

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 NO. 755 & 756/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2012-13

|   |      |                                |
|---|------|--------------------------------|
| Bhag Singh<br>H.No. 260, Vill:Manauli Part -I<br>Teh Kharar, Mohali | बनाम | The ITO<br>Ward 6(5)<br>Mohali |
| स्थायी लेखा सं. / PAN NO: FSMPS9251L                                |      |                                |
| अपीलार्थी/ Appellant  |      | प्रत्यर्थी/ Respondent         |

निर्धारित की ओर से/ Assessee by : Shri Gaurav Dhall, C.A  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR  
सुनवाई की तारीख/ Date of Hearing : 12/06/2024  
उद्घोषणा की तारीख/ Date of Pronouncement : 27/06/2024

**आदेश/Order**

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

Both the above appeals have been filed by the Assessee against the separate order passed by the Ld. CIT(A)/NFAC, Delhi each dt. 31/10/2023 pertaining to Assessment Year 2012-13.

2. Appeal in ITA No. 755/Chd/2023 relates to liability of the assessee from the point of view of tax whereas Appeal in ITA No. 756/Chd/2023 relates to penalty under section 271(1)(c) of the Income Tax Act, 1961.

3. Since the issues involved in both the above appeals are common and were heard together so they are being disposed of by this consolidated order for the sake of convenience and brevity.

4. With the consent of both the parties we shall take Appeal in ITA No. 755/Chd/2023 for the A.Y. 2012-13 as a lead case.

5. The Appeal in ITA No. 755/Chd/2023 filed by the Assessee under section 253 of the Income Tax Act, 1961 being aggrieved by order No. ITBA/NFAC/S/250/2023-24/1057555836(1) dt. 31/10/2023 of Ld. CIT(A) which is hereinafter referred to as the "impugned order" for the sake of convenience

and ease. The assessee is a person resident in India. The relevant A.Y is 2012-13 corresponding to Financial Year 2011-12.

### **Factual Matrix**

6. That as per information available with the Department, the assessee had purchased a property of Rs. 1,40,00,000/-.

7. That the above information was uploaded by the Tahsildar, Tehsil Office Samrala, Dist: Ludhiana, Punjab. But as per records available with the Department of Income Tax, the assessee had not filed any return of income for the A.Y. 2012-13 corresponding to F.Y. 2011-12.

8. That accordingly the proceedings under section 147 was initiated against the assessee and that the case was reopened after recording reasons. Thereafter following notices were issued.

| S.No. | Particulars of Notice             | No. & Date       | Mode of Service | Remarks                                     |
|-------|-----------------------------------|------------------|-----------------|---|
| i)    | Notice u/s 148                    | 26049/29.03.2019 | Speed Post      | Neither anyone attended nor any reply filed |
| ii)   | Notice u/s 142(1) / Questionnaire | 5769/09.07.2019  | Speed Post      | -do-  |

9. That since no compliance was made by the assessee to any of the above mentioned notices. However, in the interest of justice another opportunity was provided to the assessee vide show cause as per particulars given below wherein it was clearly stated that it is final opportunity and in case of failure to comply with the said notice, the assessment will be completed u/s 144 of the I.T. Act, 1961 on the basis of information available on record:-

| Particulars of notice                                | No. & Date       | Mode of Service | Remarks                                     |
|--|------------------|-----------------|---|
| Final-Opportunity/ Penalty Notice/ Notice u/s 142(1) | 12880/24.09.2019 | Speed Post      | Neither anyone attended nor any reply filed |

|  |                  |                   |   |
|--|------------------|-------------------|---|
| Final-Opportunity /<br>Penalty Notice /<br>Notice u/s 142(1) | 12880/24.09.2019 | Through Affixture | Neither anyone<br>attended nor any<br>reply filed |
|--|------------------|-------------------|---|

**However, no compliance has been made even to this notice.**

10. That as per information available with the Department, the assessee has purchased of property. The information is uploaded by the below mentioned Sub-Registrar which is as follows:

| S.No. | Filer Name  | Transaction Date | Sale/Purchase of Property(Rs.) |               |
|-------|---|------------------|--------------------------------|---------------|
| 1     | The Tehsildar,<br>Tehsil Office<br>Samrala Distt.<br>Ludhiana | 17.02.2012       | Purchase of<br>Property        | 1,40,00,000/- |
| 2     |   |                  | Total Addition                 | 1,40,00,000/- |

**11. That no compliance has been made to the various notices issued during the course of assessment proceedings and no explanation with regard to source of above mentioned purchased of property of the assessee has been filed.**

12. In view of the above factual back drop the Ld. AO passed on assessment order No. 1002166687(1) dt. 11/12/2019 and assessed the income of the assessee at Rs. 1,40,00,000/- and held as follows after recording above facts:

2.2 *Since this is a time barring matter and the assessee has not complied with the notices / questionnaire issued, I am left with no other alternative than to assess the case u/s 144 of the Income Tax Act, 1961 to the best of my judgment as per information available on record. The assessee has purchased of property. No explanation with regard to the source of this investment has been filed by the assessee despite opportunities provided during the course of assessment proceedings under consideration. Hence the source of the said investments remains unexplained and assessment is completed subject to the following observations:*

3.1 *UNEXPLAINED INVESTMENT: As per table given in para 1 above, there is purchased of property as under:*

| S.No. | Name of Filer | Transaction | Sale (Purchase of Property(Rs.)) |
|-------|---------------|-------------|----------------------------------|
|-------|---------------|-------------|----------------------------------|

|    |   | Date       |                                       |
|----|---|------------|---------------------------------------|
| 1. | The Tehsildar,<br>Tehsil Office<br>Samrala Distt.<br>Ludhiana | 17.02.2012 | Purchase of<br>Property 1,40,00,000/- |

In the absence of any explanation, the entire amount of Rs. 1,40,00,000/- is treated as income of the assessee from unknown and unexplained sources of the assessee and charged to tax accordingly. I am satisfied that the assessee has concealed the particulars of income of Rs. 1,40,00,000/-. Therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 for concealment of particulars of income are initiated separately.

4. In view of the above, the income of the assessee is computed as under:

|    |  |                   |
|----|--|-------------------|
| 1. | Income assessed as discussed in para 3.1 | Rs. 1,40,00,000/- |
| 2. | Total                                    | Rs. 1,40,00,000/- |

Assessed. Issue requisite documents. Charge interest u/s 234A, B and C of I.T. Act, 1961. Issue penalty notice u/s 271(1)(c) of the I.T. Act, 1961 as referred to above and notice u/s 271(1)(b) for non-compliance of notice u/s 142(1) of the Income Tax Act, 1961. Since the assessee has not filed ITR, Penalty proceedings u/s 271F of the Income Tax Act, 1961 are also initiated.

13. Being aggrieved by the aforesaid assessment order of Ld. AO, the assessee filed an appeal under section 246A /250 of the Income Tax Act, 1961 by filing Form No. 35 on 19/04/2022 . The date of service of Ld. AO order is shown as 01/01/2020. The assessment was done under section 144 as per Form No. 35. Date of Ld. AO order is 11/12/2019. It was contended before Ld. CIT(A) as and by way of grounds as under:

1. The assessment is based void both on the basis of facts of the case and law points.
2. Wrong addition is made by the Ld. AO with rigid mind Wrong addition is made by the Ld. AO with rigid mind Wrong addition is made by the Ld. AO with rigid mind.
3. The appellant creaves liberty to raise any other ground with the permission of chair.

14. That by impugned order dt. 31/10/2023 the Ld. CIT(A) has held as follows:

2. During the appellate proceedings, notice u/s. 250 were issued. Although the appellant has not complied to the latest notice dated 20.10.2023, the appellant had earlier filed reply on 17.01.2023.

3. *Belated Appeal:*

The appellant in Form No. 35 has stated the following reasons for filing belated appeal which are reproduced hereunder:

"The appellant is very very senior old, he is sick and remain unhealthy, due to this he could not file appeal in time".

4. *CIT's Decision:*

On perusal of the details available on record, the assessment order was passed by the AO on 11.12.2019 and date of service of the said order is 01.01.2020. The appellant is required to file appeal within 30 days from the date of service of order under dispute before the CIT(A) i.e., on or before 31.01.2020. But, the appellant has filed the appeal on 19.04.2022 with a delay of 808 days and the appellant has stated very general reasons for the condonation of delay. In the case under consideration, the delay is as high as 808 days and the reasons stated by the appellant does not justify such a huge delay of 808 days. Also, the appellant did not furnish any details/documentary evidence to establish that he is sick and remained unhealthy for such a long period from 01.01.2020 to 19.04.2022, in support of his contention with regard to delay in filing appeal. For condonation of delay, the appellant is required to explain each and every day of delay with the specific reasons, which is to be supported by the requisite documentary evidence and the appellant has not furnished the same. Therefore, after considering the reasons stated by the appellant, I am of the considered opinion that "it is not a fit case for condonation of delay". In view of this, the request of the appellant for condonation of delay in filing of appeal is hereby rejected.

5. In the result, the appeal is treated as dismissed for statistical purposes.

15. Being aggrieved by the aforesaid impugned order of Ld. CIT(A) the assessee is in appeal under section 253 before us and has raised following grounds in Form No. 36:

1. The assessment is void on the basis of facts of the case and law points.
2. Ld. AO made wrong additions.
3. The appellant creaves liberty to raise any other ground with the permission of chair.

16. That the assessee has filed following statement of facts before us:

" Assessee had purchased property of Rs. 1,40,00,000/-.

*Government acquired agriculture land of assessee to establish IT city for Rs. 97916743 vide cheque number 000428 dated 13.1.12 as per certificate issued by Office of collector certificate no. 000522 dated 10.02.2012.*

*Government given concession of stamp duty on purchase of property.*

*So assessee further purchased agriculture land for Rs. 1.4 crores at Village Billo, tehsil samrala vide sale deed dated 17.2.12.*

*We are filing the certificate of collector and purchase documents of agriculture land for your kind reference.*

*The source of funds to purchase agriculture property is well explained above.*

*The case is assessed exparte. Assessee is of 81 years age and very law abiding citizen of the country.*

*Please allow the appeal and quash the demand of alleged tax and penalty."*

### **Record of Hearing**

17. The hearing before us took place on 12/06/2024 when Ld. AR Shri Dhall, C.A appeared and brought to our notice the above facts as stated in Para 12 above. The Ld. DR stated that she is going by the orders of lower authorities which are correct in law. Per contra AR stated that assessee is 81 years old and sick and hence a leniency may be shown. He vehemently contended that assessee was an agriculturist and that Government acquired his agriculture land to establish IT city for Rs. 9,79,16,743/-and that said payment was made to assessee by Government vide Cheque No. 00428 dt. 13/01/2012 and issued a certificate no. 000522 dt. 10/02/2012. He further that out of said proceeds the assessee has partly utilised sum of Rs. 1,40,00,000/- to buy a new agriculture land as Government has given concession of stamp duty on purchase of property acquired through amount of compensation give on account of acquisition of land, therefore assessee purchased a new agriculture land for 1.4 crores at village Billo, Tehsil Samrala vide sale deed dt. 17/02/2012 . We have perused the paper book and on pages 23 to 26 we noticed documents in Punjabi / Gurumukhi and its translation in English. We notice that translation is not certified by any official translator as true and correct of the original. Further even the one in Punjabi (Gurumukhi script) does not bear any seal of Government of Punjab or any public servant. On top of receipt/exemption certificate a number 000522 is mentioned but in

