

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

**BEFORE DR KRINWANT SAHAY, ACCOUNTANT MEMBER  
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 685/CHD/2023

निर्धारण वर्ष / Assessment Year: 2012-13

Shiv Charan, H.No. 640, Sarswati Mohalla Mustafabad Yamunanagar	Vs. बनाम	The ITO, Ward-1, Yamunanagar
स्थायी लेखा सं./PAN No: AHWPC0128J		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONENT

( Hybrid Hearing )

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate  
राजस्व की ओर से/ Revenue by : Shri Rahul Sohu, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 02.07.2024  
उदघोषणा की तारीख/Date of Pronouncement : 04.07.2024

**आदेश/Order**

**Per Paresh M. Joshi, JM :**

This is an appeal filed before the Tribunal under section 253 of the Income Tax Act, 1961. The Assessee is aggrieved by the order under section 250 of the Income Tax Act, 1961 bearing No; ITBA/NFAC/S/250/2023-24/105606956 (1) dated 27.9.2023 which is hereinafter referred to as the "impugned order". The Assessee PAN is

AHWPC0128J. The A.Y. is 2012-13 corresponding to the F.Y. from 01.4.2011 to 31.03.2012.

**Factual Matrix**

2. The Assessee has raised following Grounds of appeal in Form No. 36 before us.

1. *That the Ld. Commissioner of Income Tax (Appeal) NFAC has erred in passing the ex-parte order and, thereafter, confirming the addition as made by the Ld. Assessing Officer.*
1. *That the notice of hearing was sent on the wrong e-mail ID and, whereas, the notice should have been sent at the 'email-id' as given in FNO. 35 as "parmeetsingh\_123@rediffmail.com" and as such non-attended to the hearings.*
2. *That on account of above/facts as per ground No.2 the assessee was prevented by reasonable/sufficient cause in not appearing before the Ld. CIT(A) NFAC.*
3. *That further, the Ld. CIT (A) has erred in not deciding the appeal on merits on the basis of facts on record and, thus, it is prayed that the case may, please be set aside to the file the Worthy CIT(A) for deciding the issue on merits.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. The brief statement of facts are as under:-

*“This is a case of an assessee who is an individual and retired from the Government Department and senior citizen having not good health. The case of the assessee has reopened under section 147 of the Income tax Act, on the basis of AIR/CIB information available in this case that the assessee has deposited cash amounting to Rs. 78 lacs in his bank account in the Punjab National Bank Mustfabad during the year under consideration. After examined by the Ld. Assessing Officer during the assessment proceedings, the bank account statement of the assessee with his brother Sh. Shiv Ram and credited amounting to Rs. 82,99,757/- i.e by cash credit of Rs. 78 lacs and credited through transfer amounting to Rs. 499,757/-. The Ld. Assessing Officer has made the addition of Rs. 41,49,878/- i.e 50% of the total credit in the bank account of the assessee.*

1. *Aggrieved by the order of the Ld. AO, the assessee filed an appeal before Worthy NFAC Delhi. While filing the appeal, the counsel of the assessee namely Sh. Parmeet Singh has mentioned his own email id i.e. parmeetsingh\_123@rediffmail.com on the prescribed Form No.35.*

2. *Subsequent thereto, the appeal was fixed and the seven notices for hearing have been sent by the Worthy CIT(A)-NFAC Delhi. There were three notices have been issued on the email of the counsel as per serial No. 2,3 and 4 of the order of CIT(A) at page 3. The counsel of the assessee did not respond the above notice issued by the CIT(A) NFAC Delhi. This is highly regretted. The affidavit of his counsel namely CA Parmeet Singh is being enclosed herewith, in which, he has apologized that he could not respond to such notices. The four notices have been sent of the email of the assessee, who due to ill health, the assessee also could not inform to his counsel about the notices due to unavoidable circumstances, As a result, the assessee was not able to file his detailed submissions during the course of appellate proceedings, therefore, the Worthy CIT(A) has passed the ex-parte order dated 27.09.2023*

3. *Hence, it is very humbly requested before the Hon'ble Bench that the case of the assessee may kindly be set aside*

to the file of Worthy CIT(A) to be decided de novo. Further, we hereby assure your goodself that the assessee would duly cooperate during the appellate proceedings.









4. Reliance is placed on the judgment of the Hon'ble Punjab and Haryana High court in the case of **M/s Munjal BCU Centre of Innovation and Entrepreneurship Ludhiana Vs. CIT Exemptions Chandigarh**. The Hon'ble High court held that :-

**In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated hereinabove. The provisions do not mention of communication to be "presumed" by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed.**

**Having noticed as above, this Court is of the firm view that the petitioner has not been given sufficient opportunity to put up his pleas with regard to the proceedings under Section 12A(1)(ac)(iii) of the Act of 1961 and as he was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter. 10. In view of the above, Writ Petition is allowed and the order dated 16.01.2023 (Annexure P-5) is quashed and set aside.**

In view of the above said facts and circumstances of the case, it is very humbly requested to your Honour that the above said case may, please, be set-aside to the file of worthy CIT(A)-NFAC Delhi on account of natural justice.”

