with the cash flow statement being submitted separately. He pleaded that the matter may be remanded back to the Assessing Officer to pass de novo assessment after granting opportunity of being heard to the appellant assessee.

6. In view of the principles of natural justice, we accept the grievance of the assessee as genuine and accordingly, we consider it deem fit to restore back the matter to the Assessing Officer to pass a speaking assessment order *de novo* after considering the written submission and evidences filed on record and to be filed in fresh proceedings after granting sufficient opportunity of being heard to the assessee. No doubt, the assessee shall cooperate in the fresh assessment proceedings before the AO.

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

Order pronounced in the open court on 28.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order