

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

HEARING THROUGH: PHYSICAL MODE

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

आयकर अपील सं. / ITA Nos. 570 & 571/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Harinder Kaur C/o Shri Tejmoan Singh, Advocate #527, Sector-10D, Chandigarh	बनाम	The ITO Ward-6(5), Mohali
स्थायी लेखा सं. / PAN NO: BOWPK1454B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tejmoan Singh, Advocate  
राजस्व की ओर से / Revenue by : Shri Manpreet Duggal, JCIT, Sr. DR  
सुनवाई की तारीख / Date of Hearing : 26/06/2024  
उद्घोषणा की तारीख / Date of Pronouncement : 27/06/2024

### आदेश / Order

**PER VIKRAM SINGH YADAV, A.M. :**

The present appeals have been preferred by the assessee against the respective orders passed by the Id. Commissioner of Income Tax, NFAC, Delhi dated 04/09/2023.

2. The assessee in these appeals has contested the action of the Id. CIT(A) in dismissing the appeals of the assessee against the additions made by the Assessing officer while passing the assessment order u/s 147 r/w 144 of the Act and levy of penalty u/s 271(1)(c) of the Act on the ground of limitation and without the deciding the appeals on merits of the case.

3. In this regard, the Id. AR for the assessee has invited our attention to the impugned orders so passed by the Id. CIT(A) and submitted that the Id CIT(A) has dismissed the appeals on the grounds of limitation. It was submitted that firstly, there was no delay in filing the appeals before the Id CIT(A) and secondly, the Id CIT(A) has not issued any show-cause before holding that the appeals are barred by limitation

and therefore, there is clearly violation of the principle of natural justice. In this regard, our reference was drawn to Form 35 wherein the assessee has stated the date of the communication of the assessment order as 16/07/2018 and it was submitted that thereafter, the assessee has filed the appeal before the Id CIT(A) on 11/08/2018 and there was thus no delay in filing the appeal by the assessee. It was further submitted that the Id CIT(A) has considered the date of the assessment order i.e, 15/11/2017 as so passed by the AO as the date of communication of the order to the assessee and considering the same, has worked out the period of delay which is factually incorrect. It was submitted that it is a matter of record that the assessee didn't receive the original order so passed by the AO u/s 147 r/w 144 of the Act and once she came to know about the passing of the order and certified copy of the order was obtained from the AO on 16/07/2018, the assessee has filed the appeal. In this regard, our reference was drawn to the penalty order passed by the AO u/s 271(1)(c) where the AO himself has stated that the assessment order alongwith demand notice and notice u/s 271(1)(c) dated 15/11/2017 was served upon the assessee vide office no. 9993 dated 17/11/2017 and which was received back undelivered. Further, in support of the aforesaid explanation, the assessee has submitted the affidavit of the assessee, the death certificate of earlier Counsel and request letter to the AO by the new Counsel seeking inspection of the records and requesting for certified copy of the assessment order. It was accordingly submitted that the Id CIT(A) has wrongly held that there was delay in filing the appeal and had the assessee or the Counsel being put to notice, the aforesaid explanation could have been submitted before him but due to lack of any such notice, the assessee was prevented from furnishing any explanation in this regard. It was submitted that similar fact pattern exist for the matter relating to levy of penalty

and there was no delay in filing the said appeal. It was accordingly submitted that there was no delay in filing the appeals and the appeals of the assessee be admitted and the matter be decided on merits and the assessee be allowed one more opportunity to represent its case before the Id CIT(A) and the matter may accordingly be set-aside to the file of the Id CIT(A).

4. The Id. DR has relied on the orders of the Id CIT(A), at the same time, has not expressed any reservation where the matters are remitted back to the file of the Id CIT(A) for examination on merits.

5. We have heard the rival contentions and perused the material available on record. We find that the Id AR has correctly brought out the fact that the date of the assessment order is not the date when the order was communicated to the assessee as the original order was returned back by the postal authorities undelivered as so noted by the AO. It is only on receipt of the certified copy of the order on 16/07/2018, the order so passed can be said to be communicated to the assessee and thereafter, the appeal was filed on 11/08/2018 and there is admittedly no delay in filing the appeal. The assessee was also not put to notice before dismissing the appeal which is also against settled principle of natural justice. Similar fact pattern exist for the penalty order and appeal so filed by the assessee on receipt of the certified copy. The findings of the Id CIT(A) in this regard are accordingly set-aside and both the matters are hereby set aside to the file of the Id CIT(A) with a direction to admit and decide the appeals on merits as per law 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 electronic mode on the email address provided by the assessee. Needless to say, the

assessee will participate in the proceedings and submit necessary information and documentation as called for and as advised.

6. The appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open Court on 27/06/2024.

Sd/-

**परेश म. जोशी**  
**(PARESH M. JOSHI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

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. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar