

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

HEARING THROUGH: VIRTUAL HEARING

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. 20/Chd/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Raj Kumar S/o Shr. Magzi Ram, Village: Bahang, P.O. And Tehsil Manali	बनाम	The ITO Kullu
स्थायी लेखा सं. / PAN NO: BCOPK1525R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashwani Kumar, C.A
राजस्व की ओर से/ Revenue by : Shri Dhgaram Vir, JCIt, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 24/07/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 30/07/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed before us in terms of Section 253 of the Income Tax Act, 1961 as assessee is aggrieved by the order of Ld. CIT(A) bearing No. ITBA/NFAC/S/250/2023-24/1056199571(1) dt. 18/09/2023 which is hereinafter referred to as the "Impugned order".

Factual Matrix

- The Ld. AO vide order No. ITBA/AST/S/144/2019-20/1022831422(1) dt. 21/12/2019 has assessed the income of the assessee at Rs. 35,38,840/- under section 144 of the Income Tax Act, 1961.
- The assessee being aggrieved by the aforesaid assessment order dt. 21/12/2019 had preferred an appeal before the Ld. CIT(A) who by "Impugned order" has dismissed the same exparte.
- The assessee being aggrieved by the "Impugned order" has preferred Present second appeal before us and in Form No. 36 has raised following grounds of appeal:

1. That order assed u/s 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi is against law and facts on the file in as much as NFAC was not justified to decide the appeal exparte.

2. That the Learned CIT(A) was not justified not to decide the appeal on merits.

3. That the Learned CIT(A) gravely erred in upholding the action of the Learned Assessing Officer in making an addition of Rs. 30,00,300/- on account of cash deposit out of sale proceed as unexplained money u/s 69A r.w.s 115BBE of the Income Tax, 1961.

4. That the Learned CIT(A) further gravely erred in upholding the addition of Rs. 5,38,540/- by invoking provisions of Section 44AD and supply a rate of 8 per cent on total receipt of Rs. 67,31,750/-.

Record of Hearing

5. The physical hearing before us took place on 24/07/2024 when both the parties appeared before us and that they were patiently heard at length. It was contended by the Ld. AR that there was a communication gap between former CA Inder Raj Chanauriya and assessee consequently he had no information about his case with the Income Tax Department. It was contended that due to this there is delay of 52 days in filing the appeal also and that same may please be condoned. It was thereafter contended that assessee had no access to notice dt. 02/01/2021, 05/01/2022 and 08/09/2023 given by Ld. CIT(A) for hearing of the appeal as there was no communication with former CA. It was therefore requested that impugned order of Ld. CIT(A) be set aside and matter be remanded for fresh decision. The Ld. DR contended that the assessee ought to have been vigilant since he was not vigilant and non responsive the Ld. CIT(A) has correctly passed the impugned order. The inaction of the assessee thus clogging the system which is causing hardship to the Department. No leeway be given to the assessee.

Findings and Conclusions

6. We hold that the assessee has shown reasonable cause for condonation of delay, accordingly delay is condoned.

6.1. After condoning the delay we notice that "Impugned order" is exparte as no opportunity in effective manner is noticed by us to have been given to the assessee even at the original stage as Ld.AO's order is under section 144 despite there being a reply dt. 20/09/2019 and appearance by the assessee. Para 5.1 of the Ld. AO's order

records this fact too. There is admittedly a communication gap between old CA and the assessee and this was the main reason for non compliance of notices (supra) before Ld. CIT(A).

Order

7. In view of foregoing, we set aside the impugned order back to the file of the Ld. AO with a direction to assessee to cooperate with the Department in disposing off his appeal.

8. Appeal allowed as and by way of remand to the Ld. AO.

9. 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