

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस. एम. सी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "SMC", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री कृणवन्त सहायलेखा सदस्य एवं श्री परेश म ., जोशीन्यायिक सदस्य ,
BEFORE: SHRI. KRINWANT SAHAY, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 40/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

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|---|------|------------------------|
| Kamlesh Mahajan H.No. 1010, Sector 18C, Chandigarh | बनाम | The ITO Chandigarh |
| स्थायी लेखा सं. / PAN NO: ABJPM8271F | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Shri Amitoz Singh Kamboj, C.A
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 25/07/2024
उदघोषणा की तारीख/ Date of Pronouncement : 30/07/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee who is aggrieved by order bearing No. ITBA/NFAC/S/250/2023-24/1058023555(1) dt. 17/11/2023 passed by the Ld. CIT(A) under section 250 of the Income Tax Act, 1961 which is hereinafter referred to as the "Impugned order". The appeal before us is filled in terms of Section 253 of the Income Tax Act, as and by way of second appeal. Impugned order is of first appellate proceedings under the Act.

Brief Factual Matrix

The order of Ld. Assessing Officer is under section 143(3) which is dated 23/12/2019 whereby in returne income of Rs. 7,02,490/- an addition of Rs. 22,46,795/- is made. The assessed income determined is of Rs. 29,49,285/-. The additions are made by virtue of Para 12 of the assessment order which read as under:

"12. The assessee deposited huge cash in bank accounts during demonetization period (9th November, 2016 to 30th December, 2016), but the sources were neither explained nor such money offered for taxation, the onus is on the assessee to prove that the cash deposits made did not bear the character

of income. In this case the assessee failed to prove this fact that the cash deposited during demonetization period are cash in hand and therefore, hence an addition of Rs.22,46,795/- (Rs.27,46,795/- Rs.5,00,000/- added back to the returned income of the assessee cash deposit during demonetization period, represented income from undisclosed sources."

2. The assessee being aggrieved by the aforesaid assessment order made by the Ld. AO dt. 23/12/2019 had preferred first appeal before the Ld. CIT(A) who by impugned order has sustained the order of the Ld. AO dt. 23/12/2019 by dismissing the appeal.

3. Being aggrieved by the impugned order the assessee is before us and has raised following grounds in Form No. 36.

1. *Section 144: Ex Parte That the Ld. CIT(A) has erred in law by passing the order ex parte and the appeal be considered keeping in view the principles of natural justice.*

2. *Section 68: Unexplained Money - That the Ld. CIT(A) has erred in law by confirming an addition of Rs.22,46,795/- under Section-68 r.w.s. 115BBE of Income tax Act, 1961 as unexplained cash credits on account of cash deposits done during the demonetization period when the source of such cash deposits was from the regular Cash Sales, debtor collections as well as cash in hand in the audited books of accounts done u/s 44AB of the Income Tax Act, 1961, all of which stood well explained with supporting evidences and therefore the addition as unexplained cash credits was not justified and bears to be deleted.*

3. *In view of the above and such other grounds, which may be taken at the time of hearing, the appeal may please be allowed, and justice rendered.*

3.1 The assessee on 24/07/2024 has filed before us one page submissions in which it is interalia contended as follows:

"The assessee is engaged in the trading business. For the assessment year 2017-18, her case was selected for Complete Scrutiny under CASS. The Assessing Officer (AO) passed an order under Section 143(3) and made an addition of ₹ 22,46,795/- on account of cash deposits during the demonetisation period.

An appeal was subsequently filed before the Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre. During this process, the assessee's counsel was compiling relevant documentation submitted during the assessment proceedings and additional evidence that needed to be brought to the attention of the CIT(A). An adjournment was also requested for one of the hearing dates.

Unfortunately, the counsel inadvertently missed the next scheduled hearing date and did not file an adjournment request for that date. Consequently, the CIT(A) passed an ex-parte order in this case.

In light of these facts, I kindly pray that the matter be remanded back to the office of the CIT(A). This will allow the assessee to submit all relevant documentation and present the case on its merits, in accordance with the principles of natural justice.”

Record of Hearing

4. The physical hearing took place before us today i.e; 25/07/2024 when both the parties were heard at length. During the hearing there was near consensus between both the parties that the Impugned order should be set aside and matter be remanded back to the file of the Ld. CIT(A) as **per se** the impugned order is in violation of the principles of natural justice as the Impugned order was passed exparte as counsel of the assessee missed the scheduled hearing and could not file the adjournment request. Upon a query by Bench whether matter should be remanded, which was made to both the parties. Both the parties accepted fairly that the ends of justice require one more opportunity be given to the Assessee by Ld. CIT(A).

Findings & Conclusions

5. In view of the foregoing we hold that the impugned order is in the violation of the principles of natural justice and we hold that the “nature” of the impugned order is exparte.

Order

6. In the premises set out hereinabove we set aside the impugned order and remand the case back to the file of the Ld. CIT(A) to decide the case on denovo basis by giving an opportunity to the assessee to set up a plausible defence and after an opportunity is given to pass a speaking and well reasoned order on merits of the case. Assessee and his counsel to be vigilant and cooperate with Department in disposing off the appeal.

7. Appeal allowed as and by way of Remand.
8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/07/2024

Sd/-

कृणवन्त सहाय

(KRINWANT SAHAY)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

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. 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