

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

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 627/CHD/2023

निर्धारण वर्ष / Assessment Year: 2019-20

Karam Chand Di Hatti, Zira, Punjab 142047	Vs. बनाम	The DCIT, Central Circle-2, Ludhiana
स्थायी लेखा सं./PAN No: AARFK5503D		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

निर्धारिती की ओर से/Assessee by : Sh. Ashrey Sarna, C.A.

राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03.06.2024

उदघोषणा की तारीख/Date of Pronouncement : 03.06.2024

**आदेश/Order**

**Per Dr. Krinwant Sahay, A.M.:**

The appeal in this case has been filed by the Assessee against the order dated 30.08.2023 of the ld. Commissioner of Income Tax (Appeals)-5, Ludhiana-5 [herein referred to as 'CIT(A)'].

2. The Assessee has raised the following grounds of appeal:-

1. *That, the orders passed by the Ld. Commissioner of Income Tax (Appeal) vide orders dated 30.08.2023 is illegal, uncalled for and against the law & facts.*

2. *That, the Ld. Commissioner of Income Tax (Appeal) has sustained the additions merely on conjectures and surmises without any legal basis.*
3. *That, the grounds of appeal raised with Ld. Commissioner of Income Tax (Appeal) is as follows :-*
  - (i) *That Assessing Officer has wrongly applied rate of Income Tax as per provisions of section 115BBE of Income tax Act, 1961 on Rs. 25,64,500.00. Provisions of section 115 BBE may please be deleted & normal tax rate is to be applied on Rs.25,64,500.00.*
  - (ii) *That, the Assessing Officer has failed to appreciate the submissions made by Assessee in surrender letter at the time of survey that surrender of business income of Rs. 25,64,500.00 is subject to be taxed as normal business income subject to no penalty/prosecution, So. the Assessment order passed by Assessing Officer calculating tax on assessed income as per section 115BBE is wrong and suo-moto calculated which is against the natural law of justice and should be set-aside.*
  - (iii) *That, the Assessing Officer has purely as per his whims and fancies deemed the surrender business income of Rs. 25,64,500.00 as unexplained investments and unexplained money as per section 69 and 69A of Income tax Act, 1961 whereas the Assessee has duly submitted the same as business income over and above the normal business income for Assessment Year 2019-20. So, the provisions of section 115BBE of Income tax Act, 1961 have been erroneously imposed by Assessing Officer while passing assessment order. Therefore, the Assessment order passed by Assessing Officer calculating tax on assessed income as per section 115BBE is illegal which is*

*against the natural law of justice and should be set-aside.*

- (iv) *The Assessee craves leave to argue on any other question of law or facts at the time of hearing of the appeal.*

3. Besides above, the Assessee has also raised an additional Ground of appeal, which reads as under: -

1. *That the ld. CIT(A) has passed Ex-parte order and not provided sufficient opportunity of being heard to the appellant.*

*So, the orders passed by the ld. CIT(A) is illegal and against the natural law of justice.*

4. At the very outset, the ld. Counsel for the Assessee contended before the Bench that the appeal of the Assessee has been decided ex-parte by the ld. Commissioner of Income Tax(A)-5, Ludhiana. He further contended that the ld. Commissioner of Income Tax (A)-5, Ludhiana has not decided the appeal on merits and no sufficient opportunity of being heard was provided to the Assessee. Finally, the ld. Counsel prayed that the appeal of the Assessee needs to be restored back to the file of the ld. CIT(A) for fresh adjudication on merits.

5. The ld. DR relied on the orders of the ld. CIT(A).

6. We have considered the facts brought on record by the Id. Counsel of the Assessee and we find that the appeal not been decided on merits by the Id. CIT(A)-5, Ludhiana. Accordingly, keeping in view the principles of natural justice, the appeal is restored back to the file of the Id. CIT(A), Ludhiana for adjudication 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.

7. In the result, for statistical purposes, the appeal of the Assessee stands allowed.

Order pronounced on 03.06.2024

**Sd/-**

**( A.D. JAIN )  
Vice President**

**Sd/-**

**(DR KRINWANT SAHAY)  
Accountant Member**

“rkk.”

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,