

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

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

**आयकर अपील सं./ITA No. 601/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2019-20

M/s Karam Chand Sweets, Railway Road, Zira, Distt. Ferozepur.	Vs	The DCIT, Central Circle-2, Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AARFK5504E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, Addl. CIT

तारीख/Date of Hearing : 02.01.2025

उद्घोषणा की तारीख/Date of Pronouncement : 10.01.2025

**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 Act) before this Hon'ble Tribunal. The assessee is aggrieved by the order dated 12.07.2023 passed in Appeal No.10779/2018-19/IT/CIT(A)-5/Ldh/2019-20 by ld. CIT(A) under Section 250(6) of the Act which is hereinafter referred to as the "impugned order". The relevant assessment year

is 2019-20 and the corresponding previous year period is from 01.04.2018 to 31.03.2019.

2.

**Factual Matrix**

2.1 The assessee is engaged in the business of making and selling sweets during the year under consideration assessment year 2019-20.

2.2 That the assessee filed its return of income for the assessment year 2019-20 on 31.10.2019 declaring total income of Rs.29,82,510/-.

2.3 The return filed by the assessee was processed under Section 143(1) of the Act.

2.4 That a survey operation under Section 133A(1) of the Act was conducted on 24.10.2018 at the business premises of the assessee. During the course of survey, various documents were found and impounded. The case was manually selected for scrutiny and a notice under Section 143(2) was issued on 24.09.2020 which was served upon the assessee. Further notice under Section 142(1) of the Act was issued containing the detailed questionnaire on

26.01.2021 which was duly served upon the assessee electronically. Copy of impounded material was provided to the assessee. In response to the above notice(s) the assessee electronically uploaded his reply and submitted the requisite information/documents online through e-filing Portal, from time to time. The reply and the requisite documents filed by the assessee were duly examined.

2.5 That during the course of survey, tax amount of Rs.21,00,000/- was surrendered by the assessee which corresponded to surrender of additional income of Rs.27,18,500/- on application of provision under Section 115BBE of the Act. The ITR and Tax Computation showed that the assessee had failed to account for and tax the income of Rs.27,18,500/- by virtue of Section 115BBE of the Act. Thus, the assessee was called upon to show cause vide notice under Section 142(1) of the Act dated 26.01.2021 as to why the surrendered tax liability of Rs.21,00,000/- was not paid and the additional income surrendered should not be taxed under Section 115BBE of the Act.

2.6 In response to the above Show Cause Notice, the assessee furnished a reply dated 18.09.2021 that the assessee had surrendered Rs.21,00,000/- as tax in the partnership firm M/s Karam Chand Sweets for assessment year 2019-20 by surrender letter dated 24.10.2018. The assessee had duly paid tax of Rs.22,43,500/- [which includes surrender tax of Rs.21,00,000/- under Section 115BBE of the Act] and had complied with the voluntary submissions made at the time of survey. Copy of 26AS was enclosed too.

2.7 The ld. AO basis perusal of ITR, Challan credit as per ITR and Ack of ITR learnt that the assessee had not full filled tax liability as was sought to be claimed in its reply (supra) till the date of filing of return. In view of this factual position, the assessee has failed to deposit the tax as per the additional income of Rs.27,18,500/- as per the provision of Section 115BBE of the Act.

2.8 The ld. AO keeping in view the above factual position assessed the income of the assessee at Rs.29,82,510/- declared by the assessee. Tax to be charged under Section

115BBE of the Act on Rs.27,18,500/- on account of additional income surrendered during survey proceedings.

2.9 That the aforesaid assessment order of Id. AO bears No. ITBA/AST/S/143(3)/2021-22/103571/2015(1) and is dated 19.09.2021 which is passed under Section 143(3) of the Act, which is hereinafter referred to as “Impugned Assessment Order”.

2.10 That the assessee being aggrieved by the aforesaid “Impugned Assessment Order” prefers first appeal under Section 246A of the Act before Id. CIT(A) who by “impugned order” under Section 250(6) of the Act has dismissed the same. The Id. CIT(A) in sum and substance has dismissed the appeal as despite issuance of about 9 notices from 26.05.2022 to 22.06.2023 (different dates) the assessee has not appeared for hearing and therefore, it is clear that assessee is not interested in perusing his appeal and following Maxim “law assists those who are vigilant and not those who sleep over their rights” appeal was dismissed. It was also held that appeal does not mean merely filing of the appeal but rather effectively pursuing it.

2.11 The assessee being aggrieved by the impugned order has challenged the impugned order before us and has raised following grounds of appeal before us in Form 36 :

“1. That, the orders passed by the Ld. Commissioner of Income Tax (Appeal) vide orders dated 12.07.2023 is illegal uncalled for and against the law & facts.

2. That the Ld. Commissioner of Income Tax (Appeal) has sustained the additions merely on conjectures and surmises without any legal basis.

3. That, the grounds of appeal raised with Ld. Commissioner of Income Tax (Appeal) is as follows :-

(i) That Assessing Officer has wrongly applied rate of Income Tax as per provisions of section 115BBE of Income tax Act, 1961 on Rs. 27,18,500.00

Provisions of section 115 BBE may please be deleted & normal tax rate is to be applied on Rs.27,18,500.00.

(ii) That, the Assessing Officer has failed to appreciate the submissions made by Assessee in surrender letter at the time of survey that surrender of business income of Rs. 27,18,500.00 is subject to be taxed as normal business income subject to no penalty/prosecution.

So, the Assessment order passed by Assessing Officer calculating tax on assessed income as per section 115BBE is wrong and suo-moto calculated which is against the natural law of justice and should be set-aside.

(iii) That, the Assessing Officer has purely as per his whims and fancies deemed the surrender business income of Rs. 27,18,500.00 as unexplained investments and unexplained money as per section 69 and 69A of Income tax Act, 1961 whereas the Assessee has duly submitted the same as business income over and above the normal business income for Assessment Year 2019-20

So, the provisions of section 115BBE of Income tax Act, 1961 have been erroneously imposed by Assessing Officer while passing assessment order. Therefore, the Assessment order passed by Assessing Officer calculating tax on assessed income as per section 115BBE is illegal which is against the natural law of justice and should be set-aside.

(iv) The Assessee craves leave to argue on any other question of law or facts at the time of hearing of this appeal.”

3. **Record of Hearing**

3.1 The hearing in the matter took place before us on 02.01.2025 when none appeared before us for and on behalf of the assessee. The Registry placed before us an adjournment letter filed by Dinesh Sarna, counsel for the assessee wherein a request for adjournment was sought on ground that assessee is collecting information and documents necessary for appeal. The ld. DR appeared for and on behalf of the Revenue and interalia contended that at both the stages below i.e. before ld. AO and before CIT(A), the assessee has remained dormant and has not effectively pursued anything. Under these circumstances, he left it to this Tribunal to take appropriate decision in accordance with law.

4. **Observations, findings and conclusions**

4.1 We have examined the papers and records of the case and after carefully perusing the same we are of the considered view that almost both the orders of lower

authorities are ex-parte meaning thereby that assessee despite opportunity after opportunity has not explained his case on merits . Consequently, there is no effective disposal of the case on merits especially before CIT(A). Accordingly, we set aside the impugned order and direct the assessee to put forth his case on merits before Id. CIT(A) as expeditiously as possible. This Tribunal desires disposal of the case on merits alongwith reasoned and speaking order which deals with core of the dispute between assessee and Revenue. The unspeaking/non speaking order by First Appellate Authority is dangerous trend and so also non participation in First Appellate Proceedings by the assessee. We do not want Tax Administration getting clogged by such trend.

4.2 We are of the considered view that one more final opportunity be given to the assessee so that ends of justice are met. Therefore, under these facts and circumstances, we set aside the impugned order with direction to assessee to avail only one more opportunity of hearing as and by way of last chance. The assessee is directed to prepare his case

papers and before he avails the opportunity to be given by ld. CIT(A) and not to seek any adjournment. CIT(A) to pass order as expeditiously as possible preferably within six months from date of receipt of this order of the Tribunal.

5.

**ORDER**

5.1 In the premises, we set aside the impugned order and remand the case back to the file of CIT(A) with above directions. The adjournment request made is rejected.

5.2 The appeal of the assessee is allowed for statistical purposes.

**Sd/-  
(VIKRAM SINGH YADAV)  
ACCOUNTANT MEMBER**

**Sd/- ( 10.01.2025  
( PARESH M. JOSHI)  
JUDICIAL MEMBER**

“Poonam”

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