

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 99/Chd/2024
निर्धारण वर्ष / Assessment Year : 2015-16

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|---|------|---------------------------|
| Nirmal Singh Street No. 9 H.No. 3444/2, New Janta Nagar, Ludhiana | बनाम | The ITO V(1), Ludhiana |
| स्थायी लेखा सं. / PAN NO: AYEPS5242A | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Shri Rajiv Kaushal, C.A
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 02/09/2024
उदघोषणा की तारीख/ Date of Pronouncement : 06/09/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee under section 253 of the Income Tax Act, 1961 before this Tribunal. The relevant Assessment Year is 2015-16. The corresponding previous year period is from 01/04/2014 to 31/03/2015. The assessee is aggrieved by order No. ITBA/NFAC/S/250/2023-24/1058687656(1) dated 12/12/2023 of the Ld. CIT(A) which is hereinafter referred to as the "impugned order".

Factual Matrix

- The assessee is an individual engaged in the business of purchase and sale of property, **however no return of income was filed**. The assessee filed return of income for A.Y. 2015-16 on 21/02/2020 declaring total income of Rs. 2,56,640/- only after the issue of notice u/s 148 by the Department.
- During the year consideration the JAO was in possession of **AIR/CIB information** that the assessee has deposited cash of **Rs. 58,14,140/-** in his bank account, however, no return of income was filed. Accordingly, the JAO had

reason to believe **that income of Rs. 58,14,140/- has escaped assessment** within the meaning of section 147 of IT Act. Accordingly, the JAO re-opened this case **after recording satisfaction.**

4. In response to notice under section 143(2) and 142(1) the assessee furnished a reply letter dt. 28/08/2021 which was uploaded on ITBA on 31/08/2021.

5. **Unexplained cash deposit:**

As mentioned in the satisfaction note by the JAO, during the year the assessee has made cash deposit of Rs.58,14,140/- in his bank account maintained with HDFC Bank. In response to notices issued the assessee vide letter dated 28.08.2021 uploaded in the ITBA on 31.08.2021 has stated as under:

"(a) I have a business of sale and purchase of property. So we deposited and withdrawals cash from bank from time to time for business purposes. The source of cash deposit in bank is cash received from party to pay counter party after deducting our profit from this cash deposited.

(b) Actual gross turnover is Rs.32,96,400/- during the financial year. So we calculate our income from business is Rs.2,63,712/- @ 8% on gross turnover of Rs.32,96,400/- and interest income from savings account of Rs.11,687.00 which is also below exemption limit."

6. The assessee's submission was considered but not found acceptable.

7. That the Ld. AO vide order dt. 21/09/2021 assessed total income as Rs. 60,70,780/- i.e; Rs. 256640/- as per return and added Rs. 58,14,140/-.

8. The assessee being aggrieved by the order of Ld. AO filed an appeal before Ld. CIT(A) who by the impugned order has sustained the order of the Ld. AO.

9. The assessee has raised following grounds of appeal in Form 36 before US:

1. That the assessee was not having sufficient opportunity to plead his case/ substantiate his contentions, since the A.R. did not apply for adjournment on 11-12-2023 and Ld CIT(A) passed ex-parte order on 12-12-2023. Assessee did have reasonable/sufficient cause while not submitting the requisite documents.

2. That the additional evidence may kindly be admitted under rule 29 of Appellate Tribunal Rules, 1963, in the interest of natural justice.

3. That the addition made u/s 69A of the Income Tax Act, 1961, amounting to Rs 58,14,140/- is against the actual facts (in contrast to facts on record) of the case and thus not as per provisions of The Act.

4. That the assessee craves the right to add, delete or amend any ground of appeal before disposal of the appeal.

Record of Hearing

10. The hearing in the matter took place on 02/09/2024 when both the parties appeared before us and were heard on their respective contentions. The Ld. AR contended that the impugned order is exparte order and that it should be set aside back to the file of the Ld. CIT(A) for fresh order on denovo basis. The Ld. CIT(A) ought to have provided a reasonable opportunity to the assessee to present his case and to adduce evidence in support. The Ld. AR more or less has conquered with the submissions of Ld. AR and has left it to this Tribunal to take appropriate decision in accordance with law.

Findings and Conclusions

11. We have examined the records of the proceedings before Ld. AO and Ld. CIT(A). We have heard the rival contentions of the parties. We observe that the Ld. CIT(A) proceeded with matter merely because on 11/12/2023 the assessee in response to notice dt. 23/11/2023 did not appear and gave no explanation. We feel Ld. CIT(A) ought to have given one more opportunity of hearing to assessee before deciding the first appeal in exparte manner. We

therefore hold impugned order to be in violation of principles of natural justice as prejudice is caused to assessee. We therefore set aside the impugned order and remand the case back to the file of CIT(A) with a direction to pass a fresh order on denovo basis after giving full and complete opportunity to assessee to present his case. The assessee is directed to cooperate with Department and be vigilante.

Order

12. The impugned order is set aside as and by way of remand.
13. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/09/2024.

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
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. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar