

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 अपीलसं./ITA No.616/CHD/2023  
निर्धारणवर्ष / Assessment Year : 2016-17

Sh. Varun Gupta S/o Shri Ram Gupta H.No.1919, Sector-22B Chandigarh	Vs	Income Tax Officer Ward-3(3) Chandigarh
स्थायीलेखासं./PAN No:BOBPG4626J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by: Shri Sachin Jain, Adv.  
राजस्वकीओरसे/ Revenue by : Sh. DharamVir, JCIT-DR

सुनवाईकीतारीख/Date of Hearing : 28.05.2024  
उदघोषणाकीतारीख/Date of Pronouncement : 04.06.2024

**PHYSICAL HEARING**

**आदेश/Order**

**PER PARESH M. JOSHI, JM:**

This is an Appeal filed by the Assessee Shri Varun Gupta who is aggrieved by the order of Learned CIT(A) bearing DIN and Order No.ITBA/NFAC/S/250/2023-24/1055298746(1) dated 22.08.2023 for the Assessment Year 2016-17, passed under Section 250 of the Income Tax Act, 1961. The Appeal is filed before the Tribunal in terms of Section 253 of the Income Tax Act, 1961. The order of Ld. CIT(A) in first appeal is hereinafter referred to as the **impugned order**. Assessee thus is in second appeal before us.

**Limited Factual Matrix**

2. That the Assessee had filed his return of the income for the Assessment Year 2016-17 on **22.09.2019 [probably after notice under section 147/148]** wherein the gross total income shown is of Rs.3,55,896/- the deductions under chapter VI-A was of Rs.85,900/-. The total income was thus Rs.2,70,000/-. Type of return was **original return of income**. This is at page-5 of the Paper Book bearing Acknowledge **No.170124980220919** dated. **22.09.2019**.

3. That on page -4 of the Paper Book we notice **one screen shot** bearing Acknowledgement **No.233220420040716** with filing date of **4<sup>th</sup> July, 2016** bearing name of the Assessee and the Asst. Year 2016-17. According to Assessee he had filed a return of income for Asst. Year 2016-17 on **4<sup>th</sup> July, 2016** and screen shot is proof enough.

4. That on Paper Book page 1 to 3 there are reasons given for reopening or for initiating proceedings U/s 147 of the IT Act, 1961 which is dated 31/03/2019.

5. That in the reasons as aforesaid at bottom of Page No.1 it is averred as follows:-

***“No income tax return for Assessment Year 2016-17 has been filed by the Assessee.”***

6. That on page 2 of Paper Book para 2 of reasons;

Undersection 147 it is averred as follows:-

***“The return of income for Assessment Year 2016-17 has not been filed by the Assessee.”***

It is further averred in said para 2 as follows:-

***“Moreover, no return of income has been filed by the Assessee for the said period which will also attract penal provisions of section 271F of the IT Act.”***

7. That in para 3, 5 & 6 on page 2 of Paper Book which are reasons for U/s 147 it is averred as follows: -

***“3. ....as no ITR has filed by the assessee.”***

***“5. In this case, return of income was not filed for the year under consideration.”***

***“6. Moreover, it is pertinent to mention here that in this case, no return of income has been filed for the year under consideration.”***

8. That above few limited factual matrix has been given by us as Assessee at the outset and threshold during the course of personal hearing and based thereon has contended that the proceedings u/s 147 are all bad in law, illegal and without jurisdiction and the very initiation of proceedings should be declared by this Tribunal as illegal, bad in law and without jurisdiction as very premises for initiation of proceedings U/s 147 is that the Assessee has not filed a return of income for Asst. Year 2016-17 and the screen shot is proof enough that return of income was filed on **04.07.2016**.

9. That the Assessee has relied upon the few orders of ITAT and judgment of Jurisdictional High Court in support of his

preliminary and threshold submissions on the applicability of section 147 of the IT Act, 1961 which are at pages 6-22 of Paper Book. We are thus at the stage of maintainability of the proceedings under section 147 / 148 by virtue of which the subsequent proceedings took place i.e; the assessment order of the Ld. AO and the first appellate proceedings under section 250 before the Ld. CIT(A).