English translation this number is missing. **Be that as it may further we notice on pages 27-31 a purchase deed for 1.4 Crores and on pages no. 32-36 another purchase deed of Rs. 30/- lacs.** On perusing pages 27-31 we notice that there an Agreement (English Translation not certified as true copy of original) whereby Jagir Singh, Amrik Singh, Paramjit Kaur, Kulwant Singh all together have sold their rights, title and interest in some agriculture land whose details are furnished to Bhag Singh the assessee for a consideration of Rs. 1.4 Crores. It is dated 17/02/2012. On these pages there is a document in Gurumukhi too from which the translation in English is drawn/made on page 32-36 there is a second Agreement and on perusal of same we notice that there is another Agreement (English translation not certified as true copy of original) whereby Jagir Singh, Amrik Singh, Paramjit Kaur, Kulwant Singh have sold their rights, title and interest in some agriculture land whose details are furnished to Bhag Singh the assessee for a consideration of Rs. 30/- lacs. It is also dated 17/02/2012. The Ld. AR had contended during the course of the hearing that there is a provision of law in Punjab that whenever an agriculture land is acquired and compensation is paid to an agriculturist and as and when such compensation proceeds are deployed to purchase a new agriculture land then by virtue of exemption certificate so given the agriculturist need not pay stamp duty and registration charges on such new land. We thus have perused the said consumption receipt / certificate which are at pages 37 & 38 of Paper Book both in Gurumukhi and English evidencing deployment of Rs. 1.4 Crores and Rs. 30/- lacs in purchasing new land by assessee.

### **Findings and Conclusions**

18. **We now examine the legality, validity and propriety of the impugned order of Ld. CIT(A). We hold that proceedings before the Ld. AO were totally exparte. We also hold that order of Ld. CIT(A) is too not on merits of case in light of what is now contended before us. We hold that a fresh case is now made out before us at second appellate stage and that too which is based on documentary evidences as discussed above the authenticity of these**

**documents needs a thorough inquiry and verification as prima facie the assessee has made out a arguable and debatable case before us.** Unfortunately these issues could not be thrashed out at the original and at first appellate stages. **The assessee is 81 years old and an agriculturist by profession. He is sick too.**

#### **ORDER**

In view of the above, we set aside the order of Ld. CIT(A) in entirety and we remit the case back to the file of Ld. AO to decide the case a fresh on merits after taking into consideration above documents and other contentions of the assessee. The Ld. AO is directed to pass a fresh order on merits within a period of 60 days from date of receipt of this order. Simultaneously assessee is directed to fully cooperate with the Department. Thus appeal of the assessee is allowed as and by way of remand on denovo basis.

19. Appeal of the assessee is allowed for statistical purposes too.

20. The Appeal in ITA No. 756/Chd/2023, the facts of the case are common with the lead case and only difference between the two is whereas appeal number 755/Chd/2023 deals with tax liability of the assessee, the present appeal being 756/Chd/2023 is related to penalty under section 271(1)(c) of the Income Tax Act, 1961. Since we have set aside the impugned order of CIT(A) dt. 31/10/2023 which is in relation with tax liability / assessment of assessee and have remanded the case back to Ld. AO for passing a fresh order on merits on denovo basis. We deem fit, proper and appropriate to set aside even the order No. ITBA/NFAC/S/250/2023-24/1057556509(1) dt. 31/10/2023 which is in relation to penalty under section 271(1)(c) of the Income Tax Act, 1961 (which has sustained the penalty order under section 271(1)(c) passed by the Ld. AO bearing no. ITBA/PNL/F/271(1)(c)/2021-22/1040802537(1) dt. 15/03/2022 whereby penalty of Rs. 41,73,560 is imposed) and remand the case back to the file of Ld. AO with direction to take up the case afresh after the tax liability / assessment if any is decided against the

assessee in original assessment proceedings arising out of Appeal No. 755/Chd/2023.

20.1 With the above direction the impugned order dt. 31/10/2023 of CIT(A) supra is set aside and matter is remanded back to Ld. AO to pass a fresh order on merits on denovo basis in view of our directions as aforesaid. Thus the appeal of the assessee is allowed as and by way of remand on denovo basis.

21. In the result, both the above appeals of the Assessee are allowed for statistical purposes.

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

Sd/-

Sd/-

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar