

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

BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं./ITA No. 810/CHD/2023

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Mohinder Chauhan, Mukesh Apartment Fingask Estate, Shimla.	Vs	The ITO, Ward-1, Shimla.
स्थायी लेखा सं./PAN /TAN No: AFUPC0382E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Adjournment Application)

राजस्व की ओर से/ Revenue by : Dr.Ranjit Kaur, Addl.CIT Sr. DR

तारीख/Date of Hearing : 01.10.2024

उदघोषणा की तारीख/Date of Pronouncement : 30.10. 2024

PHYSICAL HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is an appeal filed by the assessee under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") before this Tribunal as and by way of second appeal under the Act. The relevant assessment year is assessment year 2010-11. The corresponding previous year period is from 01.04.2009 to 31.03.2010. The assessee is aggrieved by order bearing No. ITBA/NFAC/S/250/2023-24/1057469665(1) dated 28.10.2023

which is hereinafter referred to as the “impugned order” passed in the first appeal under Section 250(6) of the Act.

Factual Matrix

2. That that assessee failed to file the return of income (ITR) for the assessment year 2010-11 as required under Section 139(1) of the Act.

3. The Department had information from NMS Cycle-1/2 that the assessee was a non filer.

4. That as per information, the assessee had made a cash deposit of Rs.18,41,810/-.

5. That in view of above stated position a Notice under Section 148 of the Act was issued on 31.03.2017 after recording the following reasons :

“The assessee was requested to file the reply on online Portal regarding transaction vide this office letter, but no compliance was made by the assessee and the case status was still open on online portal i.e., itaxnet. It was therefore presumed that assessee had no reply to explain the source of cash deposits. Therefore, proceedings under Section 147 were initiated”.

6. The notice under Section 148 was sent on the postal address of the assessee. However, the same was received back and it was served upon assessee by way of affixture by Inspector of Id. AO office on 31.03.2017 and the assessee was required to

file return of income in response to notice under Section 148 which was finally duly served by pasting.

7. That thereafter, notice under Section 142(1) alongwith questionnaire were issued on 22.06.2017. The address of the assessee was obtained from his previous employer at UTI, Fingask, Shimla and notice under Section 142(1) sent to his new address.

8. Subsequently, fresh notices under Section 142(1) were issued on 22.06.2017 for 12.07.2017, on 31.07.2017 for 21.08.2017, on 07.09.2017 for 19.09.2017, on 25.09.2017 for 10.10.2017. None appeared nor any reply filed.

9. That being time barring assessment, only alternative was to complete assessment under Section 144 of the Income Tax Act, 1961.

10. That since the assessee had not filed ITR in response to notice under Section 148/142(1), penalty proceedings were contemplated separately.

11. That a Show Cause Notice before completion of assessment under Section 144 of the Act was also issued on 14.11.2017 calling upon the assessee to file reply/objection by 24.11.2017. On said date, none attended nor any reply filed/submitted to the Show Cause Notice.

12. That in view of the above, the ld. AO was left with no other alternative in view of the non cooperative attitude of the assessee and so also in view of the fact that assessment was getting time barred to exercise power under Section 144 of the Act.

13. That the bank statement for assessee for the period 01.04.2009 to 31.03.2010 was called from Manager of ICICI Bank under Section 133(6) of the Act which showed deposit of Rs.28,35,130/- for assessment year 2010-11/F.Y. 2009-10. From perusal of bank statement and other details, it appeared to ld. AO that assessee is engaged in share trading too. But in view of Non cooperative attitude of assessee, he estimated income of Rs.one lakh.

14. That ld. AO finally computed total assessed income as Rs.29,35,130/- i.e., Rs.28,35,130/- plus Rs.1,00,000/- by invoking 69A of the Act.

15. That the aforesaid original assessment order under Section 144/47 is dated 05.12.2017.

16. That the assessee being aggrieved by the aforesaid assessment order dated 05.12.2017 prefers first appeal before ld. CIT(A) under Section 246A of the Act in Form No. 35 wherein fee paid is Rs.1000/- on 26.12.2017 Column No.16 of Form 35. It is

required to be noted and appreciated that in column No19 of Form 35, it is stated as under :

*“Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per Section 249(4)(6) of the Income Tax Act, 1961 has been paid. **NOT APPLICABLE**”*।.

17. That since the aforesaid case was one of not filing an Income Tax Return (ITR) it was incumbent upon the assessee to have paid an amount equal to the amount of advance tax as per Section 249(4)(b) of the Act which in fact was not paid and instead **‘non applicable’** was stated in Form No.35.

18. The ld. CIT(A) in the impugned order at para 4.4, 7 and 8 has held as under :

4.4 Though the appellant has not offered 'YES' comments at sl. No. 9 of Form-35, it was asked vide DIN & letter no. ITBA/NFAC/F/APL_1/2023-24/1057242885(1) dated 20.10.2023 to intimate whether it has made payment of tax -which includes element of advance tax also- in compliance to notice of demand u/s 156 of the Act and date of compliance was fixed for 27.10.2023 but the appellant failed to contradict the information given at sl. no. 9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income. It requested for adjournment only. It is, therefore, dear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income.

7. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.

8. The appeal is dismissed.”

19. In brief, the original assessment dated 05.12.2017 is sustained as first appeal under Section 250(6) was dismissed by impugned order.

20. The assessee being aggrieved by the impugned order is before us has raised following grounds of appeal :

1. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeal) is not justified in dismissing the appeal of the appellant holding that the admitted tax liability had not been paid as per the provisions of section 249(4) (b) and as such the appeal was not maintainable . Fact of the matter is that the admitted tax liability of the appellant amounted to NIL and as such appeal has been legally dismissed.

2. That in the, facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the treating of deposits made in the bank account of the assessee as deemed income of the assessee and as such upholding the addition of Rs 28.35,130/-made to the taxable income of the assessee .

3. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding the estimation of Rs 1,00,000/- relating to the alleged income from share / commodity trading and allied activities.

4. That the order of the Ld. Commissioner of Income Tax (Appeals) is bad in law and facts.

Record of Hearing

21. The hearing in the matter took place before this Tribunal on 01.10.2024 when ld. AR was absent for and on behalf of the assessee. The ld. DR for and on behalf of the Revenue was present. An application dated 30.09.2024 seeking adjournment was presented before us by Registry which was rejected.

Findings and conclusions

22. In the premises set out herein above and after carefully perusing all the papers and proceedings of the case, we are of the considered opinion that the impugned order should be set aside and we accordingly set aside the same and remand the case back to the file of CIT(A with direction to call the assessee to show cause as to why it has not paid an amount equal to the amount of advance tax which was payable by him and where it is finally determined that the assessee was liable for payment of advance tax and whereon an application filed by the assessee within the meaning of proviso to Section 249(4) to seek necessary exemption the ld. CIT(A) to take appropriate decision as per law. If appropriate decision is in affirmation or if amount is deposited as the case may be, the ld. CIT(A) to pass a speaking and reasoned order on merits of the case.

Order

23. In result, the impugned order is set aside as and by way of remand with directions as aforesaid.

24. Appeal allowed for statistical purposes.

Order pronounced on 30.10.2024.

Sd/-

**(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER**

Sd/-

**(PARESH M. JOSHI)
JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेपित/ 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 फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar