

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

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

आयकर अपील सं./ITA No. 76/CHD/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Dalbir Singh, Pinjore, Panchkula, C/o Shri Tej Mohan Singh, Advocate, # 527, Sector 10D, Chandigarh.	Vs	The ITO, Ward-1, Panchkula.
स्थायी लेखा सं./PAN NO: ARFPS1156B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing : 15.10.2024
उदघोषणा की तारीख/Date of Pronouncement : 15.10.2024

PHYSICAL HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

The present appeal has been preferred by the assessee against the order passed by the ld. Commissioner of Income Tax (Appeals) NFAC, Delhi dated 26.10.2023 pertaining to 2012-13 assessment year.

2. The assessee in this appeal has raised the following

grounds of appeal :

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the initiation of proceedings under section 148 in as much as there was no escapement of income leading to a reason to belief and as such the re-opening is illegal, arbitrary and unjustified.

2. That the ld. Commissioner of Income Tax (Appeals) has failed to appreciate that no notice under section 148 was ever served on the assessee and as such the order passed is Illegal arbitrary and unjustified.

3. That the Ld. Assessing Officer has erred in law as well as on facts in as much as there has been no reason to believe that there was an escapement of income in as much as the reasons recorded are based only on borrowed information and as such the assessment order passed is illegal, arbitrary and unjustified.

4. Without prejudice to the above, the Ld, Commissioner of Income Tax (Appeals) has erred .in upholding the addition of Rs.61,97,798/- made on account of alleged unexplained sale of immovable property which is arbitrary and unjustified.

5. That the Ld. Commissioner of Income. Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 61,97,798/- treating agricultural land sold to be a Capital Asset especially when a specific ground of appeal in this regard was raised before him stating that the land was situated beyond the specified municipal limits which is arbitrary and unjustified.

3. On scrutiny, it is found that there is a delay of 29 days, as pointed out by the Registry, in filing the appeal before this Tribunal. The assessee has filed an application for condonation of delay alongwith his affidavit, explaining the reasons for the delay occurred in filing the present appeal.

The contents of the affidavit of the assessee are given below :

1. That I had filed an appeal against the assessment order passed under section 147 r.w.s. 144 of the Act before the CIT(A), NFAC, Delhi for the Assessment Year 2012-13.

2. *That the appeal was decided by the Commissioner of Income Tax (Appeals) (NFAC) vide order dated 26.10.2023 ex-parte.*
3. *That an appeal against the order of Commissioner Tax(Appeals) was filed before the Income Tax Appellate Tribunal, Chandigarh on 23.01.2024 which was late by 29 days*
4. *That I am an agriculturist and not much educated and also a senior citizen.*
5. *That I had filed the appeal before the Commissioner of Income Tax (Appeal).NFAC on the basis of the password and email address of Shri Satish Kanojia who used to look after my income tax case.*
6. *That being not much educated, I did not see the SMS, if any. received from the Income tax Department/CTT(A) and Shri Satish Kanojia, whose e-mail was given to the Department did not inform me of any mail received on his e-mail from the IT Department or CIT(A).*
7. *That Shri Salish Kanojia changed the password/Login Id and as such the Notices received on my profile also could not be accessed*
8. *That I was informed by Shri Salisli Kanojia on 16.01.2021 regarding the dismissal of my IT Appeal by the CIT(A). I obtained the login Id and password immediately, I contacted my Advocate and on checking the portal, it was seen that the appellate order dismissing my appeal had been passed by the CIT(A), NFAC, Delhi on 26.10.2023.*
9. *That the SMS/email from the Income Tax Department regarding notices and passing of the order by the CIT(A), NFAC, Delhi could not be seen/accessed by me being not much educated.*
10. *That the appeal was filed before the Hon'ble ITAT, Chandigarh Benches, Chandigarh against the order passed by the CIT(A), NFAC, Delhi on 23.01.2024 though belatedly for the reasons mentioned above.”*

4. Heard. After taking into consideration the contents of the application and the affidavit of the assessee, we are satisfied that the assessee was prevented by sufficient cause from filing the appeal in time. Even otherwise, the assessee cannot be said to stand to gain anything by deliberately delaying the filing of the appeal before this Tribunal.

Therefore, in the interest of justice, the delay of 29 days caused in filing the present appeal is condoned.

5. The assessee in this appeal has contested the action of the Assessing Officer in passing the order under Section 147 r.w.s. 144 and also the action of the ld.CIT(A) in confirming the action of the AO affording reasonable opportunity of being heard to the assessee. The ld. Counsel for the assessee has stated that there was no service of notice and as such the proceedings under Section 148 were illegal and bad in law. It is further stated that the ld. CIT(A) has erred in law as well as on facts in upholding the initiation of proceedings under Section 148 of the Act.

6. Heard. The ld. Counsel for the assessee has invited our attention to order of the Assessing Officer confirmed by the ld. CIT(A), to submit that the same is an ex-parte order. He has submitted that the Assessing Officer has summarily rejected the application of the assessee without giving any opportunity of hearing to the assessee to present its case. He has submitted that no notice of date of hearing was served by the Assessing Officer, either through physical mode or through e-mail etc. The ld. Counsel for the assessee

has requested that the assessee may be given opportunity to present its case.

7. The ld. DR has relied on the impugned order.

8. We have heard the rival contentions. In the facts and circumstances of the present case, we are of the considered opinion that the assessee deserves to be given appropriate opportunity to present his case. Therefore, the order of the ld. CIT(A) is not sustainable in the eyes of law. The same is hereby set aside with a direction to the CIT(A) to decide the appeal of the assessee afresh after giving proper and adequate opportunity to the assessee to present his case. The ld. CIT(A) will serve notice of hearing through physical mode as well as through electronic mode upon the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A).

9. The appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced on 15th October,2024.

Sd/-

**(KRINWANT SAHAY)
ACCOUNTANT MEMBER**

Sd/-

**(A.D.JAIN)
VICE PRESIDENT**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar