

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A" CHANDIGARH**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No 741/CHD/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Amita Mittal, C/o Shri Tej Mohan Singh, House No. 527, Chandigarh.	Vs	The ITO, Ward 2(2), Ropar.
स्थायी लेखा सं./PAN NO: AASPM1307N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 16.04.2024
उद्घोषणा की तारीख/Date of Pronouncement : 19.04.2024

PHYSICAL HEARING

आदेश/Order

PER VIKRAM SINGH YADAV, A.M.

The present appeal has been preferred by the assessee against the order passed by the ld. Commissioner of Income Tax (Appeals) NFAC, Delhi dated 18.10.2023 pertaining to 2012-13 assessment year.

2. The assessee in this appeal has raised the following grounds of appeal :

1. 1. That Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in dismissing the appeal ex-parte without affording a

proper opportunity of hearing which is against the principles of natural justice and as such the order passed is arbitrary and unjustified.

2. *That the Commissioner of Income Tax (Appeals) has further erred in holding that the appeal filed by the assessee was barred by the limitation as it had been filed after a lapse of 141 days and as such the appeal filed was not maintainable on technical grounds which is arbitrary and unjustified.*

3. *3. Without prejudice to the above, the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs. 69,000/- made by disallowing the interest applying the provisions of Section 36(1)(iii) which is arbitrary and unjustified.*

4. *4. That the Ld. Commissioner of Income Tax(Appeals) has further erred in upholding the disallowance of 20% the expenditure under various heads for alleged personal use resulting in an addition of Rs. 41,240/- which is arbitrary and unjustified.*

5. *That the Ld. Commissioner of Income Tax(Appeals) has further erred in law as well as on facts in upholding the addition of Rs. 1,01,00,000/- though on protective basis when no addition whatsoever is called for as the assessee has already declared the above amount in A.Y. 2014-15 and paid the requisite taxes thereon and as such the protective addition made and upheld is arbitrary and unjustified.*

6. *That the Ld. Commissioner of Income Tax(Appeals) has further erred in upholding the , charging of interest under section 234 of the Act which is not chargeable in the facts of the cases.*

3. At the outset, the ld. Counsel for the assessee has invited our attention to the impugned order of the ld.CIT(A) to submit that the same is an ex-parte order. He has submitted that the ld.CIT(A) has summarily rejected the application of the assessee without giving any opportunity of hearing to the assessee to present its case. He has submitted that no notice of date of hearing was served by the ld.CIT(A), either through physical mode, through e-mail or registered post etc. That the notice of date of hearing was allegedly issued through ITBA Portal and the

assessee was requested to submit the relevant submissions with documentary evidences, if any electronically in the proceeding facility through e-filing website. The ld. CIT(A) issued several notices i.e., on 23.12.2020, 30.01.2022, 31.10.2022, 28.04.2023, 30.05.2023, 19.06.2023, 02.08.2023 and 09.10.2023 but the assessee did not furnish any details/submissions etc. The ld. Counsel for the assessee submitted that the ld.CIT(A) has summarily rejected the application of the assessee without giving any opportunity of hearing to the assessee to present its case. Further, there is nothing on record to show that notices for hearing were served upon the assessee.

4. The ld. DR could not rebut the aforesaid factual position.

5. We have heard the rival contentions. 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 “deemed” by placing the notice on the e-portal of the Department; that an pragmatic view has always 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. Accordingly, the impugned order of the Id.CIT(A) is, therefore, not sustainable in the eyes of law. The same 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 through physical mode as well as through electronic mode upon the assessee.

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

Order pronounced on 19th April,2024.

Sd/-

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

“Poonam”

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar