

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", 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. 217/Chd/2024
निर्धारण वर्ष / Assessment Year : 2012-13

Jagroop Singh, Akki Patti, Ward No. 1 Near Bada Gurudwara Sahib, Vill: Sanghera-148101 District: Barnala(Punjab)	बनाम	The ITO Ward-1- Barnala
स्थायी लेखा सं. / PAN NO: DFSPS7817R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Pardeep Goyal, CA
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT
सुनवाई की तारीख/Date of Hearing : 21/10/2024
उद्घोषणा की तारीख/Date of Pronouncement : 16/12/2024

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 (hereinafter referred to as the Act) before this Tribunal. The assessee is aggrieved by the order bearing No. ITBA/NFAC/S/250/2023-24/105946628(1) dt. 08/01/2024 passed by the CIT(A) under section 250(6) of the Act which is hereinafter referred to as the "**impugned order**". The relevant A.Y. is 2012-13 and the corresponding previous year period is from 01/04/2011 to 31/03/2012.

2.

Factual Matrix

2.1 The Income Tax Department as per the individual transaction statement available on the system noticed that the assessee had made cash deposits /FDRs of Rs. 57,00,000/- (44,00,000 + 13,00,000) in his bank account during the

period 01/04/2011 to 31/03/2012 relevant to A.Y. 2012-13 and that the assessee had not filed his return of income for the A.Y. 2012-13.

2.2 That the information was called for from the assessee but the assessee failed to reply in this regard.

2.3 That As there was nothing on record to establish the genuineness and source of cash deposits/FDRs of Rs. 57,00,000/- was escaped assessment for the A.Y. 2012-13 within the meaning of explanation 2(a) of section 147 of the IT. Act, 1961. Subsequently the case was selected for manual scrutiny.

2.4 That after taking approval of Pr. CIT, Patiala u/s 151 of the IT Act, 1961, notice u/s 148 of the Act was issued dated 29-03-2019 to file the return of income for the Assessment Year 2012-13. In response to this notice, the assessee filed return of income on 12-04-2019. Information u/s 133(6) of the IT. Act, 1961 was called for from Punjab National Bank and placed on record.

2.5 Further, notices u/s 142(1) and 143(2) of the I.T. Act, 1961 were issued. Notice u/s 142(1) of the Income Tax Act, 1961 dated 18-07-2019 alongwith questionnaire calling for some information were issued. The assessee was required to submit the documents by 26-07-2019. But by the due date nobody attended nor any written reply was received. Again a letter was issued on 02-09-2019 in which he was requested to submit his reply by 13-09-2019. But no information was received. Again a show cause notice was issued on 19-10-2019 in which the assessee was show caused that you had made cash

deposited/FDRs of Rs. 57,00,000/- in his bank account during the period under consideration and in the absence of his reply an order u/s 144 of the I.T. Act, 1961 shall be passed and tax will be levied on Rs. 57,00,000/- under the Income Tax Act. Again no reply was received nor any authorized representative attended by the due date. Since, the assessee has failed to comply with provisions of section 142(1) of the I.T. Act, 1961, the A.O has to proceed with completion of the 'best judgment assessment' u/s 144 of the I.T. Act, 1961.

2.6 As the assessee has not made any compliance to any of the notices sent by this office. Therefore, as per the provisions of section 144 of the I.T. Act, 1961 if the assessee fails to the comply with terms of notices u/s 142(1), the Assessing officer has to gather relevant material and to make the assessment to the best of his judgment and determine the some payable by the assessee on the basis of such assessment. Hence, in the absence of any reply submitted by the assessee the A.O has to proceed with completion of the best judgment assessment u/s 144 of the I.T. Act, 1961. Therefore, the cash deposits/FDRs of Rs. 57,00,000/- remain unexplained and are added to the income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act have initiated for concealment of income and penalty proceedings u/s 271 (1)(b) have been initiated for non-compliance of notice u/s 142(1) of the I.T. Act, 1961.

2.7 Thus the Ld. AO computed total income of assessee at Rs. 57,28,420/- (returned income Rs. 28,420/- + Rs. 57,00,000/-).

2.8 That the aforesaid assessment order of Ld. AO bears No. ITBA/COM/F/17/2019-20/ 1022452033(1) and is dated 16/12/2019 under section 144 r.w.s 147 of the Act.

3. That the assessee being aggrieved by the aforesaid assessment order dt. 16/12/2019 prefers first appeal under the Act in terms of section 246 A on 31/05/2022 however the Ld. CIT(A) vide impugned order has dismissed the appeal. Consequently the order of AO stands confirmed at 1st appellate stage.

4. that the assessee being aggrieved by the impugned order has preferred second appeal before this Tribunal and in Form 36 has raised following grounds of appeal before us:

1. On facts and under the circumstances of the case the CIT (Appeals), NFAC has erred in law by not affording an opportunity of being heard to assessee and by not following the principles of natural justice.

2. On facts and under the circumstances of the case the CIT (Appeals), NFAC has erred in law by not admitting the assessee application for additional evidence which substantiates the merits of the case and goes to root of the matter.

3. On facts and under the circumstances of the case the CIT (Appeals) was not justified in confirming the order of AO holding that cash deposits of Rs.57,00,000/- remain unexplained and added to the income of the assessee.

