

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 371/CHD/2022

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Varinder Kumar, S/o Shri Sat Parkash H.No.295, Sector 5-B, New Shastri Nagar, Mandi Gobindgarh	Vs. बनाम	The ITO, Ward 2, Mandi Gobindgarh
स्थायी लेखा सं./PAN No. AERPK6511M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 14.03.2024

उद्घोषणा की तारीख/Date of Pronouncement : 15.03.2024

आदेश/Order

Per A.D. Jain, Vice President:

This is assessee's appeal against the order of the ld. CIT(A)-2, Ludhiana, dated 29.04.2020, for the Assessment Year 2008-09, taking the following grounds of appeal:-

1. *That the Ld. CIT(A)-2, Ludhiana has erred in dismissing the appeal of the assessee on technical*

ground and which is against the facts and circumstances of the case.

2. *That the Ld. CIT(A) has erred in mentioning that Form No.35 or any attachment were not uploaded and rather Form Mo. 35 with grounds of appeal and assessment order had been duly uploaded as per evidence being attached herewith and, thus, wrong finding has been given by the Worthy CIT(A).*
3. *That the assessee did not receive any notice, dated 20.12.2019 or thereafter, dated 28.02.2020, since they were received by his earlier counsel at that time namely Sh. Rajesh Sharma, who has since migrated to Canada and, as such, the assessee was prevented by sufficient and reasonable case in not appearing before the Ld. CIT(A).*
4. *That the Ld. CIT(A) has failed to appreciate that the case was earlier taken by his predecessor and the date was fixed for 07.08.2018 as per notice attached and in response to that, submissions, dated 17.01.2019 alongwith Judgement Set were filed and no such objection was noticed by the then Ld. CIT(A) at that time.*
5. *That the dismissal of appeal by the Ld. CIT(A) on technical ground is devoid of any valid reasoning.*

2. There is a delay of 662 days in filing the appeal. The Assessee, at the outset, has submitted a Brief enumerating calculation to explain the reason for delay of 662 days in filing the appeal. It has been submitted that in this case the impugned order was passed by the ld. CIT(A) on 29.04.2020 and the due date for filing the appeal before the ITAT was 29.6.2020 but due to the spread of Covid 19,

from March 2020 onwards, the appeal was filed on 21.4.2022 resulting in delay of 662 days in filing the appeal. It is submitted by the Id. Counsel for the Assessee that keeping in view the spread of Covid 19 Pandemic, the Hon'ble Apex Court had extended the limitation of all the cases upto 31st of May 2022 and as such there is no delay in filing the appeal, and the appeal was filed within the limitation period.

3. We have considered the facts and reasoning furnished by the Assessee and find that there is no fault attributable on the part of the assessee owing to the circumstances in the wake of COVID-19 Pandemic, as the limitation period for filing of all the cases was extended till 31st May, 2022 by the Hon'ble Apex Court. Further, the aforesaid factual aspect has not been controverted by the Id. DR. Thus, finding that the Assessee was prevented by sufficient cause from filing the Appeal during Covid 19 Pandemic period, and in view of the directions of the Hon'ble Apex Court whereby, the limitation period was extended till 31st May, 2022, we find that there was no delay in filing the appeal by the Assessee, which has been filed within the extended limitation period, and as such, we proceeded to hear the appeal on merits.

4. At the outset, it has been submitted by the ld. Counsel of the Assessee that the sole grievance of the Assessee is that the ld. CIT(A) has erred in dismissing the appeal of the Assessee on technical ground, which is against the facts and circumstances of the case; that the ld. CIT(A) has wrongly mentioned that Form No. 35 or any attachment were not uploaded whereas, Form No.35 with grounds of appeal and assessment order had been duly uploaded and evidence to this effect was also furnished; that the Assessee did not receive the notices dated 20.12.2019 and 28.2.2020 rather, the same were received by his earlier Counsel, namely Shri Rajesh Sharma, who had later migrated to Canada; that the case was earlier taken by his predecessor and submissions dated 17.01.2019 to the notice issued were duly filed but no such objection was noticed by the then ld. CIT(A) at that time; and that thus, the dismissal of the appeal by the ld. CIT(A) on technical Ground is devoid and any merit or valid reasoning. It has further been submitted that the impugned order passed by the ld. CIT(A) is totally unfair, arbitrary and unjustified. It is submitted that the Assessee has a valid explanation, supporting documentary evidence and fair case on merits and, therefore, prayed that keeping in view the principles of natural justice, the Assessee may be given a reasonable opportunity of hearing of the appeal before the ld. Commissioner (Appeals) and the appeal may be directed to be decided on merits.

5. The ld. DR, on the other hand, relied on the orders of the lower authorities.

6. Heard. We have gone through the order of the ld. CIT (A) and find that the ld. CIT(A) has dismissed the appeal of the Assessee merely on technical ground, without considering the facts of the case and material available on record, and also without giving due opportunity of hearing to the Assessee, under the mistaken impression that the Assessee had not uploaded Form No. 35 or any attachment whereas, the plea taken by the Assessee is that Form No. 35 alongside grounds of appeal were duly uploaded. Further, we find force in the contention raised by the Assessee with regard to the receipt of the notice, dated 20.12.2019, which had been received by his earlier Counsel, Sri Rajesh Sharma, who since had migrated to Canada and hence, the Assessee was prevented by sufficient and reasonable cause for his non-appearance before the ld. CIT(A). As such, an opportunity of hearing requires to be given to the Assessee to represent his case fully before the ld. CIT(A). Even otherwise, it is trite [*S. Velu Palandar Vs. DCIT* 83 ITR 683 (Mad.)] and incumbent on the authority to decide an appeal on merit in accordance with the principles of natural justice.

7. The Id. D.R., though, has placed reliance on the orders of the authorities below, he has no objection if the matter is remanded to the CIT(A) for adjudication afresh.

8. In view of the above, in the interest of justice, the matter is remitted to the file of the CIT(A), to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

9. In the result, for statistical purposes, the appeal is treated as allowed for statistical purposes.

10. In the result, the appeal is dismissed.

Order pronounced on 15.03.2024

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Sd/-p
(A.D. JAIN)
Vice President

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar