

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

HEARING THROUGH: PHYSICAL 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. 388/Chd/2024
निर्धारण वर्ष / Assessment Year : 2012-13

Gurbachan Kaur Dera Chakjagatian Lukhi Pehowa, Kurukshetra-136128 Haryana	बनाम	The ITO Ward No.1 Kurukshetra, Haryana
स्थायी लेखा सं. / PAN NO: GGHPK1907B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Adjournment Application)
राजस्व की ओर से / Revenue by : Shri Danish Abdullah, JCIT, Sr.DR
सुनवाई की तारीख / Date of Hearing : 04/09/2024
उदघोषणा की तारीख / Date of Pronouncement : 13/09/2024

आदेश / Order

PER PARESH M. JOSHI, J.M. :

This Is an appeal filed by the Assessee in terms of Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") as and by way of second appeal under the Act. The relevant assessment year is A.Y. 2012-13 and the corresponding previous year period is from 01/04/2011 to 31/03/2012. The assessee is aggrieved by the order of Ld. CIT(A) bearing No. ITBA/NFAC/S/250/2023-24/1059055707(1) dt/ 26/12/2023 passed under section 250 of the Act, which is hereinafter referred to as the "**impugned order**".

Factual Matrix

2. That Ld. AO by way of an assessment order bearing No. ITBA/COM/F/17/2019-20/1023377477(1) dt. 29/12/2019 for A.Y. 2012-13 has

determined total assessed income of **Rs. 36,53,200/- being ½ share only in respect of land purchased which was situated at Village Narayana, Tehsil: Nilokheri District: Karnal Haryana registered vide Registration bearing No. 5198 dt. 21/11/2021 for Rs. 73,06,400/- (all inclusive)**. After completing all the necessary statutory duties which Ld. AO is **enjoined** upon to do so in law under the Act he was left with no other option but to pass an exparte order u/s 144 of the Act. The Assessee being aggrieved by the aforesaid AO (supra) filed first appeal before Ld. CIT(A) who by the impugned order has dismissed the first appeal as the assessee despite three opportunities did not avail off even a single opportunity.

Being aggrieved by the impugned order the assessee is in second appeal before us and has raised following grounds in Form 36 which are as under:

*1. That the worthy CIT (A) has dismissed the appeal on the ground of non-submission of the documents after providing the opportunity given. It is submitted that Assessee is a non-resident Indian and came to India for a while. **During the proceedings before the worthy CIT (A), Assessee was not in India and no notices was received by her and her family members.***

*2. That the appellant has filed appeal before the worthy CIT (A) on 14-01-2020. On 23rd March 2020, Lockdown was declared by the Indian Government which was imposed till May 2021 with some relaxation. First notice was issued on 19-01-2021 which was not received by the appellant and lockdown was also imposed. Second Notice was issued on 03-11-2023 that is silence of 2 Years 9 Months and third and final notice was issued on 29-11-2023. **All of the notices were not received by the appellant and her family members at their address.***

*3. **That the worthy CIT (A) has not provided proper opportunity to represent the case.** Notice was issued in the month of Nov-2023 after the first notice on Jan 2021 with a long period of 2 Years 9 Months and final notice was also issued in same month. No sufficient opportunity was given whereas notice was issued just before the time barred of the appeal i.e 31st December 2023 which demonstrate the intention of the department to closure of the appeal by sending notice near*

to the time barred date. No Notice was issued from the year Jan 2021 to Nov 2023.

4. That the worthy CIT (A) has passed the order on 26-12-2023 which was received by the appellant on 14-02-2024. The appellant feel shocked at the time of order received due to non-receipt of previous communication.

Record of Hearing

3. The hearing before this Tribunal took place on 04/09/2024 when Ld. DR appeared before us. However Ld. AR was absent despite notice. An adjournment application was filed stating that assessee desires to submit some documents physically save except nothing was specified. We found the application as false and frivolous due to lack of any material particulars stated therein. We accordingly rejected the said application dated 03/09/2024 . Thereafter we heard Ld. DR who took us through the records of the case of both the lower authorities i.e; Ld. AO and Ld. CIT(A). He contended that despite several opportunities afforded to the assessee, the assessee and AR have not participated at all in effective manner before both the lower authorities and therefore grounds of appeal are ill founded and order of Ld. AO and impugned order in the circumstances are **justifiable**. Upon a query by Bench that in the interest of ends of justice whether it would be prudent on part of this Tribunal to remit the matter back to the file of CIT(A) as there has to be full and complete opportunity for assessee to meet his or her case particularly so when appearance of Ld. AR is on record before both authorities below he replied that let this Tribunal take appropriate call **basis law**.

Findings and Conclusions

4. We have examined the records of the case as presented to us. We have heard Ld. DR we have minutely perused the papers and proceedings of case papers of both the lower authorities. We notice that in the original assessment proceedings assessee has given Power of Attorney to CA Ankush Garg and he on 23/12/2019 one of the date of personal hearing had produced the same before Ld. AO and it is since that day till date of hearing before us i.e; 04/09/2024 nobody has appeared despite opportunities after opportunities. **Mysterious are ways here.** We have perused Power of Attorney of the assessee in favour of Makkan Singh her nephew which is placed on record.

We have perused statement of fact in Form No. 35 wherein it is averred that assessee was not in India during service of notice by Department. Assessee was out of India from 19/03/2019 to 20/12/2019 after she arrived and came to know of Income Tax Notice issued by Ld. AO she went to bank for updation of her KYC with bank as account had become dormant. She even applied for **jamabandi copy** but officer concerned was busy with "**suryagrahan mela**". All these factors prevented her to obtain her own bank details and jabandi copy consequently reply documents could not be placed before Ld. AO. She has averred that she has purchased property from her bonafide explainable sources.

4.1 In light of above facts which are under verification clause of form 35/36 we are of the considered opinion that one more opportunity should be afforded to her to plead her case before Ld. CIT(A) who may take suitable assistance of

Ld. AO in disposing off her appeal as expeditiously as possible. Accordingly, we set aside the impugned order and remand the case back to the file of Ld. CIT(A) with a direction to provide last one more opportunity to assessee to present her bank statement, document of title to the property which she has purchased and to explain source of money etc from which property was sourced. The Ld. CIT(A) to pass a suitable speaking order. The assessee to avail such opportunity and not to seek adjournment and to cooperate with Department.

Order

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

Order pronounced in the open Court on 13/09/2024

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. 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