

आयकरअपीलीय 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

आयकरअपील सं. / ITA NO. 425/Chd/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Ekomp Exim Private Limited SCO-11, Sector -4D, Bhattan Lal GT Road, Mandi Gobindagarh, Punjab	बनाम	The Jurisdictional Assessing Officer, ACIT, DCIT Central Circle, Patiala Punjab - 147001
स्थायी लेखा सं. / PAN NO: AADCE0047M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से / Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाई की तारीख / Date of Hearing : 16/10/2024

उदघोषणा की तारीख / Date of Pronouncement : 18/12/2024

आदेश / Order

PER PARESH M. JOSHI, J.M. :

This is a second 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 dt. 05/10/2023 passed in 1st Appeal No. 10596/ROT/Patiala/IT/CIT(A)-5 Ldh/2019-20 passed under section 250(6) of the Act by Ld. CIT(A) which is hereinafter referred to as the “**impugned order**”. The relevant A.Y. is 2017-18 and the corresponding previous year period is from 01/04/2016 to 31/03/2017.

2. The assessee being aggrieved by the assessment order dt. 30/12/2019 under section 144 r.w.s 147 of Ld. AO Ward-2, Mandi, Govindgarh, Head Quarter, Sirhind wherein total income of the assessee was computed as Rs.

20,26,79,670/- preferred first appeal before Ld. CIT(A) under section 246A of the Act who by the impugned order has dismissed the appeal of the Assessee. Consequently impugned assessment order dt. 30/12/2019 of Ld. AO stands sustained.

3. The assessee being aggrieved by the impugned order has preferred second appeal u/s 253 of the Act before us and in form No. 36 which is the form of appeal to this Tribunal has raised following grounds of appeal:

1. *That the Ld. CIT(A) has erred in passing the ex-parte order and confirming the action of the Assessing Officer in assessing the income at Rs. 20,26,79,870/- against the income returned at Nil.*

2. *That no notice was received by the assessee by way of physical mode and the assessee could not access to the notice having been sent on the assessee's portal as the assessee is not conversant for the same and nor the assessee's counsel intimated about the date of hearing and, thus, the assessee was prevented by sufficient and reasonable case in not appearing before the Ld, CIT(A) and which is highly regretted.*

3. *That even otherwise, it is submitted that no business had been carrying on at the time when the assessment proceedings were taken up by the Assessing Officer and also at the time of appellate proceedings before the Ld. CIT(A) and, thus, the assessee was not aware about the proceedings of the case before the Appellate Authority and also that no notice of hearing was received by the assessee by way of physical mode.*

4. *Notwithstanding the above said ground of appeal, the Ld. CIT(A) had not given any finding on the merits of the case, which he was not expected to do so and as such, the passing of ex-parte order is against the facts and circumstances of the case.*

5. *That the Ld. CIT(A) has erred in confirming the following additions as made by the Assessing Officer:-*

a). *That the Ld. Assessing officer has erred in making the addition u/s 68 in respect of cash deposits in the bank account to the tune of Rs. 10.06.74,230/-.*

b). *That the Ld. Assessing officer has erred in making the addition of credit entries as per para 5 of the order amounting to Rs. 66,12,621 /-.*

c) *That the Ld. Assessing officer has erred in making the addition u/s 68 on the basis of impounded documents as per para 6 amounting to Rs. 9,39,82,823/-.*

d). That the Ld. Assessing officer has erred in making the addition u/s 68 on the basis of cash found during the course of search amounting to Rs. 4,10,000/-.

e). That the Ld. Assessing Officer has erred in making the addition u/s 68 on the basis of amount declared under the PMGYK during the demonetization period amounting to Rs. 10 lacs.

6. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in charging to tax the income as per the provisions of section 11 5BBE of the Income Tax Act.

7. That the Ld. CIT(A) should have passed the order on merit.

8. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

4. The hearing in the matter took place before this Tribunal on 16/10/2024 when both Ld. AR for and on behalf of the assessee and Ld. DR for and on behalf of the Revenue were heard in respect of their respective contentions. The Ld.AR has placed on record of this Tribunal a copy of self declaration of the one Gurvinder Singh who was former Director of the Assessee Corporation, A paper book- I containing pages 1 to 9 and a Paper Book-II containing pages 10 to 138. There is delay of 136 days in filing the present appeal for which the necessary explanation was given and justifiable cause was shown about not seeing the IT portal email sent to earlier counsel etc. Thereafter it was vehemently contended that he impugned order is illegal, bad in law and not proper. It was next sought to be contended that correct email was **dhiman_68@yahoo.co.in** but all the notices were sent to earlier counsel's email id **itreturns750@gmail.com** who was appearing at the time of assessment proceedings only. The Ld. DR then placed reliance on page 1 of PB I which is

chart showing that in all six notices were sent fixing six hearing on different dates at email id **itreturns750@gmail.com** whereas it ought to have been sent on email id as given in Form No. 35 and also on profile of the Income Tax Portal of the appellant / assessee which was **dhiman68@yahoo.co.in** The Ld.AR carefully took us to all the pages of PB I from pages 1 to 9 including profile email id as per IT porta and as given in Form 35. Basis this material it was interalia contended by him that the impugned order is exparte and in violation of the principles of natural justice and prayed that impugned order be set aside and matter be remanded back to the file of CIT(A) for fresh adjudication and that too on merit of the case. Per contra Ld. DR has left the issue to be decided by Tribunal as per law.

5. After examining the rival submissions we firstly condone the delay for which sufficient cause is shown. We hold that the impugned order is indeed exparte and in violation of principles of natural justice and therefore bad in law and illegal. The notices ought to have been sent on email id as given in Form No. 35 and as per profile of assessee company which was dhiman68@yahoo.co.inbut was wrongly sent at email id **itreturns750@gmail.com**.

6. In the premises laid down we set aside the impugned order and remand the case back to the file of the Ld. CIT(A) to decide the case afresh on merit on denovo basis and to pass a well reasoned and speaking order.

7. In the result, impugned order is set aside as and by way of remand on denovo basis.

8. Appeal allowed for statistical purposes.

Order pronounced in the open Court on 18/12/2024.

Sd/-

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखासदस्य/ ACCOUNTANT MEMBER

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,
सहायकपंजीकार/ Assistant Registrar