

**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.262/Asr/2022
Assessment Year: 2012-13**

Sh. Rajinder Kumar H.N. 3405, Bootan Mandi, Nakodar Road, Near Guru Ravi Dass Chowk, Jalandhar. [PAN:-ATZPK4841M] (Appellant)	Vs.	ITO-Ward-1(3), Jalandhar. (Respondent)
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Appellant by	Sh. Ashray Sarna, CA
Respondent by	Sh. Pradeep Kumar, Sr. DR

Date of Hearing	12.06.2023
Date of Pronouncement	19.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’],order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for

A.Y. 2012-13. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-1(3), Jalandhar, [in brevity 'the AO'] order passed u/s 144/147 of the Act.

2. The assessee filed the appeal with a delay of 139 days. The assessee filed a self-declaration with condonation of delay and placed that due to the non-cooperation from the consultant the appeal was filed with delay of 139 days. The appointed consultant Mr. M R Bhagat was passed away during appeal proceeding. The details was with deceased consultant. This is the reason for filing appeal in delay. The Id. DR had not made any objection against the condonation of delay 139 days. Therefore, the delay for 139 days is condoned.

3. Brief fact of the case is that the assessment was completed u/s 144 with addition amount of Rs.12,13,420/- related long term capital gain. During assessment the assessee was totally non cooperative. As a result, the assessment was passed *ex parte*. Aggrieved assessee filed an appeal before the Id. CIT(A) by challenging the order of the Id. AO. The Id. CIT(A) upheld the order of the Id. AO and passed the order *ex parte*. Aggrieved the assessee filed an appeal before us.

4. The Id. Counsel for the assessee first invited our attention in CIT(A) order page 10 para 4.4 to 4.6 which are extracted as below:

“4.4 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. Same is the position in cases of all allowance, deductions, claims or loss, etc. since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

4.5 Since, the Appellant has not presented any argument and submission or any paper filed in support of its claim, the appeal is decided judiciously based on materials available on record. Therefore, the addition made by the assessing officer of the unexplained cash credit is upheld.

4.6 Since the appellant has chosen not to attend the appeal proceedings, the additions made by the Assessing Officer are sustained, on the reasons recorded in the Assessment Order.”

5. The ld. AR submitted that both the assessment and appeal orders are passed *ex parte*. The ld. AR explained that due to death of consultant Mr. M.R. Bhagat change the reason the matter was not properly represented before the ld. CIT(A).

6. The ld. DR vehemently argued and fully relied on the orders of revenue authorities.

7. We heard the rival submission and consider the available documents on the record. The assessee placed evidence that the assessee's consultant Mr. M R Bhagat was duly expired during time of appeal. Both the appeal and the assessment orders are passed *ex parte*.

7.1 In our considered view the reasonable opportunity was denied for the assessee for submission of his evidence. There is plausible cause for no appearance before the 1st appellate authority. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is *set aside* and the matters

are remitted back to the ld. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

8. In the result, the appeal of the assessee bearing **ITA No. 262/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 19.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

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