### **Record of Hearing**

10. The matter was listed for hearing on 28.03.2024 when both parties were heard on the threshold issue u/s 147/148 which was hard pressed besides others by both the parties. The ld. DR too filed a written submissions dated 22/05/2024. He contended that on issue of section 147/148 though this ground was taken up before Ld. CIT(A) which is visible persebut no reasons and hence the issue may be send back to CIT(A). The Ld. AR took up contentions as per para 8 & 9 (supra) by placing reliance on facts as recorded by us in para 2 to 7 supra.

### **Findings Conclusions**

11. In the foregoing, we observe that ld. CIT(A) in his impugned order has held as follows on issue of section 147/148 of Income Tax Act, 1961 which is reproduced below:-

***“4.3 I have gone through the submissions of the appellant as well as the reasons for reopening of the assessment. In the written***

***submissions, the assessee has objected for the procedure followed for reopening of the assessment. However, appellant has not raised any ground in this regard". Hence no adjudication is warranted."***

The Ld. AR no doubt has raised this issue of ground of jurisdiction before us at the outset u/s 147/148 of the Income Tax Act, 1961. Needless to state that ground of jurisdiction and maintainability goes to the root of the matter. They are foundational grounds; besides legal. The question of maintainability and jurisdiction are generally preliminary and threshold in nature. It relates to assumption of jurisdiction by the respective authorities. It needs to be decided at the outset and at threshold too; because to decide the case on merits without considering the same itself amounts to assumption of jurisdiction. Hence maintainability and jurisdiction assumes the place of super importance in the broad field of law at any stage of judicial hierarchy be it in the original proceedings or in the appellate proceedings. Per contra, Ld. DR too; has also said that on issue of section 147/148, the Ld.CIT(A) findings are silent though recorded (supra). We therefore hold that in the peculiar facts and circumstances of the present case the ld. CIT(A) should deal with this issue also in view of the assertions of both Ld. AR and Ld. DR and give conclusive findings one way or the other on merits. With regard to the applicability of Section 147/ 148 of the Income Tax Act, 1961. The Tribunal cannot be put to such a complexities in second appeal where one asserts a new point of

law before us,i.e; the Ld. AR and other the Ld. DR say that there is **no determination** despite a recording to that effect (supra).

12. Therefore, we are of the considered view that in such a **perplexed situation** it would be just, fair and convenient and in the interest of justice that we set aside the impugned order of Ld. CIT(A) and remit the mater back to the file of Ld. CIT(A) to pass a fresh order with regard to the objections of the Ld. AR of the assessee, as aforesaid which too is sought by Ld. DR i.e. absence of reasoned findings u/s 147/148 by Ld. CIT(A) supra.In brief, we hold that there is a necessity to record a finding on merits with regard to contentions raised on u/s 147/148 by Ld. CIT(A). We also hold as per Paper Book on record there is a material to show **tworeturn of income** one dated 4<sup>th</sup> July, 2016 and another dated 22/09/2019. Whether return of income dated 4<sup>th</sup> July, 2016 is on record needs to be ascertained as later one could be said be one filed after notice u/s 147/148 & there is material available to support it. Copy of return dated 4<sup>th</sup> July, 2016 needs to be found out. Be that as it may contentions after factum of returns is / are ascertained the arguments for and against the applicability of section 147/148 needs a decision of Ld. CIT(A)by giving a reasoned speaking order which too even Revenue desires.

**Order**

13. Accordingly, we set aside the impugned order of Ld. CIT(A)

with directions as aforesaid. We make it clear that the issues now raised by ld. AR of the Assessee as contended before us would not deter the Ld. CIT(A) to pass an order on merits of the case and our observations supra would in no way affect his powers u/s 250 of the Act while hearing and deciding the first appeal. Accordingly, the impugned order is set aside and the appeal is allowed as and by way of remand / denovo.

14. In the result, appeal of Appellant/Assessee is allowed for statistical purposes.

Order pronounced on 04/06/2024.

**Sd/-**  
**(VIKRAM SINGH YADAV)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(PARESH M. JOSHI)**  
**JUDICIAL MEMBER**

“PK/Sr.Ps”/ AG

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar