

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL 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. 609/Chd/2023
निर्धारण वर्ष / Assessment Year : 2019-20

M/s Harbans Singh Sadhiora Prop. M/s Neeta Jewellers 3246/704/1, Chet Singh Nagar, Gill Road, Ludhiana	बनाम	The DCIT Central Circle-2 Ludhiana
स्थायी लेखा सं./PAN NO: AFTPS7335A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित 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 : 20/03/2024
उद्घोषणा की तारीख/Date of Pronouncement : 04/04/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 05/09/2023 pertaining to Assessment Year 2019-20.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

- "1. That the Ld. CIT(A) has erred in dismissing the appeal of the assessee on the basis of ex-parte order, dated 05.09.2023.
2. That, though, the notices of hearing had been sent on the portal of the assessee but since assessee is under metric and has no knowledge of computer and nor his Accountant could down load the notices of hearing as sent by the Ld.CIT(A), resulting in ex-parte order and which is highly regretted.
3. Notwithstanding the above said facts, the assessee has good and arguable case on merits, regarding invoking the provisions of section 69B r.w.s. 115BBE of the Income Tax Act, on the surrendered amount of Rs. 1 crore during the survey.
4. That the said issue is otherwise covered by number of judgments of Jurisdictional Bench of the ITAT and Others and, though, the nonappearance before the Ld.CIT(A) is highly regretted, but the issue being covered in favour of assessee, the appeal of the assessee may, please, be decided on merits since all the documents had been filed before the Assessing Officer.

5. *That the finding of the Ld. Assessing Officer about the status of treatment of surrendered income at Rs. 1 crore during survey to be taxed at special rate u/s 69B r.w.s. 115BBE is against the facts and circumstances of the case, as per various judgments of the Jurisdictional Bench of the ITAT & Others."*

3. During the course of hearing, the Id AR submitted that the assessee is an individual and has been engaged in the business of trading of gold/ diamond jewellery since past many years. For the said business, the assessee maintains a complete set of books of account which are duly audited by the Chartered accountant and on the basis of the said audited financial statements, the assessee files his return on income.

3.1 It was submitted that the assessee has been regularly filing his return of income for past many years. For the relevant AY, the assessee filed his return of income wherein, the assessee has declared his total income of Rs. 1,34,48,412/- on 30.01.2019. The said return of income was filed by the assessee on the basis of audited set of books of account.

3.2 It was submitted that during the F.Y 2018-19 relevant to A.Y 2019-20, a survey action was conducted at the business premises of the assessee on 25.10.2018 and during the course of survey action, certain discrepancies were found on account of valuation of stock as on the date of survey i.e. stock as found at the business premises of the assessee was Rs.4,40,99,999/- and the stock as recorded in the books of account as on the date of survey was Rs. 3,44,76,314/-. Hence, there was an excess stock to the tune of Rs.96,23,685/-. The assessee in order to cover up such discrepancies of excess stock surrendered an amount of Rs.97,00,000/-. Further, in order to cover other discrepancies in general, the assessee also surrendered an amount of Rs.3,00,000/-. Hence, the assessee made surrender to the tune of Rs. 1,00,00,000/- during the course of survey action. From the perusal of the surrender letter, it is evident that the surrender was made by the assessee as business income of the relevant year over and above his regular income and only to buy the peace of mind. In addition to this, at the time of survey action, statement of the assessee was also recorded.

3.3 It was submitted that after such surrender, the assessee credited his profit & Loss Account for the year ended 31.03.2019 with an amount of Rs. 1 crore on account of

surrender made during the course of survey and thereafter filed his return of income including the amount of Rs. 1,00,00,000/- and paid due tax at normal rate of tax applicable to the assessee. Thereafter, the return of income filed by the assessee was processed and case of the assessee was selected for scrutiny and a notice u/s 143(2) of The Income Tax Act, 1961 ('the Act') dated 24.09.2020 was issued to the assessee.

3.4 Subsequently, the assessment in the case of the assessee was concluded and assessment order dated 24.09.2021 was passed u/s 143(3) of the Act, wherein the Ld. AO although did not make any additions to the returned income of the assessee but applied the provisions of Section 69B read with Section 115BBE of the Act on the amount of Rs. 1 crore surrendered by the assessee during the course of survey action. It was submitted that the order of the AO has been passed in presumptuous manner without considering the detailed replies/ facts and circumstances of the case of the assessee.

4. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT-(A). However, the communication w.r.t. fixation of such appeal before the CIT(A) was made to the assessee in electronic manner on the email id, however, the assessee as well as his accountant being not IT qualified was not aware of such manner of communication and the assessee was under a bonafide belief that the communication w.r.t. fixation of such appeal would be made physically and hearing notice would be delivered to the assessee in hard copy. As a result, the assessee was not able to file his detailed submissions during the course of appellate proceedings.

5. In the aforesaid factual matrix, it was submitted that the limited prayer of the assessee is that the matter be set-aside to the file of the Id CIT(A) to decide the same afresh after allowing opportunity to the assessee.

6. The Id DR is heard who has relied on the order of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. We find that though there has been communication of the notices on email address provided at the time of filing of the appeal, the assessee has come forward

and shown his bonafide that due to lack of awareness of the fact that the notices will be issued electronically only and not physically, there has been non-attendance on his part to the proceedings conducted before the Id CIT(E) resulting in ex-parte order being passed against him. We find that in the interest of substantial justice, the assessee deserve one more opportunity and the matter is hereby set aside with a direction to the Id. CIT(A) to decide the appeal of the assessee afresh after giving proper and adequate opportunity to the assessee to present its case. The Id. CIT(A) will serve notice of hearing on the assessee through physical mode as well as through electronic mode on the email address provided by the assessee. The assessee will participate in the proceedings and submit necessary information and documentation as called for and as advised.

8. The appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 04/04/2024.

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