

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

(VIRTUAL COURT)

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

I.T.A. No. 15/Asr/2023
Assessment Year: 2012-13

Sh. Sukhdev Singh
H. No. 826 JMC, Bhagwati
Nagar, Jammu, Jammu &
Kashmir, 180001

[PAN: BSEPS 0546J]

(Appellant)

V. Income Tax Officer,
Ward-2 (2), Jammu

(Respondent)

Appellant by Sh. P. N. Arora, Adv.

Respondent by Smt. Kanchan Garg, Sr. DR

Date of Hearing : 17.04.2023
Date of Pronouncement : 25.04.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 18.11.2022 in respect of Assessment Year: 2012-13.

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

- “1. *That the National Faceless Appeal Centre [Delhi] is not justified in passing the order u/s 250 ex-parte without affording reasonable opportunity of being heard to the assessee.*
2. *That the order framed by National Faceless Appeal Centre [Delhi] is bad in the eyes of law.*
3. *That having regards to the facts and circumstances of the case the National Faceless Appeal Centre [Delhi] has erred both in law and on facts by treating the entire amounts of cash deposits in the savings bank account as unexplained investments u/s 69 A of the Income Tax Act.*
4. *That having regard to the facts and circumstances of the case, the order of Ld. A.O is capriciously and unjustified.*
5. *That the appellant craves to add, amend, modify, delete any of the grounds of appeal before or at any time of hearing and all the above grounds without prejudice to each other.”*

3. Apropos Ground No. 1, the appellant challenged the order that the National Faceless Appeal Centre [Delhi] is not justified in passing the order u/s 250 ex-parte without affording reasonable opportunity of being heard to the assessee.

4. The Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, wherein the worthy CIT(A) has dismissed the appeal *in limini* with the following observation vide Para 4.2 of the order as under:

“4.2 Hon’ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and Another, 118 ITR 461 (SC) observed that preferring an appeal means more than formally filing it but effectively prosecuting it. Hon’ble M.P. High Court in the case of Estate of Late Tukojirao Holkar vs. CWT, (1997) (223 ITR 480) (M.P.) dismissed the reference in default and for not taking necessary steps. Similar view has been taken by I.T.A.T. Delhi Bench in the case of CIT vs. Multiplan India (P) Ltd. (1991) (38 ITD 320). Considering the above, it appears that the appellant is not interested in prosecuting its appeal. Therefore, the appeal filed by the appellant is dismissed for non-prosecution.”

5. The Ld. Counsel for the appellant submitted that this case was decided ex-parte by the Ld. CIT(A) on the ground that the notices were delivered on the registered e-mail. In this connection, it is relevant to point out that this e-mail belonged to the person who was filing my returns and did not inform me about the fixation of appeal. As such, I did not appear before the worthy CIT(A). Thus, it constitutes a reasonable cause. He further submitted that several grounds of appeal were raised before the CIT(A) but the case was not decided on merits even. Thus, the ex-parte order passed by the worthy CIT(A) is illegal, invalid and void ab-initio in the eyes of law.

5.1 The Ld. AR argued that the worthy CIT(A) decided the case ex-parte without granting opportunity of the hearing of the appeal against the ex-parte assessment order passed under section 144/147 of the act and while deciding the case ex-parte the Ld. CIT(A) has not decided the case even

on merits. In view of these circumstances, it is prayed that the order passed by CIT(A) may be restored back to either the file of the AO in the interest of natural justice. In support, he placed reliance on the judgment of Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.” (APB, Pgs. 4-5)

5.2 The Ld. AR further referred to the decision of ITAT, Amritsar Bench, Amritsar in the case of Sh. Manjit Singh vs. ITO, Ward 3(2), Amritsar in ITA No: 44/Asr/2022, order dated 17/11/2022 relating to AY 2017-18. (APB, Pgs.6-15). Accordingly, he pleaded that since, revenue authorities have violated the principles of natural justice, therefore, this case may be set aside and restored back to the file of the Assessing Officer in the interest of natural justice. Furthermore, he undertakes to fully assist the department and to fully cooperate in the matter of assessment.

6. The Hon'ble ITAT Amritsar Bench in the case of Sh. Manjit Singh v. Income Tax Officer in ITA No. 44/Asr/2022 dated 17.11.2022 vide para 8, 9 & 10 has held as under:

“8. We have carefully considered the submission of both the sides, assessment order, impugned order and material placed on record. Admittedly, there is an addition of an amount of Rs.35,04,500/- towards cash deposits in bank account maintained with Punjab National Bank in Bank of India in a staggered manner from 18th Nov., 2016 to 29th Nov., 2016 by the authorities below in exparte proceedings qua the assessee. It is seen that aggrieved with the exparte assessment order, the assessee preferred an appeal before the Learned CIT(A), NFAC Delhi who too decided this appeal ex-parte without appreciating the facts and merits of the case as per the contentions raised by the appellant before us.

9. From the Impugned order, it is evident that the CIT(A) while passing the order has only reproduced the grounds of appeal raised by the assessee and the assessment order while dismissing the appeal of the assessee in limini without deciding the case on merits. We hold that the impugned order passed by the CIT(A) is a non-speaking being passed without application of mind to the issues raised in the grounds of appeal.

10. In view of the principles of natural Justice and considering the factual matrix of the case, we are of the considered view, that the appellant assessee should get an opportunity to explain and substantiate the nature cash deposits in the alleged bank account with the support of material evidence relevant for the year under consideration. Accordingly, we consider it deem fit to restore back the matter back to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidences filed on record before him

during the appellate proceedings, 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 proceedings.”

7. On parity of facts, following coordinate bench decision in the case of “Sh. Manjit Singh v. Income Tax Officer”, (Supra) we consider it deem fit to restore back the matter back to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidences filed on record and may be filed before him during the fresh proceedings after granting sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open court on 25.04.2023

**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