

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

HEARING THROUGH: HYBRID 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. 306/Chd/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

Beena H.No. 5828, Panjlasa, Naraingarh	बनाम	The ITO Ward-1, Ambala
स्थायी लेखा सं./PAN NO: BCKPB4185Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Yad Ram Saini, Advocate  
राजस्व की ओर से/ Revenue by : Shri Danish Abdullah, JCIT, Sr. DR  
सुनवाई की तारीख/Date of Hearing : 26/08/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 27/08/2024

**आदेश/Order**

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by the Assessee Beena, Naraingarh Haryana for the A.Y. 2012-13. The appeal is filed under section 253 of the Income Tax Act, 1961 as and by way of second appeal under the Act. The assessee is aggrieved by order dt. 30/01/2024 passed in first appeal bearing No. ITBA/NFAC/S/250/2023-24/1060261170(1) of Ld. CIT(A) under section 250 of the Act, which is hereinafter referred to as the "impugned order".

**Factual Matrix**

2. The assessee is an individual. As per information available with the Income Tax Department it came to be noticed that the assessee had invested in purchase of immovable property for Rs. 7650000/- during the F.Y. 2011-12 relevant to A.Y. 2012-13. The case of the assessee for A.Y. 2012-13 was reopened under section 147 of the Act, after obtaining necessary approval of Ld. PCIT, Panchkula.

2.1 That notice under section 148 of the Act was issued on 14/03/2019 calling upon the assessee to file the return for the A.Y. 2012-13 as the record

showed that no return whatsoever was filed by her. Even after notice under section 148 no return was filed.

2.2 The assessee not only failed to comply with the notice under section 148 but also failed to comply with the notices issued under section 142(1). The notices under section 142(1) were issued on 20/05/2019 and 26/07/2019 fixing the date of hearing on 27/05/2019 and 05/08/2019 respectively. On the fixed dates nobody appeared nor any written reply was filed or return of income filed for A.Y. 2012-13. The assessee during the year under consideration as per information available with the Department had purchased a property for Rs. 76,50,000/- .

2.3 That the assessee was granted final opportunity for hearing on 07/11/2019 by issuance of notice under section 142(1) in 30/10/2019 wherein it was clearly mentioned that in case no information or details are filed for assessment purposes then the matter would be decided ex parte under section 144 of Act. The assessee even failed to attend the hearing on 07/11/2019 nor furnished any written submissions.

2.4 That by order dt. 14/11/2019 the Ld. AO determined total income of the assessee as Rs. 76,50,000/- under section 144 r.w.s 147 of the Act.

3. Being aggrieved by the aforesaid order the assessee carried the matter in appeal before the Ld. CIT(A) who has since upheld the order of Ld. A.O.

4. Against the order of the Ld. CIT(A) the assessee has come up in appeal before us, and has raised several contentions including that the Ld. CIT(A) has not adjudicated the appeal of the assessee on merits.

### **Record of hearing**

5. The hearing in the matter took place today i.e; 26/08/2024 when both the parties appeared and were heard on their respective submissions. The core contention of the assessee was that even the assessment order dt.

14/11/2019 was an ex parte order and that Ld. CIT(A) ought to have set aside the said order or ought to have heard the case on merits but it was not done so. It was also contended that the order of Ld. CIT(A) is totally erroneous in as much as it has been held by him in para 4 that “ **Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.**”

It was therefore contended that Ld. CIT(A) in the impugned order has taken a totally different approach than that was in the original assessment order dt. 14/11/2019. It was therefore prayed that impugned order be set aside and matter be remanded back to Ld. AO for fresh adjudication on denovo basis, where full details of her case with documents would be submitted.

6. Per contra, the Ld. DR fairly conceded that orders of lower authorities are indeed in violation of principles of natural justice and ought to be set aside for fresh adjudication in accordance with law, back to the file of AO with opportunity to assessee to furnish such documents as she deems fit and proper.

### **Findings and Conclusions**

7. In the premises, after perusing the records of the case we observe that the orders of the lower authorities including that of Ld. AO dt. 14/11/2019 under section 144 are indeed ex parte orders and that the assessee has not been given any reasonable opportunity of filing a reply and that of a hearing before the impugned orders were passed. Hence, we set aside the order of Ld. CIT(A) as the same is in violation of principles of natural justice.

### **Order**

8. In the circumstances, we set aside the impugned order and remand the matter back to the file of Ld. AO with a direction to pass an order

afresh on denovo basis after considering the submissions of the assessee and after affording her a reasonable opportunity of being heard in person.

9. In result appeal of the assessee is allowed as and by way of remand.

10. Appeal is allowed for statistical purposes.

Order pronounced in the open Court on 27/08/2024.

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