

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

HEARING THROUGH: VIRTUAL 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. 822/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2016-17

Hans Raj Memorial Educational Society, Society Sahota Building 1 <sup>st</sup> Floor, Model Town Road, Jalandhar, Punjab – 144001	बनाम	The DCIT(Exemptions) Circle-1 Chandigarh
स्थायी लेखा सं. / PAN NO: AAATH3891G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashray Sarna, CA  
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR  
सुनवाई की तारीख/Date of Hearing : 01/07/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 03/07/2024

**आदेश/Order**

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

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 17/04/2023 pertaining to Assessment Year 2016-17 wherein the appeal filed by the assessee has been dismissed on account of non-prosecution on the part of the assessee and the order passed by the AO dt. 26/12/2018 under Section 143(3) wherein the AO has denied the claim of exemption under section 11 and made an addition of Rs. 8,61,78,252/- has been confirmed.

2. During the course of hearing, the Ld. AR submitted that the assessee filed the present appeal before the Ld. CIT(A) on 19/01/2019 and thereafter, search operations under section 132 were conducted on the Assessee Group on 25/09/2019. It was submitted that the Assessee Group thereafter filed applications under section 245(C)(1) on 24/09/2021 before the Settlement Commission which was subsequently taken up by the Interim Board of Settlement – V, Mumbai. It was submitted that since the matter was pending before the Interim Board of Settlement, the assessee moved adjournment

applications before the Ld. CIT(A) from time to time and as far as the last notice dt. 30/03/2023 was concerned, the same was not received by the assessee, hence, assessee could not file the necessary adjournment application. It was submitted that as the impugned assessment year was covered in the application so filed by the assessee before the Interim Board of Settlement, the assessee was awaiting the order to be passed by the Interim Board of Settlement and the said order has since been received on 30/03/2023. It was accordingly submitted that there was reasonable cause for non-compliance before the Ld. CIT(A) and given that the matter has been decided ex-parte qua the assessee and the fact that the order has not been passed on merits, the matter may be set aside to the file of the Ld. CIT(A) to decide the same on merits after providing necessary opportunity to the assessee.

3. The Ld. CIT/DR submitted that it is unclear what the grievance of the assessee is where the assessee has moved an application and an order has since been passed by the Interim Board of Settlement. It was further submitted that since the Interim Board of Settlement has passed the order and it is the AO who has to give necessary effect to the order so passed by the Interim Board of Settlement, therefore, where the matter has to be set-aside, it would be more appropriate that this matter is set aside to the file of the AO who can pass appropriate order after taking into consideration the order so passed by the Interim Board of Settlement.

4. We have heard the rival contentions and perused the material available on the record. Admittedly, the assessee filed the appeal before the Ld. CIT(A) on 19/01/2019 and thereafter, search operations under section 132(1) were conducted on the Assessee Group on 25/09/2019 and the Assessee Group thereafter moved the applications before the Settlement Commission on 24/09/2021 (later on take up by Interim Board of Settlement ) and since the proceedings were underway before the Interim Board for Settlement, Mumbai, the assessee has pleaded that the proceedings could

not be attended before the Id. CIT(A) and there was thus a reasonable cause for non-appearance. Further, given that the matter has not been decided on merits of the case, it was requested that the same be set-aside to which the Id CIT/DR didn't raise any serious objections where the matter is set-aside.

5. Further, it has been informed by the Id AR that the order of the Interim Board of Settlement has since been passed and in this context, as submitted by the Id CIT/DR, since the AO has to take effect to the said order of the Interim Board of Settlement, it was suggested that it would be more appropriate that this matter is also set-aside to the file of the AO instead of Id CIT(A).

6. We have given a careful consideration to the factual matrix and find that the reason for non-appearance before the Id CIT(A) as so pleaded by the Id AR was on account of subsequent search and proceedings pending before the Interim Board of Settlement which apparently took precedence over the proceedings before the Id CIT(A). At the same time, as far as merits of the present case are concerned, as can be seen from the impugned order, the subject matter of appeal before the Id CIT(A) is arising out of the order passed by the AO u/s 143(3) dated 26/12/2018 under Section 143(3) wherein the AO has denied the claim of exemption under section 11 and made an addition of Rs. 8,61,78,252/- and the said assessment proceedings have been completed well before the date of search which was conducted on 25/09/2019. Therefore, as far as proceedings which were subject matter before the Interim Board of Settlement is concerned, the same are arising out of the subsequent search proceedings and as far as the present proceedings are concerned, the same are under regular assessment pursuant to regular tax filings by the assessee and are thus distinct proceedings and the subsequent search proceedings and consequent proceedings before the Interim Board of Settlement have no bearing on it and the same have to be decided and adjudicated independently. Further, given that in the instant

case, the AO has already passed a detailed and speaking order u/s 143(3) and the Id CIT(A) has dismissed the appeal of the assessee without deciding on merits of the case, we deem it appropriate to set-aside the matter to the file of the Id CIT(A) to decide the matter a fresh as per law after providing reasonable opportunity to the assessee and calling for the remand report from the AO, where he so desires and deem fit.

7. Needless to say, the assessee shall attend to the proceedings before the Id CIT(A) and ensure in timely completion thereof and shall not seek unnecessary adjournment without the leave of the Id CIT(A) and shall be at liberty to take necessary pleadings and file submissions as so advised which shall be considered on merits by the Id CIT(A).

8. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/07/2024.

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. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar