

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", 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 Nos. 634 to 643/Chd/2023
निर्धारण वर्ष / Assessment Years : 2013-14 TO 2017-18

Shri Gurcharan Singh C/o Ravinder Singh Baba Deep Singh Nagar, Near Indian National Public School, Link Road, Mullanpur V.P.O Mandi, Ludhiana, Punjab-141101	बनाम	The ITO 6(1), Ludhiana
स्थायी लेखा सं. / PAN NO: BRZPS2163R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 18/03/2024
उद्घोषणा की तारीख/Date of Pronouncement : 19/03/2024

आदेश/Order

PER BENCH:

All the above appeals are filed by the Assessee against the order passed by the Ld. CIT(A)/ NFAC, Delhi confirming the orders passed by the AO, as per following details:

Sl.No.	Appeal No.	Name of assessee	CIT(Appeal / s) / NFAC Delhi	AO's Order passed under section	Order dt.	Asst. Year
1.	ITA No. 634/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	144	30/08/2023	2013-14
2.	ITA NO. 635/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(c)	31/08/2023	2013-14
3.	ITA NO. 636/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(b)	31/08/2023	2013-14
4.	ITA NO. 637/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(c)	31/08/2023	2015-16
5.	ITA NO. 638/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(b)	31/08/2023	2015-16
6.	ITA NO. 639/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	144	31/08/2023	2016-17
7.	ITA NO. 640/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(c)	31/08/2023	2016-17
8.	ITA NO. 641/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	271(1)(b)	31/08/2023	2016-17
9.	ITA NO. 642/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	144	31/08/2023	2017-18
10.	ITA NO. 643/Chd/2023	Shri Gurcharan Singh	NFAC, Delhi	144	31/08/2023	2017-18

2. During the course of hearing, the Ld. AR submitted that in all these cases, all the notices were sent on the email id of the assessee's Counsel, C.A. Jaswinder Singh and as he was in police custody, the matter could not be represented before the Ld. CIT(A). It was submitted even before the AO, the assessee being an NRI could not represent his case resulting in passing of the ex-parte orders. It was accordingly prayed that the matter may be set aside to the file of the AO in all these cases and the assessee assures full cooperation in respect of the proceedings before the AO.

3. Further, reliance was placed on the written synopsis and the contents thereof read as under:

"1. These are appeals filed by the NRE namely Sh. Gurcharan Singh, who is having British Passport and permanent resident of United Kingdom. The assessee had not been filing his Income tax returns. Certain notices u/s 148 for all the years were issued by the Assessing Officer during the COVID period at the old address of the assessee and which premises was locked as the assessee was residing outside India and on account of COVID, he did not come to India during that time also. Thus, no notice u/s 148 was served upon the assessee.

2. Thereafter, the Assessing Officer passed the ex-parte orders and also levied the penalties u/s 271 (1)(b) & 271(1)(c).

3. Thereafter, the assessee came to know about such orders having been passed by the department, when he came to India and the assessee engaged one CA, Jaswinder Singh Dang, who filed the appeals before the CIT(A), NFAC, Delhi and he also uploaded the data at the Income tax portal of the assessee giving his email.id and Mobile Number as per evidences enclosed in the paper book page 1.

4. The Worthy CIT(A), NFAC, Delhi issued all the notices for hearing on the email. Id of Sh.Jaswinder Singh in July/August 2023 and such notices were sent to CA, Jaswinder Singh as per evidences at pages 2 to 9 of the Paper Book.

5. However, on the basis of FIR registered against some person including CA. Jaswinder Singh by the Police vide FIR, dated 21.02.2023, (Placed at pages 10 to 24 of Paper Book). CA, Jaswinder Singh was arrested on 18.07.2023 and he remained in police custody/Jail upto 25th of January 2024. This is evident from the fact that he was denied Bail by the Judicial Magistrate 1st Class on 18.08.2023 as per copy of the order enclosed in Paper Book at pages 25 to 27. Ultimately, he was released on Bail on 25th of January 2024. Thus, since all the notices were sent on the email.id of CA, Jaswinder Singh and he was in Police custody at that time and, as such, the assessee was not aware of the proceedings before the CIT (A)

and neither CA could intimate the assessee and, thus, the ex-parte orders were passed by the CIT(A), NFAC, Delhi.

6. It is submitted that the assessee is a British Citizen and all the deposits in the shape of FDRs and in the bank are on account of accounted for sources and it is, therefore, prayed that in the interest of justice and equity that the matter may, please, be set aside to the file of the Assessing Officer and the assessee assures full cooperation in respect of the proceedings before the Assessing Officer concerned"

4. Further, our reference was also drawn to the Affidavit submitted by the C.A. Jaswinder Singh and the contents thereof read as under:

"I, Jaswinder Singh Dang S/o Sh. Gulzar Singh Dang R/o 195, MIG, Urban Estate, Phase-III, Ludhiana do hereby solemnly state and affirm as under:-

1. That I am practicing Chartered Accountant and have filed the appeals in the case of Sh. Gurcharan Singh, NRE a British Citizen before the CIT(A), NFAC, Delhi for Asstt. Years 2013-14, 2015-16, 2016-17 & 2017-18 in respect of the orders passed by the Assessing Officer u/s 144 read with 148 and also the appeals for levying of penalty u/s 271(1)(b) & 271 (1)(c) for all the above said years.

2. That the said appeals were prepared and filed by me and I had uploaded the data at the Income Tax portal of the assessee, giving my email.id.

3. That the Police had registered FIR, dated 21.02.2023 against me and some other persons and in consequence of the same, I was arrested by the Police on 18th of July 2023 and remained in Police custody upto 25.01.2024.

4. That I had applied for bail before the 1st class Magistrate, but the same was refused by the Judicial Magistrate on 10.08.2023 as per copy of the order being submitted in the Paper Book.

6. That since all the notices of hearing by the CIT(A), NFAC, Delhi were sent on my email.id and I was in Police custody/Jail and I did not know about such hearings fixed before the CIT(A), NFAC, Delhi and, as such, I could not inform the assessee about the dates of hearing before the CIT(A) due to such circumstances, who was totally dependent upon me."

5. The Id. D.R, though, has placed reliance on the orders of the authorities below, she has no objection if the matter is remanded to the AO for adjudication afresh.

6. We have heard both the parties and perused the material available on record. We have gone through the order of the Id. CIT (A) and find that the Id. CIT(A) has dismissed the appeal of the Assessee ex-parte by confirming the order passed by the Assessing Officer, without considering the material available on record, and also without giving due opportunity of hearing to the Assessee, under the mistaken impression that the notices sent on e-mail were served upon the Assessee whereas, the notices were served on the Counsel of the assessee who being in police custody couldn't respond to the said notices and communicate with the assessee. The Assessee further deposed that there was no willful intention on his part in non-replying to the notices. The contents of the affidavit have not been disputed. No material has been brought on record by the Id. DR to the contrary. As such, an opportunity of hearing requires to be given to the Assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite ['S. VeluPalandar 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. Further, it is noted that even before the AO, the assessee couldn't appear due to covid lockdown and the fact that he was not physically present in India at the relevant point in time resulting in ex-parte assessment and penalty orders being passed by the AO.

8. In view of the above, in the interest of justice, the matter in all these cases are remitted to the file of the AO, 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 AO. All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

9. In the result, for statistical purposes, all the above appeals are treated as allowed.

Order pronounced in the open Court on 19/03/2024.

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

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

AG

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