

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. SANJAY GARG, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 341/Chd/ 2020
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Chahat Kaushal House No. 172, Sector 3-C Mandi Gobindgarh	बनाम	The ITO Ward, Sirhind
स्थायी लेखा सं./PAN NO: ARMPK4092K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 13/02/2024
उद्घोषणा की तारीख/Date of Pronouncement : 27/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Patiala dt. 25/01/2019 wherein the limited ground of appeal relates to sustenance of addition of Rs. 9,55,020/- basis receipt shown in Form No. 26AS not disclosed by the assessee as part of gross receipts while filing his return of income.

2. At the outset, it is noted that there is a substantial delay in filing the present appeal. In this regard, the Ld. AR drawn our reference to the condonation application as well as the affidavit filed by the assessee. It was submitted that the delay in filing the appeal has happened on account of reasons which were beyond the control of the assessee. It was submitted that firstly, the assessee has engaged a Counsel to look after his tax matters and the assessee was under the genuine belief that the Counsel is taking care of his tax matters and in particular, the appeal filed before the Ld. CIT(A). However the assessee came to know about the dismissal of the appeal by the Ld. CIT(A) when the AO contacted him for recovery of the tax demand and there was no

communication from the Counsel in this regard. It was submitted that by the time, the assessee got to know about the dismissal of the appeal, the statutory period for filing the appeal had already expired. It was further submitted that another reason for the delay in filing the appeal was on account of COVID-19 Pandemic which was again beyond the control of the assessee and in this regard, support was drawn from the decision of Hon'ble Supreme Court wherein the period of limitation has been extended from time to time. It was accordingly submitted that there was reasonable cause for the delay in filing the appeal and the same may be condoned and the appeal filed by the assessee be admitted.

3. Per contra, the Ld. DR submitted that there was substantial delay in filing the appeal and except for the period of Covid pandemic, the assessee has not furnished any reasonable cause for such delay and the delay so happened should not be condoned.

4. After hearing both the parties and considering the prayer so made on behalf of the assessee and pursuing the affidavit of the assessee placed on record, we find that the assessee was having reasonable cause for the delay in filing the present appeal on account of lack of support and assistance from the Counsel who was duly entrusted with task of handling his tax matters. Secondly, on account of COVID-19 Pandemic wherein the Courts have been taking a liberal view and in particular, the Hon'ble Supreme Court has also passed specific order extending the period of limitation. Therefore in the entirety of facts and circumstances of the present case, the delay so happened is hereby condoned and the appeal is admitted for adjudication.

5. Briefly the facts of the case are that the assessee filed his return of income on 29/09/2015 declaring taxable income of Rs. 10,53,950/- which was selected for scrutiny and notice under section 143(2) and 142(1) alongwith questionnaire were issued from time to time. During the course of assessment proceedings, the AO observed that the assessee has received payment of Rs. 9,55,020/- from Executive Engineer, Water Supply and Sanitation Division, Fategarh Sahib wherein the TDS of Rs. 9550/- has also been deducted. It was further observed by the AO that the said receipt has not been included in the gross receipt so shown by the assessee in the balance sheet as well as

while filing his return of income and a show cause was issued as to why the said amount may not be brought to tax in the hands of the assessee. The AO also got the payment verified from the Executive Engineer, Water Supply & Sanitation Division who has since confirmed that the payment relates to F.Y. 2014-15 relevant to the impugned A.Y 2015-16 wherein the tax has already been deducted amounting to Rs. 9,550/-. After considering the reply of the assessee but not founding the same acceptable, the AO went ahead and made the addition of Rs. 9,55,020/- to the returned income and the assessed income was accordingly determined at Rs. 20,08,970/-.

6. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition. Against the said finding and the direction of the Ld. CIT(A), the assessee is in appeal before us.

7. During the course of hearing, the Ld. AR submitted that the limited prayer of the assessee is that instead of whole of the receipt of Rs. 9,55,020/- which has been brought to tax by the AO, only gross profit @ 8% on the said receipt may be brought to tax and the remaining addition may be directed to be deleted.

8. Per contra, the Ld. DR submitted that the assessee is a contractor who was following mercantile system of accounting and has not accounted for the specific receipt while filing the return of income. It was further submitted that the assessee is not covered under the presumptive taxation scheme and therefore the whole of the receipt deserves to be added to the income of the assessee as the same has not been offered to tax while filing the return of income.

9. We have heard the rival contentions and perused the material available on record. It is not in dispute that the assessee has received an amount of Rs. 9,55,020/- on account of contractual payment from M/s Executive Engineer, Water Supply and Sanitation Division, Fategarh Sahib and the said payment pertains to financial year relevant to impugned assessment year and therefore, the same should form part of his gross receipts for the impugned assessment year. The limited prayer of the assessee is that instead of the whole receipt, the addition should be restricted to the gross profit which is embedded in the said receipts as only real income can be brought to tax which we find reasonable in the peculiar facts and circumstances of the present case.

Accordingly, we direct the AO to apply the declared GP rate or 8% whichever is higher on the contractual receipt of Rs. 9,55,020/- and the remaining addition is hereby directed to be deleted.

10. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 27/02/2024.

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 27/02/2024

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