4. That the appellant craves leave to add, amend or withdraw any ground of appeal before the appeal is finally heard or disposed off.

5. **Record of Hearing**

The hearing in the matter took place on 21/10/2024 when the Ld. AR for and on behalf of the assessee appeared before us and contended that the impugned order is illegal, not proper and is bad in law as the Ld. CIT(A) has failed to give assessee an opportunity of being heard which is in gross violation of the

principles of natural justice. He contended that impugned order should be set aside and matter be remitted back to the CIT(A) to pass a fresh order after giving reasonable opportunity of hearing. Per contra Ld. DR has left the issue on this Tribunal to take appropriate decision in accordance with law.

6. **Observations, Findings & Conclusions**

6.1 In the premises,, now we have to decide the legality, validity and the propriety of the impugned order. We have examined the records of the case as placed before us and after examining the rival contentions, we notice that there was a delay of 897 days in preferring 1st appeal for which the assessee had filed an Affidavit dt. 31/05/2022 **basis** which **we find that delay was condoned** (page 4 to 8 of impugned order). We further notice that from pages 10 to 23 of the impugned order entire written submissions of the assessee is incorporated in the impugned order and basis which impugned order is passed. However before taking the same into consideration the Ld. CIT(A) had sought Remand Report from the Ld. AO as in written submission additional evidence was relied upon by the Assessee. The Remand Report is incorporated on pages 24 to 27 of the impugned order. In sum and substance in Remand Report the Ld. AO has **opposed introduction of additional evidence as in past many opportunities during the course of the assessment proceedings were afforded to assessee**. In the impugned order the Ld. CIT(A) at para 5.1.1 has held as under:

*5.1.1 During the appellate proceedings the appellant has submitted some details of bank accounts and details of land sale received by the appellant and his nephews from M/s Gazebo Constructions Pvt Ltd, Patiala. However, these documents/additional **evidence cannot be taken into cognizance as per provisions of rule 46A of the Income Tax Rules 1962. Rule 46A stipulate:***

Production of additional evidence before the ¹ [Joint Commissioner] (Appeals) and Commissioner (Appeals).

46A. (1) The appellant **shall not be entitled to produce** before the ¹[Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely:—

(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the ¹[Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) **records in writing the reasons for its admission.**

(3) The ¹ [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the ¹ [Joint Commissioner] (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.

5.1.2 There are only four exceptions where the appellant is entitled to produced additional evidence as listed above. However, the appellant has not been able to prove that his case falls under any of them. It is noted that the appellant had not made any satisfactory compliance of the notices issued during the assessment proceedings.

5.1.3 The cause put forward by the appellant for placing on record the details/evidence as he was prevented by sufficient cause due to the fault of the appellant, cannot be accepted in the absence of any evidence. The sufficient cause within the contemplation of the provisions of Rule 46A must be the one which is beyond the control of the party invoking the aid of the provisions. The cause which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of provisions of Rule 46A. As the appellant had availed off the number of opportunities allowed to him from time to time during the assessment proceedings, the request for additional evidence now sought to be placed on record or produced cannot be

acceded. Hence, the documents/evidences submitted during appeal proceedings are ignored while adjudicating the matter.

5.1.4 The AO during the course of assessment proceedings has noted that the appellant failed to explain the source of cash deposits of Rs. 57,00,000/- made by him in his bank account maintained with Punjab National Bank, Sanghera bearing saving a/c No. 3478000101032021 and The Sangrur Central Co-op Bank, Sanghera bearing saving a/c No. 182834028000257 during the under consideration. Thereby, an addition of Rs. 57,00,000/- was made on account of unexplained cash deposit.

5.2 The submissions of the appellant have been considered however it is held that they have no substance. The assessing officer has rightly assessed the income of Rs.57,00,000/- on account of cash deposits because the appellant has failed to substantiate the same with corresponding evidence of credible sources. Hence, the addition made by the AO is hereby confirmed and ground No. 1, 2, 3 & 4 of the appeal are dismissed.

5.3 Ground No. 5: There are no specific issues in this ground of objection, which requires adjudication. Hence Ground No.5 of the present appeal is dismissed.

6. In the result, the appeal filed by the appellant is treated as dismissed.

6.2 Basis above we notice that no opportunity of hearing is afforded to the assessee before passing the impugned order **for which the assessee has a grievance which is agitated before us.**

6.3 We therefore hold that before rejecting application of the **assessee under rule 46A coupled with the fact that appeal of the assessee is dismissed.** The Ld.CIT(A) ought to have granted a personal hearing to the assessee and by not doing so, the Ld. CIT(A) has grossly erred in law and principles of natural justice stands violated.

6.4 In the result, we set aside the impugned order and remit the case back to the file of Ld. CIT(A) to give final opportunity to the assessee for personal hearing before passing any order either under Rule 46A or otherwise in order to secure ends of justice. Be it noted we have restrained from commenting any thing on merits on the application of assessee under rule 46A as we do not intend to prejudice anyone.

6.5 Appeal of the assessee is allowed as and by way of remand.

6.6 The Ld. CIT(A) to dispose off the appeal as expeditiously as possible preferably within six months from date of receipt of this order.

6.7 In the result, appeal allowed for statistical purposes.

Order pronounced in the open Court on 16/12/2024.

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