

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

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश एम. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JUDICIAL MEMBER

आयकर अपील सं. / ITA NO. 546/Chd/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Vijaiender Singh Sen C/o Aditya Shawl Industry VPO Shamshi, Tehsil, Bhuntar, H.P	बनाम	The ITO Pirdi Kullu
स्थायी लेखा सं. / PAN NO: ADYPS2199F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Rohit Kumar, ITP and
Shri Raman Sharma, CA
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 23/04/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 02/05/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee who is an individual taxpayer having residential status as that of a person resident in India.

2. The assessee being aggrieved by DIN & Order No. ITBA/NFAC/S/250/2023-24/1054187243(1) dt. 06/07/2023 which was passed by Ld. CIT(A) NFAC Delhi under section 250 of the Income Tax Act, 1961. The said first appeal was dismissed by the Ld. CIT(A). Therefore the present second appeal under section 253 of the Income Tax Act, 1961 before us against the aforesaid order dt. 06/07/2018 which is hereinafter referred to as the "impugned order"

3. During the relevant assessment year 2011-12 the assessee run a small handloom and handicraft shop at NH21, VPO Shamshi, Dist: Kullu, H.P. He is registered dealer under the VAT Act 2005, having TIN No. 02100200063. The Assessee has filed VAT Return during the F.Y. 2010-11 within time and duly declared all Turnover/Sales. Even the particulars of sales/purchases were

inspected by the Assistant Commissioner, State Taxes and Excise Kullu and were found to be correct. Assessment order copy passed by Assistant Commissioner State Taxes & excise is on record. According to the assessee the AO was not justifying for applying under section 69A of act for the trade and other exempt receipts in the Bank accounts since these receipts are pertained to Trading/exempt Receipts and their sources are well equipped with relevant substantial evidences, hence section 69A is unjust and against the principles of natural justice.

4. The appeal memo at Ground No. 2 it is averred as under:

Apologizing me for not attended the assessment Proceedings before the Ld. Assessing Officer Kullu for the A.Y. 2011-12 and due to medical reasons was that I was suffered with sickness. I was affected with herpes zoster and due to such ailment, I was hospitalized in unconscious state of mind at Kullu and thereafter I was referred to PGI Chandigarh again. I am still in the recovery zone Due to illness I am not able to attend the online proceedings and not in a position to provide additional documents before the National Faceless Appeals Centre-Commissioner of Income tax (Appeals) and the appeal is dismissed and stated that in the absence of any document/ evidence, no separate reasons needs to be recorded by the appellate authority for affirming the order of A.O. and decided that "It is evident that the appellant during the assessment as well as appellate proceedings failed to furnish documentary evidences/ proper explanation in support of his contention"

5. In appeal memo at Ground No. 3 it is averred as under:

Kindly consider my ill heath situations and accept my ITAT appeal application. I had cash credit and otherwise in my bank accounts pertain to my Trading and other exempt receipts. Applying provisions of section 44AD of the IT ACT, my net Taxable income was below threshold limit. I got surprised when I received order of assessment and demand notice. Since I was prevented by sufficient cause from producing these evidences before the learned assessing officer, or the Ld. AO has not conducted any field enquiry regarding my trading. It has been held in a number of cases including in Keshav mills co. Ltd. Vs CIT(1965) 1TR 365(SC) and now recognized as rule 46A that the ITAT appellate Authority has a right to admit the additional evidence in the interest of justice. I therefore requested to accord kind permission for production of certain relevant evidences as they go to the very roof of the matter and involve a substantial cause in determining the correct income and correct tax liability.

6. We have simultaneously perused the assessment order dated 21/12/2018 of Shri Krishan Lal, ITO, Kullu(H.P) and so also of the Ld. CIT(A).

7. During the course of the hearing today i.e; 23/04/2024 it was contended by the Ld. AR for assessee that due to extraordinary health reason (the records of which are filed and placed before us and perused) the assessee could not attend personal / virtual hearing in both the proceedings before AO and the Ld. CIT(A); under the circumstances it was prayed that full and complete opportunity be provided to him, to appear before the AO which would enable him to present all relevant material before AO including that of papers / proceedings held under VAT Act. The Ld. DR too agreed with the submission of the Ld. AR during the course of the hearing today before us. Both the parties agreed that impugned order be set aside. Under the peculiar circumstances of poor health of the assessee which disabled him from presenting the case and it would be prudent that the impugned order be set aside and the matter be remanded to AO. Consequently the impugned order of CIT(A) is set aside and matter is remanded back to the file of the AO to give assessee a full and complete opportunity to present his case including papers and proceedings under VAT Act and to pass a fresh assessment order after fully complying with all the principles of natural justice including opportunity of being heard.

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

Order pronounced in the open Court on 02/05/2024

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

Sd/-
परेश एम. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL 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