

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

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

आयकर अपील सं./ ITA No. 170/CHD/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Chhering Tomdan, Village Khurik, PO Rangreek, Rangrik B.O. Khurik (78), Lauhaul & Spiti, H.P. 171114	Vs. बनाम	The ITO, Rampur Bushahr, Himachal Pradesh
स्थायी लेखा सं./PAN No: BHXPT8803P		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

(HYBRID MODE)

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal, Advocate,
Shri Viren Sibbal, Advocate,
& Shri Ashok Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Ved Parkash Kalia, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 12.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 04.09.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 06.01.2024 of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. Grounds of appeal are as under: -

1. *That the reopening of the proceedings is bad in law in the absence of valid service of notice under section 148 of the Income Tax Act, 1961.*
2. *That reopening of assessment is barred by limitation prescribed under section 149 (1) (b) of the Income Tax Act, 1961.*
3. *That the reassessment proceedings are bad in law and non-est as the same have been concluded without following the directions of Hon'ble Supreme Court in the case of Union of India v. Ashish Agarwal (2022) 444 ITR 1 (SC).*
4. *That the impugned Order had been passed in gross violation of the principle of natural justice and without allowing reasonable opportunity of being heard to the Assessee.*
5. *That the Ld. AO has erred in passing the order under section 144 read with section 147 of the Income Tax Act, 1961*
6. *That the order passed by Ld. AO is void as no DIN was affixed to the order.*
7. *That the Assessment Order was erroneously passed since the Ld. AO did not issue the Notice of Demand under section 156, in Form No. 7 of the Income Tax Rules, 1962.*
8. *That Ld. CIT has erred in upholding Ld. AO's order without considering the facts and circumstances of the case and without any consideration of the fact that every citizen of this country was compelled to deposit their life*

*savings on account of demonetization
announced on 8th November, 2016.*

3. Brief facts of the case, as enumerated by the Assessee, are as under: -

The Assessee is a resident of Khurik village located in Spiti, Tehsil of Lahaul & Spiti district in Himachal Pradesh, India near Tibet Border. He is a Monk (Buddhist priest). At the age of 10 years he became a Monk and started living in Key Gompa Monastery situated near his village. He is illiterate and only know BHOTI language (Bhoti is the Ladakhi language is also referred to as Bodhi).

1.2. The case was opened on the basis that the Assessee was having cash deposits of Rs. 6,02,000/- during the demonetization period, i.e., financial year 2016-17, in his savings account bearing account no. 11464106622. The Assessee is questioned to have earned interest income amounting to Rs. 13,419/- during the year under consideration and the income from teaching the Bhoti language in Govt. Primary School, Khurik amounting to Rs. 52000/-

As per the report of the Income Tax Officer, Intelligence and Criminal Investigation, Assessee could not explain the cash deposits during demonetization period and thereafter issued notice under section 148 of the Income Tax Act, 1961 on 31.03.2021 which was not served on the registered email id of the Assessee.

Then, notices under section 142(1) of the Act were issued to the Assessee on 15.11.2021, 02.02.2022, 15.02.2022 and 02.03.2022.

The Assessee could not respond to the above notices as he was unaware of the initiation of proceedings against him because all the notices were merely uploaded on the ITBA portal, neither they were sent on the email id registered on the portal or through post. Due to his failure, AO passed an order under section 144 read with section 147 of the Act. The total income assessed by the AO, making additions under section 69A of the Act, interest and the salary as a teacher amounted to Rs. 6,67,920/-.

Order u/s 250 of the Income Tax Act 1961

Aggrieved by the Assessment order dated 21.03.2022 the Assessee filed an appeal before the Hon'ble CIT(A), NFAC on 22.04.2022.

After filing the Appeal, various notices under section 250 of the Act were issued to the Assessee dated 22.09.2023 and 06.01.2024. The Assessee duly responded to the notice dated. 22.09.2023 on 09.10.2023 through providing written submissions stating that how the cash deposits were not undisclosed, and the Assessee was having genuine reasons for keeping the cash with him.

The Ld. CIT(A), NFAC after considering the submissions given by the Assessee, dismissed the appeal and upheld

the Order of the Ld. AO, under section 250 of the Act, by an order dated 06.01.2024.

4. The ld. CIT(A) in appeal order has given his findings as under: -

“6.1.9 During the course of appellate proceedings the appellant submitted written submission wherein it has contended that he is illiterate and a monk. The cash deposit during demonetization denotes the savings of the appellant for the lifetime.

6.1.10 The submissions of the appellant have been considered but they are devoid of any merit because of no supporting evidence. Further, the AO had made clear observation in the assessment order that the source of cash deposit has not been established. Hence, the AO has rightly held the cash deposited in the bank during demonetization as appellant's own money.

6.1.11 Hence, it is held that no cogent explanation has been provided by the appellant either during the assessment proceedings or during the appellant proceedings. The contentions of the appellant raised in the ground of appeal are not supported by any tangible evidence or documents. Accordingly, it is clear that the appellant has not discharged the burden of proof as required under the respective provisions to explain the source of the cash credit in the bank account. Hence the Grounds of Appeal are dismissed.

6.1.12 In view of the discussion in the preceding paragraphs, I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions / documentations even during the instant appellate proceedings, to counter

effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. It is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014]. The additions made by the AO are sustained. As a result, the lone ground of appeal is dismissed.”

5. The ld. DR relied on the order of CIT(A).

6. We have considered the findings of the ld. CIT(A) and the arguments put forward by the ld. DR. We have also considered the written submissions of the Counsel of the Assessee during the proceedings before us. The Counsel has submitted that the notices issued of reopening u/s 147 / 148 of the Act could not be responded by the Assessee as the Assessee had not seen it because all the notices were uploaded on the ITBA portal only. The Counsel of the Assessee further submitted that notices were neither sent on e.mail id nor through post. The Counsel further submitted that the Hon'ble jurisdictional Punjab and Haryana High Court in the case of 'Munjali BCU Centre of Innovation and Entrepreneurship Vs CIT(E) Chandigarh', CWP No. 21028/2023 dated 4.3.2024 has already given the finding that notice issued through portal may not be treated as a valid service of notice. Since in this case all notices were issued only

on the portal, therefore, the very reopening of the case u/s 147 / 148 of the Act are invalid. Accordingly, the proceedings initiated u/s 147 / 148 should be quashed.

7. We have considered the arguments of the ld. DR and we find that as notices were issued on portal only, therefore, it is squarely covered by the ratio decided by the Hon'ble Punjab & Haryana High Court in the case of 'Munjai BCU Centre of Innovation and Entrepreneurship Vs CIT(E) Chandigarh' (supra). Accordingly, proceedings initiated u/s 147/148 is hereby quashed.

8. Since the proceedings u/s 147 / 148 have been quashed, therefore, there is no need of giving any findings on other grounds of appeal. Accordingly, the appeal of the Assessee stands allowed.

9. In the result, the appeal is allowed

Order pronounced on 04.09.2024.

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

Sd/-
(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