

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

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 147/CHD/2024

निर्धारण वर्ष/ Assessment Year : 2017-18

| | | |
|---|-------------|---------------------------------------|
| Kohli Garments, Subhash Bazar, Khanna 141401 | Vs. बनाम | The ACIT, Circle Khanna, Punjab |
| स्थायी लेखा सं./PAN No: AALFK0898F | | |
| अपीलार्थी/ APPELLANT | | प्रत्यर्थी/ RESPONDENT |

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Sh. Jaspal Sharma, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT

सुनवाई की तारीख/Date of Hearing : 08.08.2024

उदघोषणा की तारीख/Date of Pronouncement : 13.08.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 21.12.2023 of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. Grounds of appeal taken by the Assessee are as under: -

1. *The impugned order is both against facts and erroneous in law.*

2. *On the facts and circumstances of the case, the Ld. CIT(Appeals) NFAC, Delhi, has erred in having dismissed the assessee's appeal ex-parte without having afforded reasonable opportunity of being heard and thus the impugned order is against principle of natural justice.*
3. *On the facts and circumstances of the case, the Ld. CIT(Appeals) NFAC, Delhi has erred in having confirmed the assessment order calculating tax @ 60% on the amount of Rs.75 lacs surrendered by the assessee during the course of survey conducted u/s 133A, by applying provisions of section 115BBE of the Income Tax Act.*
4. *On the facts and circumstances of the case, the Ld. CIT(Appeals)NFAC, Delhi has erred in having confirmed the assessment order treating the amount of Rs.9,50,000/- on account of excess cash, surrendered during the course of survey, as unexplained cash u/s 69A of the Income Tax Act and assessing to tax u/s 115BBE of the Act.*
5. *On the facts and circumstances of the case, the Ld. CIT(Appeals)NFAC, Delhi has erred in having confirmed the assessment order treating the amount of Rs.44,98,000/- on account of excess stock, surrendered during the course of survey, as unexplained investment in stock u/s 69B of the Income Tax Act and assessing to tax u/s 115BBE of the Act.*
6. *On the facts and circumstances of the case, the ld. CIT(A) (Appeals) NFAC, Delhi has erred in having confirmed the assessment order treating the amount of Rs. 10,02,000/- shown as Sundry Debtors under the head "Current Assets" in Balance Sheet, surrendered during the course of survey, as unexplained investment u/s 69B of the Income Tax Act and assessing to tax u/s 115BBE of the Act.*
7. *On the facts and circumstances of the case, the Ld. CIT (Appeals) NFAC, Delhi has erred in*

having confirmed the assessment order treating the amount of Rs. 10,50,000/- on account of expenditure incurred on Building and Furniture and Fixture, surrendered during the course of survey, as unexplained investment u/s 69B of the Income Tax Act and assessing to tax u/s 115BBE of the Act.

8. *On the facts and circumstances of the case, the Ld. CIT(Appeals)NFAC, Delhi has erred in holding that amendment on 15.12.2016 to the Finance Bill,2016 was applicable for assessment year 2017-18.”*

3. At the very outset, the ld. Counsel for the Assessee submitted that it is an ex-parte order passed by the ld. CIT(A). The ld. Counsel submitted a letter dated 8.8.2024 in this regard, the relevant contents of which is as under:

*“BEFORE THE HON'BLE INCOME TAX APPELLATE
TRIBUNAL CHANDIGARH BENCH-A*

*M/s Kohli Garments Khanna
(PAN: AALFK0898F)*

Vs.

*Asstt. Commissioner of Income Tax Circle, Khanna
ITA NO.147/Chandi/2024 (Assessment year 2017-18),*

Hon'ble Members,

“In this behalf it is respectfully submitted that the present appeal has been filed by the assessee against the ex-parte order dated 21.12.2023 passed by the Ld. Commissioner of Income Tax, NFAC, Delhi. It is further humbly submitted that it has been confirmed by the assessee that no notice of hearing was served upon the

assessee either physically or through E-mail ID: raieshshahi2003@rediffmail.com as mentioned in column no.17 of Form 35, by the Ld.CIT(Appeals) NFAC, Delhi, before passing the impugned ex-parte order dated 21.12.2023. It has been further confirmed by the assessee that none of notices of hearing as mentioned in para 4 at page 3 of the appellate order dated 21.12.2023, were served upon the assessee. A confirmation from the assessee, is attached herewith. Therefore the impugned ex-parte order is against principle of natural justice as no opportunity of hearing was provided to the assessee. It is, therefore, prayed that the present appeal may kindly be set aside and be sent back to the file of the first appellate authority for fresh adjudication on merits after affording reasonable opportunity of hearing to the assessee. I shall feel highly obliged.

*Yours faithfully,
Counsel of the Assessee,*

Dated 08.08.2024

*(Sd/-)
Jaspal Sharma
Advocate”*

4. The Id. DR relied on the order of the CIT(A).

5. We have considered the CIT(A)'s Order and written submissions filed by the Id. Counsel as well as oral arguments made by the Counsel of the Assessee during the proceedings before us. We find that as per the Counsel of the Assessee, the Assessee has not received any notice of hearing of the appeal from the CIT(A). The Id. CIT(A) has also not passed the order of merit. Rather, he has dismissed his

appeal ex-parte because of the non-compliance of the Assessee. Accordingly, in view of the above, in the interest of justice, the matter is remitted to the file of the CIT(A), to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

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

Order pronounced on 13.08.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

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