4. The Assessee in support of above Factual Matrix has filed an Affidavit 27.06.2024 which is reproduced below:

Affidavit		<b>Indian-Non Judicial Stamp Haryana Government</b>		Date : 27/06/2024	
Certificate No.	I0272024F289		Stamp Duty Paid : ₹ 100 <small>(Rs. Hundred Only)</small>		
GRN No.	118199272		Penalty : ₹ 5 <small>(Rs. Five Only)</small>		
<b>Deponent</b>					
Name :	Parmeet singh son of Balwant singh				
H.No/Floor :	0	Sector/Ward :	0	Landmark :	E 66 industrial area
City/Village :	Yamuna nagar	District :	Yamuna nagar	State :	Haryana
Phone :	94*****44				
Purpose :	Affidavit to be submitted at Others				
					
					
					
The authenticity of this document can be verified by scanning this QrCode Through smart phone or on the website <a href="https://egrashry.nic.in">https://egrashry.nic.in</a>					
<b>AFFIDAVIT</b>					
I, CA, Parmeet Singh S/o Sh. Balwant Singh R/o E - 66, Industrial Area, Yamuna Nagar do hereby solemnly state and affirm as under:-					
1. That I had filed the appeal of Sh. Shiv Charan with CIT(A), NFAC, New Delhi wherein my email.id have been given alongwith the email.id of the assessee.					
2. That the three notices of hearing at Serial No. 2,3 & 4, page-3 of the order of CIT(A), were sent on my email.Id.					
3. That I could not access the notices issued on my email.Id as per Serial No. 2,3,b 4 of the order of CIT(A) at page 3 and, as such, no response could be given to the notices issued by the CIT(A).					
4. That the assessee is retired Govt. employee and a Senior citizen is not keeping good health and, as such, he could not be assessed to the email. Id and neither he informed me, which has led to ex-parte order.					
5. That the non- attending of hearings during the appellate proceedings is on my part and on the part of the assessee.					
6. That the above lapse is highly regretted and I will be careful in future and shall fully co-operate with the department during the course of proceedings before the CIT(A).					
DEPONENT					
<b>VERIFICATION</b>					
That the contents of the above affidavit are true to the best of my knowledge and belief and nothing has been concealed therein.					
<b>ATTESTED</b>					
 SHAMSHER SINGH KAMBOJ A.L.L.B NOTARY, JAGADHRI YAMUNA NAGAR					
DEPONENT					

5. The Id. CIT(A) in the impugned order at Para 3, 4.1, 4.2 and 5 has held as follows:-

*“4. Several notices were issued giving opportunities of being heard to the appellant, which were duly served upon the appellant through registered email. No response is received till date. The particulars of notices issued are as under:*

<b>Sr. No.</b>	<b>Date of Notice</b>	<b>Date of hearing</b>	<b>Remarks</b>
1	08.02.2021	17.02.2021	Delivered on the registered e-mail address given by the appellant, but no response received.
2	30.12.2021	14.01.2022	Delivered on the registered e-mail address given by the appellant, but no response received.
3	16.03.2022	31.03.2022	Delivered on the registered e-mail address given by the appellant, but no response received.
4	29.09.2022	14.10.2022	Delivered on the registered e-mail address given by the appellant, but no response received.
5	29.11.2022	14.12.2022	Delivered on the registered e-mail address given by the appellant, but no response received.
6	07.07.2023	21.07.2023	Delivered on the registered e-mail address given by the appellant, but no response received.
7	28.08.2023	04.09.2023	Delivered on the registered e-mail address given by the appellant, but no response received.

- 4.1 *In view of the above, it appears that the non-appearance to notices is deliberate as all the notices have been duly served upon the appellant on the registered email account. No response has been received from the appellant till date. It is reasonable to infer from the continued non-compliance that the appellant is not serious to pursue his appeal.*
- 4.2 *Hon'ble Supreme Court in the case of **CIT vs. B.N Bhattacharjee and Another, 118 ITR 461 (SC)** observed that preferring an appeal means more than formally filing it but effectively prosecuting it. Hon'ble M.P. High Court in the case of **Estate of Late Tukoji Rao Holkar vs. CWT, (1997) (223 ITR 480) (M.P.)** dismissed the reference in default and for not taking necessary steps. Similar view has been taken by I.T.A.T. Delhi Bench in the case of **CIT Vs. Multiplan India (P) Ltd. (1991)(38 ITD 320)**. Considering the above, it appears that the appellant is not interested in prosecuting his appeal. Therefore, the appeal filed by the appellant is **dismissed** for non-prosecution.*
5. *In the result, the appeal is **dismissed.***

#### **Record of Hearing**

6. The hearing was held on 02/07/2024 when both ld. AR and ld. DR were heard at length for some time. The ld. AR contended that impugned order should be Set Aside as no Opportunity was given to Assessee. Hence there is violation of Principles of Natural Justice. Reliance was placed on the judgement of the Hon'ble Punjab & Haryana High Court in case of Munjal BCU Centre of Innovation & Entrepreneurship, Ludhiana v/s CIT Chandigarh dated 4/3/2024 in CWP No. 21028-2023 (O&M), copy of which was placed on record. It was therefore prayed that the impugned order be Set Aside and matter

be remanded back to the file of CIT(A) to afford an opportunity and to pass a speaking order on merit. The ld. DR supported the order of the CIT(A).

### **Findings & Conclusions**

7. In light of the above Factual Matrix we now examine the legality, validity and propriety of the impugned order. We hold that before passing the impugned order a valid notice ought to have been served and case of the Assessee is squarely covered by the judgement of the Punjab & Haryana High Court (supra). We, therefore, Set Aside the Impugned order with direction to CIT(A) to give notice and thereafter an opportunity of personal hearing to pass a speaking order on merits

8. Impugned order is Set aside and matter is remanded back to CIT(A) on denovo basis for passing speaking order after service of notice on the Assessee who is a senior citizen. The matter is remitted to the file of CIT(A).

9. Appeal of Assessee is allowed for statistical purposes.

Order pronounced on 04 .07.2024.

**Sd/-**  
**(DR KRINWANT SAHAY)**  
**Accountant Member**

**Sd/-**  
**(PARESH M. JOSHI)**  
**Judicial 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,

सहायक पंजीकार/ Assistant Registrar