

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 Nos. 415 & 416/Chd/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Ram Kumar C/o Sanjay Singla, Advocate Opp. Distt. Court, Nehru Garden Colony, Kaithal- Haryana-136027	बनाम	The ITO Ward-2, Kaithal
स्थायी लेखा सं. / PAN NO: BKFPK9501A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Sanjay Kumar Singla, Advocate
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Addl. CIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 12/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 27/09/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

Both the above appeals are filed by the Assessee against the separate orders of the Ld. CIT(A), NFAC, Delhi each dt. 19/02/2024 pertaining to Assessment Years 2011-12.

2. Since both the above appeals were heard together and they are being disposed off by this consolidated order for the sake of brevity. Firstly, we shall deal with the appeal of the assessee in ITA No. 415/Chd/2024 pertaining to Assessment Year 2011-12.

3. This is an appeal filed by the Assessee under section 253 of the Income Tax Act, 1961 (which is hereinafter referred to as the 'Act' for sake of brevity) as and by way of second appeal under the Act. The relevant A.Y. is 2011-12 and the corresponding previous year period is from 01/04/2010 to 31/03/2011. The assessee is aggrieved by order No. ITBA/NFAC/S/250/023-24/1061111720(1) dt. 19/02/2024 of Ld. CIT(A) which is hereinafter referred to as the "impugned order" passed in first appeal under section 250 of the Act.

Factual Matrix

4. The Department of Income Tax basis information received from the system, noticed that the assessee had deposited cash of Rs. 23,64,000/- in his saving bank account No. 1234658895 which was maintained by the assessee with HDFC Kaithal during the F.Y. 2010-11 relevant to A.Y. 2011-12.
5. Accordingly the case was reopened by recording reasons under section 147 and notice under section 148 of the Act was issued on 23/03/2018 with prior approval of PCIT, Karnal and that the same was duly served upon the assessee.
6. That subsequently notices under section 142(1) was issued calling for requisite informations and that the same was duly served upon the assessee.
7. The assessee filed ITR on 30/11/2018 declaring income of Rs. 50,000/- plus agriculture income of Rs. 2,50,000/- in response to notice under section 148.
8. Thereafter, notices under section 143(2) was issued on 02/12/2018 for the requisite compliance on 05/12/2018.
9. That the assessee through his counsel Shri Arvind Malhotra attended the proceedings and filed the requisite reply / documents / details on 02/12/2018 and that he same was placed on file after verification.
10. That in reply filed on 02/11/2018 it was submitted that the cash deposit of Rs. 23,64,000/- was deposited in HDFC Bank (supra) out of limit amount of Rs. 33,80,000/- from SBI Kaithal.
11. That Ld. AO carried out due process during the assessment proceedings both in respect of HDFC Account (supra) and SBI Account (supra) and explanation of the assessee was found to be not satisfactory and consequently assessed Rs. 20,70,000/- as unexplained investment under section 69 of the Act. The said addition of Rs. 20,70,000/- was added to

returned income of Rs. 50,000/- and total income was determined at Rs. 21,20,000/- and in addition Rs. 2,50,000/- as agriculture income.

12. That aforesaid order of assessment of Ld. AO is dated 11/12/2018 under section 143(3) and 147 of the Act.

13. That the assessee being aggrieved by the assessment order dt. 11/12/2018 as aforesaid preferred first appeal under section 246A of the Act, before the Ld. CIT(A) who by the impugned order has dismissed the appeal of the assessee.

14. That the assessee being aggrieved by the impugned order of the Ld. CIT(A) has preferred second appeal before this Tribunal and has raised following grounds of appeal:

1. *The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in law & facts by confirming the addition made by AO without service of notice issued u/s 148 dated 23.03.2018.*

2. *The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in dismissing the appeal filed by the appellant without consider the written submission/paper-book available on income tax portal from 30.01.2021. Therefore it is clear order has been passed in mechanical manner without read the written submission. That the dismissal of appeal is against the principles of natural justice because reasonable opportunity of being heard was not given by the Worthy CIT(A)*

3. *CIT(A) erred in law and facts by confirming the action on AO acted only on the basis of information received from DDIT(Investigation) and did not apply his mind while recording the reasons u/s 147 of the Act and initiation of the proceedings u/s 147/148 of the Act, which goes to the root of the case and dent the reopening itself.*

4. *CIT(A) erred in law and facts by confirming the action of AO because Approval u/s 151(1) for re-opening the case has been given by JCIT in Mechanically manner.*

5. *Notice issue u/s 148 issued on basis of non existing facts.*

6. *That on the law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO in making addition of Rs. 2070000/- without considering the written submission/paper-book uploaded on income tax portal on 30.01.2021.*

7. *The Appellant crave leave to amend alter or delete any of above grounds of appeal.*

Record of Hearing

15. The hearing in the matter took place before us on 12/09/2024 when Ld. AR sought adjournment on the ground that he is busy in audit cases, the said request for adjournment was however rejected including another identical case of assessee bearing ITA No. 416/Chd/2024 too was listed for penalty under section 271(1)(c).

16. That the records of the case were perused by the Tribunal. Upon careful perusal it was noticed that impugned order of Ld. CIT(A) was an illegal order and in violation of the principles of natural justice.

Findings and Conclusion

17. We now have to adjudge and adjudicate the legality, validity and propriety of the impugned order **basis** reasons given in the impugned order and grounds of appeal urged before us.

18. We notice that one of the ground of appeal before us is that impugned order is in violation of the principles of natural justice as same was passed without considering the written submission / paper book which was available on income tax portal from 30/01/2021. It was therefore contended that impugned order is passed in Technical manner without taking into consideration written submission of the assessee.

19. We observe and hold that on para 5.2 of the impugned order it is recorded that assessee has not furnished a written submission despite being give ample opportunities. The case is therefore is being adjudicated as per information available on record.

20. In para 5.8 of the impugned order it is once again averred by the Ld. CIT(A) that the assessee has not furnished written submission.

21. We notice that hearing in the matter was fixed by Ld. CIT(A) on 29/01/2021 but due to "Kissan Andolan" internet was not working on

29/01/2021. The assessee in consequence thereof filed a written submission / paper book on 30/01/2021 the very next day and uploaded it on system. Another hearing was fixed by Ld. CIT(A) to which assessee replied that "Paper book already uploaded on 30/01/2021 please consider the same and allow the appeal". Copy of written submission / paper book uploaded on 30/01/2021 placed before us.

22. In view of the foregoing we hold that Ld. CIT(A) before passing the impugned order ought to have perused the written submission / paper book of assessee uploaded on 30/01/2021 and ought not to have held that assessee has not furnished written submission on para 5.2 & 5.8 of the impugned order. We therefore hold that impugned order is illegal, bad in law and not proper and further the same is in violation of the principles of natural justice. We therefore set aside the same and remand the case back to the file of CIT(A) for fresh determination after giving full and complete opportunity to the assessee. All to cooperate in early disposal of first appeal.

Order

23. The impugned order of Ld. CIT(A) is set aside and matter is remanded to CIT(A) on denovo basis.

24. Appeal of the assessee is allowed for statistical purposes.

25. Now we shall deal with appeal of the Assessee in ITA No. 416/Chd/2024.

26. The facts are common and only difference is that it deals with penalty under section 271(1)(c) of the Act.

27. By an order dt. 26/06/2019 the Ld. AO imposed penalty of 100% on the assessee under section 271(1)(c) of the Act. The core reason was unexplained investment made by the Assessee of cash deposit of Rs. 20,70,000/- which was confirmed by the assessment order dt. 11/12/2018 passed under section 143(3) r.w.s 147 of the Act. The penalty was imposed for concealment of material particulars of income of Rs. 20,70,000/-. Notices

under section 274 read with section 271 of the Act, were issued on 11/12/2018 fixing the case for 14/01/2019 through post as well as through notice server. The notice sent through notice server was received back undelivered as per his notice report on said notice itself. Accordingly the said notice was served through Affixture on 26.12.2018 for compliance on 14/01/2019. On fixed date, neither anybody attended the proceedings nor any reply whatsoever was furnished by the assessee. Subsequently, a show cause notice in connection with penalty proceedings was issued on 03/05/2019 fixing the case for 16/05/2019 and sent through notice server which was received back undelivered as per remarks of notice server appended on notice itself. Accordingly said notice was served through affixture upon the assessee on 07/05/2019. Again on fixed date i.e 16/05/2019 none attended. Vide the said show cause notice, it was duly apprised and show caused to the assessee as to why the penalty under section 271(1)(c) should not be imposed on the assessee. It was also clearly mentioned in the said notice that in case of failure of compliance to the said notice, penalty order will be passed on merits. Since the assessee squarely failed to respond to the notice(s) supra issued to him, it was referred that assessee had nothing to say in the matter and had no defence whatsoever and has in fact accepted default. In the view of aforesaid the Ld. AO had no other option but to hold that the assessee is in default for concealing the particulars of income of Rs. 20,70,000/- consequently penalty of 100% of Rs. 5,56,200/- was imposed under section 271(1) of the Act.

28. The assessee being aggrieved by the aforesaid order of Ld. AO dt. 26/06/2019 exercised his right of first appeal and preferred first appeal before Ld. CIT(A) who by an order No. ITBA/NFAC/S/250/2023-24/1061111793(1) dt. 19/02/2024 passed in terms of section 250 of the Act has sustained the aforesaid order imposing penalty which is dt. 26/06/2019.

29. The assessee being aggrieved by the aforesaid order dt. 19/02/2024 of Ld. CIT(A) prefers second appeal u/s 253 before us and has raised the contention that the imposition of penalty is bad in law, illegal and not proper.

30. On careful perusal of the order of Ld. CIT(A) we notice that number of opportunities were afforded to the assessee by way of issuance of notice(s) on 12/07/2021, 28/07/2021, 05/01/2022, 19/10/2023 and 09/02/2023 to furnish submissions respectively on or before 27/07/2021, 12/08/2021, 20/01/2022, 26/10/2023 and 16/02/2024 on ITBA portal. But assessee did not avail a single opportunity out of many afforded. Under these circumstances, the Ld. CIT(A) had no other option but to sustain the order dt. 19/02/2024.

30.1 In view of above we hold that it would be just, fair and convenient and in order to achieve ends of justice one more opportunity as and by way of final opportunity be afforded to the assessee to explain whether income is concealed or not. We accordingly set aside the order of Ld. CIT(A) dt. 19/02/2024 and remit the matter back to the file of CIT(A) on denovo basis who shall pass appropriate order on first appeal by giving just one more opportunity to the assessee.

31. In premises order of Ld. CIT(A) dt. 19/02/2024 is set aside as and by way of remand on denovo basis.

32. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/09/2024

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