

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

HEARING THROUGH: VIRTUAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 547/Chd/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Mohan Lal Prop. M.V. Fashion, 438, St. No. 1-C, New Shiv Puri Road, Vishnupuri, Ludhiana-141008 Punjab	बनाम	The DCIT/ACIT, Central Circle-1 Ludhiana
स्थायी लेखा सं. / PAN NO: AFFPL3576G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Hari Om Arora, Advocate
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 11/03/2024
उद्घोषणा की तारीख/Date of Pronouncement : 12/03/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M.

This is assessee's appeal for assessment year 2019-20 against the order dated 12/07/2023 passed by the Id. CIT(Appeals)-5, Ludhiana. The following grounds have been taken :

- 1. That the impugned order has been passed by the Ld. CIT(A), Ludhiana without proper application of mind and without considering the facts borne out from the records, as such the order deserves to be quashed. Appeal has been dismissed without considering facts and details judiciously resulting in untenable order.*
- 2. That the Ld. CIT(A), Ludhiana has passed the order without giving adequate and reasonable opportunity to the Appellant to represent his case, as the notice/s for hearing have not been received by the Appellant as these were not sent and emailed at the e-mail address ipmfca@gmail.com mentioned in the Form No. 35. The notices as per records/Portal have been sent to inderjeetfca@gmail.com whereas Appellant's e-mail address given in Form No. 35 is ipmfca@gmail.com. The Appellant has not received the notices for hearing and/or for representation, which has resulted in erroneous order and untenable conclusion.*

3. *That the notice u/s 143(2) of the I.T. Act, 1961 has not been served upon the Appellant in accordance with law, as such the order passed as vitiated and untenable and the same deserves to be quashed.*
4. *That the Ld. CIT(A) has failed to consider and take into account the facts borne out from the records and the addition made has wrongly been sustained. Addition of Rs. 15,00,000/- made u/s 69A has wrongly and arbitrarily been confirmed Provisions of Section 69A and 115BBE of the I.T. Act, 1961 have not been appraised properly, which has resulted in untenable addition. Amount of Rs. 15,00,000/- seized by Police Authorities from Shri Shinder Singh has wrongly been added in Appellant's case and taxed u/s 115BBE of I.T. Act, 1961.*
5. *That the Provisions of Section 132A, 143(3) and 153A have been misconstrued and not applied properly, resulting in erroneous order and uncalled for addition.*
6. *Without prejudice to foregoing contentions that the addition made is unreasonable and highly excessive.*
7. *That the Appellant craves leave to amend, modify and/or add new Grounds of Appeal before the Appeal is heard and disposed off.*

2. Briefly the facts of the case are that information was received by the DDIT(Inv)-I, Ludhiana from SHO, Police Station, Thana Sadar that cash of Rs. 15,00,000/- was recovered from Shri Shinder Singh at Nakka Near Pristine Mall, Khanna during routine checking and requisition u/s 132A was made on 6/02/2019. During the course of recording of his statement, Shri Shinder Singh was specifically asked to explain the source of cash of Rs. 15,00,000/- which was recovered from him by Police Authorities and the purpose for which he carried such amount with him. In response he stated that he was working as a sales executive in a Sale Firm run by Shri Lalit Kumar alias Lucky and this amount of Rs. 15,00,000/- belonged to Shri Lalit Kumar alias Lucky.

2.1 The reply was considered but not found acceptable to the AO and the AO passed the assessment order u/s 143(3) by stating that the seized cash of Rs. 15,00,000/- is taxable under section 69A being unexplained cash which is to be taxed under section 115BBE of the Income Tax Act, 1961.

3. Against the order of the Ld. AO, the assessee went in appeal before the Ld. CIT(A). The Ld. CIT (A) issued notices of hearing on 26/05/2022, 06/07/2022, 08/08/2022, 02/12/2022, 22/02/2023, 03/05/2023 and 26/06/2023 to the assessee to furnish relevant submissions in support of his grounds of appeal. but the assessee was unable to comply with the notices. The assessee did not appear before the Ld. CIT(A). Neither any submissions were filed nor any request for the adjournment was made. Therefore, the Ld. CIT(A) passed an *ex-parte* order against the assessee dismissing the appeal of the assessee, against which, the assessee is in appeal before this Tribunal.

4. We have heard the rival submissions and have perused the material available on record. We have found that the aforesaid notices were uploaded on the e-filing portal and no intimation through electronic mode or post was made for the same. The notices were sent on the e-mail ID `inderjeetfca@gmail.com` that did not belong to the assessee. The e-mail id mentioned in Form 35 i.e, `ipmfca@gmail.com` was correct and belonged to the assessee. The e-mail ID `inderjeetfca@gmail.com` was not mentioned in Form 35 at the time of filing of appeal for the purpose of communication. It is therefore a case where there is no service of notice to the assessee.

5. The matter now stands covered by the decision of the Hon'ble jurisdictional High Court in the case of *Munjal BSU Centre of Innovation and Entrepreneurship, Ludhiana through its authorized signatory Shri Bharat Goyal Vs Commissioner of Income Tax (E), Chandigarh*" in CWP 21028-2023 (O&M), wherein, vide order dated 04.03.2024, their Lordships have held that the provisions of Section 282(1) of the Income Tax Act and Rule 127(1) of the Income Tax Rules, 1962, envisage that it is essential that before any action is taken, a communication of the notice must be in terms of these provisions; that these provisions do not make mention of communication to be "presumed" by placing the notice on the e-portal of the Department; that a pragmatic view has to be adopted in these circumstances; that an individual

or a company is not expected to keep the e-portal of the Department open all the times so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms, etc.; and that the principles of natural justice are inherent in the Income Tax provisions and the same are required to be necessarily followed."

6. In the facts and circumstances of the case, we are of the considered opinion that the assessee was not afforded proper and reasonable opportunity of being heard and the matter has been decided ex-parte qua the assessee and that too, without going into merits of the case. Therefore, in the interest of justice, the matter is restored to the file of Id. CIT(A) to decide the matter afresh in accordance with law after giving a reasonable opportunity of being heard to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A).

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

Order pronounced in the open Court on 12/03/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

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

AG

Date: 12/03/2024

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